



## TRUSTS & ESTATES LAW UPDATE

JANUARY 2015

### Estate, Gift and GST Tax Changes

Effective January 1, 2015, the unified federal gift and estate tax exemption was increased to \$5.43 million dollars. This change reflects an adjustment for inflation from last year's \$5.34 million exemption amount.

What this change means is that an individual can now give up to \$5.43 million during their lifetime, or pass away with an estate valued up to \$5.43 million dollars, without paying any Federal gift or estate tax.

The annual gift reporting limit remains at \$14,000 per person. Total annual gifts less than this amount do not need to be reported and are not subject to gift tax. Total annual gifts in excess of this amount count against the donor's \$5.43 million lifetime gift exemption.

### Should You Make Changes To Your Estate Plan?

1. **Review Existing Estate Plan.** Most of our estate planning documents were drafted with flexibility to anticipate estate tax changes. It is critical, however, that all estate planning documents and overall estate plan be reviewed in light of the changes in order to avoid unwanted estate tax and asset transfer consequences and to maximize the benefits available under the new law. **This is especially true for clients who executed their Wills prior to 2001.** This is also an appropriate time to review the ownership of your assets to confirm that the manner in which you own your assets is coordinated with your estate planning documents. In addition, this may also be a good time to confirm who the beneficiaries are of your retirement plans and life insurance policies to ensure that they too are consistent with your estate planning objectives.
2. **Integrating Portability Into the Estate Plan.** Portability was made permanent by the new law. Generally, the conventional By-Pass trust is a superior vehicle for reducing estate tax than is a portability election, because it avoids estate taxes on the appreciation and accumulated income in the By-Pass trust between the deaths of the two spouses. Portability, however, can be a superior technique in cases where: (a) the couple hold most of their assets in a form that cannot be used to fund a By-Pass trust, such as joint tenancy with a right of survivorship or contractual rights (such as life insurance and retirement benefits); (b) the estate consists largely of retirement benefits that will make funding a By-Pass Trust

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less effective as a means of avoiding estate taxes; or (b) the decedent dies without having an estate plan that includes a By-Pass trust. In addition, most wills for married couples should now address the question of whether the executor should be required to elect portability, or be given discretion to elect portability.

3. **NJ State Estate Taxes.** Residents of New Jersey still have other concerns – the state estate tax. Despite a renewed push to eliminate or increase its tax credit, in New Jersey, the state exemption amount remains at \$675,000. This means that NJ residents may be subject to state estate tax even if there is no federal estate tax. While the state estate taxes are not as burdensome as the federal tax, they remain substantial nonetheless. Therefore, despite the relaxation of the federal estate tax, the overall cost of estate taxes will remain a concern for many.
4. **NY State Estate Taxes.** On April 1, 2015 the amount that may pass at death free of New York estate tax (the "New York basic exclusion amount") is set to rise to \$3.125 million. The New York State legislature passed, and New York Governor Andrew M. Cuomo signed, the Executive Budget for 2014-2015, which significantly altered New York's estate tax. The changes to the New York estate tax were made for the ostensible purpose of preventing the exodus of wealthy individuals from New York to more tax-favored jurisdictions, but the law will likely not have the desired effect.

The law increases the New York basic exclusion amount, which was previously \$1 million per person. As shown below, this increase will be made gradually through January 1, 2019, after which the New York basic exclusion amount will be equal to the federal exemption amount.

- For deaths as of April 1, 2014 and before April 1, 2015, the exemption is \$2,062,500.
- For deaths as of April 1, 2015 and before April 1, 2016, the exemption is \$3,125,000.
- For deaths as of April 1, 2016 and before April 1, 2017, the exemption is \$4,187,500.
- For deaths as of April 1, 2017 and before January 1, 2019, the exemption is \$5,250,000.
- As of January 1, 2019 and after, the exemption amount will be linked to the federal amount, which the IRS sets each year based on inflation adjustments—it's projected to be \$5.9 million in 2019. The top rate remains at 16%. (The original budget and the Senate bill had proposed a top rate of 10%.)

Do we have your current contact information and email address?

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