

Alert

Proposed Changes to Wealth Transfer and Fiduciary Income Taxes in New York State

February 21, 2014

Governor Cuomo's 2014-2015 budget proposes comprehensive New York estate, gift, generation-skipping transfer ("GST") and trust income tax reform. The proposals:

- Increase the New York estate tax exemption amount from \$1 million to \$5.25 million by 2019, with indexing thereafter;
- Decrease the top New York estate tax rate from 16 percent to 10 percent;
- Include, for purposes of calculating New York estate tax, adjusted taxable gifts made on or after April 1, 2014 by New York residents;
- Repeal the New York GST tax (which currently applies to taxable distributions and taxable terminations); and
- Assess a tax on distributions of accumulated income to New York beneficiaries of non-resident trusts and exempt resident trusts.

New York Residents Should Consider Making Gifts Before April 1, 2014

While the Governor's estate and GST proposals tend to reduce taxes for New Yorkers, his proposal to treat gifts made on or after April 1, 2014 as part of the taxable estate of New York decedents would cause additional future estate taxes for New York residents whose combined gifts and estates exceed the New York estate tax exemption amount at the time of death. Thus, New York residents who have not fully used their federal gift tax exemption of \$5,340,000 should consider making gifts prior to April 1, 2014.

Individuals who previously used their full federal gift tax exemptions in 2012 or 2013 may wish to consider "topping off" their prior gifting to reflect the increase in the federal exemption amount due to inflation indexing. For example, a couple that made combined gifts of \$10.24 million in 2012 can make additional gifts of up to \$440,000 without incurring any federal gift tax (in addition to making annual exclusion gifts and payments directly to service providers for the tuition or medical expenses of others, both of which are transfer tax-free).

You may wish to consider gifting techniques such as intra-family loans, GRATs and sales to irrevocable grantor trusts.¹ These techniques generate the most transfer tax savings in environments like the

¹ The techniques mentioned are described in greater detail in SRZ's Nov. 4, 2011 *Alert*, [Unique Gifting Opportunities Through the End of 2012](#).

present one, when IRS interest rates are low. While there has been federal discussion of eliminating such techniques, they are currently viable.

Please contact your attorney at Schulte Roth & Zabel at your earliest convenience if you wish to discuss these or other gifting opportunities as they may apply to your specific financial and personal situation. As stated above, if you are a New York State resident, you may wish to complete your gifts prior to April 1, 2014 to insulate the additional gifts from New York estate tax.

Trustees May Wish to Consider Making Distributions to New York Beneficiaries Before June 1, 2014

Under current law, the accumulated income of certain types of trusts is not subject to New York income tax at the grantor level, the trust level or the beneficiary level. These categories of trusts include: (1) non-resident trusts (i.e., a trust whose grantor was not domiciled in New York at the time the trust became irrevocable); (2) exempt resident trusts (i.e., trusts that are exempt from New York income taxation because there are no New York trustees, New York assets or New York source income); and (3) incomplete gift, non-grantor (or "ING") trusts.

The Governor's proposal would tax distributions of ordinary income accumulated after tax year 2010 and distributed to New York beneficiaries of non-resident trusts and exempt resident trusts on or after June 1, 2014. (Capital gains are not included in ordinary income and, thus, planning to avoid state income taxation of capital gains would remain unchanged.) The proposal provides a credit for beneficiaries of non-resident trusts and exempt resident trusts for taxes paid to other jurisdictions and requires trustees of such trusts to file information returns that identify the resident beneficiaries and state the amount of any distributions of accumulated income. In addition, the proposal would include the income of an ING trust established by a New York resident in the current income of the trust's grantor.

In light of the contemplated legislation, Trustees of non-resident trusts and exempt resident trusts may wish to consider making distributions of accumulated ordinary income to New York beneficiaries prior to June 1, 2014 to shield such distributions from New York income tax.

Non-Profit Revitalization Act

The Non-Profit Revitalization Act of 2013 (the "Act") became law in December 2013. The Act requires New York charities, including private foundations, to adopt written governance policies and follow specified procedures, including the adoption of written conflict of interest and whistleblower policies. Most provisions of the Act are effective as of July 1, 2014. The firm will send a more detailed *Alert* regarding recommended policies and procedures in the near future.

If you have any questions concerning this *Alert*, please contact your attorney at Schulte Roth & Zabel.

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