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TRUSTS & ESTATES AND TAX ALERT

DON'T FALL OFF THE NEW YORK ESTATE TAX CLIFF:

DYING WITH ASSETS NOMINALLY OVER THE NEW YORK ESTATE TAX EXEMPTION CAN RESULT IN A NEW YORK ESTATE TAX APPROACHING \$520,000

Effective April 1, 2014, the New York estate tax exemption (the "State Basic Exemption Amount") was increased to just over \$2,000,000 and is set to gradually increase over the next few years. (See chart on page 2.) We estimate that the State Basic Exemption Amount will be in excess of \$5,700,000 beginning in 2019, depending on inflation.

The benefit of the state estate tax exemption is rapidly phased out for estates between 100% and 105% of the State Basic Exemption Amount, and is totally lost if the estate exceeds the "State Exemption Limit," set at 105% of the State Basic Exemption Amount.

How does this matter to you?

Essentially, the estate of a person who dies with less than the State Basic Exemption Amount will not pay a New York estate tax. However, if that same estate exceeds the State Basic Exemption Amount by more than 5%, there would be a New York estate tax on the entire estate, not just the amount over the limit.

For example:

- Assume the State Basic Exemption Amount is \$5,780,000* in 2019 (*our projection based on an estimated inflation factor).
- A person who dies with that amount in 2019 will not be subject to New York estate tax.

However, the State Basic Exemption Amount is totally lost if the estate exceeds the State Basic Exemption Amount by more than 5% (in this example, more than \$6,069,000).

- If that same person who died in 2019 had \$6,070,000 or more of net assets, there would be a New York estate tax approaching \$520,000, even though the excess over the State Basic Exemption Amount was only \$290,000.
- This is what is referred to as the "Estate Tax Cliff".
- The Estate Tax Cliff concept is most pronounced in 2019 and afterwards (which is why those years are the focus of this Alert), but it also is applicable before then as well.

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What can be done?

Planning opportunities are available today to address the problem of the Estate Tax Cliff and are particularly appropriate for married couples having a combined net worth of at least \$3,000,000. Since a sizable, but potentially avoidable, New York estate tax may be generated even with a nominal amount over the State Basic Exemption Amount, planning should be considered to address this unfavorable result. The planning could be as basic as equalizing wealth between the spouses, making certain lifetime gifts to family members and charitable opportunities, among other things.

The purpose of this Alert is to inform you of this significant change in the law and to notify you that there are planning opportunities that may help to substantially reduce or alleviate this tax. Note that there are several other aspects of the new estate tax law not mentioned here, including, the add back of certain New York gifts made before 2019 and the lack of portability of New York exemptions between spouses, which may be relevant to your situation and which we would be happy to discuss with you.

Date of Death	State Basic Exemption Amount	State Exemption Limit (105%)*
4/1/2014 - 3/31/2015	\$2,062,500	\$2,165,625
4/1/2015 - 3/31/2016	\$3,125,000	\$3,281,250
4/1/2016 - 3/31/2017	\$4,187,500	\$4,396,875
4/1/2017 - 12/31/2018	\$5,250,000	\$5,512,500
1/1/2019 and thereafter	Federal Exemption Amount (approximately)	State Basic Exemption Amount, plus 5%

**Note that there would be New York estate tax for estates falling between the State Basic Exemption Amount and the State Exemption Limit since the estate tax exemption is rapidly phased out to zero for estates in this range.*

We are available to provide counsel and guidance concerning these issues, as well as other trusts and estates and tax law concerns. For additional information, please contact the Phillips Nizer attorney with whom you have a primary relationship or our Trusts & Estates Department Chair, Donald P. Perry, at (212) 977-9700.

This information is provided as a public service to highlight matters of current interest and does not imply an attorney-client relationship. It is not intended to constitute a full review of any subject matter, nor is it a substitute for obtaining specific legal advice from appropriate counsel.