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Estate Planning Update - February 2014

High-Net-Worth New Yorkers Should Consider Making Gifts by March 31 or Possibly Pay More Estate Tax

In his 2014-2015 budget bill, New York Governor Andrew Cuomo has proposed significant changes to the state tax code. A brief summary of the proposed changes follows.

One proposed change is to increase the current New York estate tax exemption from $1 million to $5.25 million over the next four years, with indexing for inflation thereafter to match the federal exemption amount, and to lower the top estate tax rate from 16 percent to 10 percent over the next three years. These favorable changes would be effective April 1, 2014, and apply to estates of individuals dying on or after that date.

A second proposed change, and one clearly less favorable to high-net-worth New Yorkers, is to require lifetime taxable gifts made on or after April 1, 2014, to be included in the gross estate of New York decedents, which would increase the state estate tax liability. This latter change would close what some have criticized as a loophole in the estate tax system that allows New Yorkers to make generous deathbed gifts to reduce, or escape altogether, the state estate tax. The overall estate tax could be increased by between $300,000 and $500,000 if an individual makes a $5,000,000 gift on or after April 1, 2014 (depending on the applicable New York estate tax rate).

The proposal also includes the closing of the so-called resident trust loophole. Governor Cuomo proposes taxing distributions of accumulated trust income to New York beneficiaries of nonresident trusts (i.e., trusts created by grantors not domiciled in New York at the time of trust formation) and so-called exempt resident trusts (i.e., those trusts exempt from New York income taxation because they meet certain criteria in the tax law).

Finally, the governor's budget bill also includes a repeal of the New York generation-skipping transfer (GST) tax. Presently, state GST taxes are fairly limited, applying only to taxable trust distributions and terminations, but the repeal is nonetheless a favorable proposal for those trusts currently affected by the GST tax.

The tax change proposals are something of a mixed bag for high-net-worth New Yorkers, although the changes are overall more favorable than not. It is too early to tell which, if any, of these proposals may become law. In light of the April 1, 2014, effective date, however, if you have been considering making a gift to use some portion of your available federal gift tax exemption, you may want to take steps to ensure that the gift is complete by March 31, to eliminate the possibility that your 2014 gift will be includable in your New York taxable estate.

Please contact us if you have any questions regarding these proposed tax changes or would like our advice on how to make gifts in a tax-efficient manner.