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A New York Perspective on Estate Taxes and One Big Beautiful Bill—Beauty is in the Eye of the Beholder

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Although the One Big Beautiful Bill Act, which was signed into law on July 4, 2025, permanently (at least for the moment) increased the federal estate tax "exemption" to $15,000,000 per individual, it did not do anything to lessen a NewYorker's New York state estate tax burden.

Beginning in 2026, the $15,000,000 federal exemption is available to offset taxable gifts made during one's lifetime with the balance available to offset the value of their taxable estate.

For married individuals, to the extent the first spouse to die has not "used" their exemption, and provided an estate tax return is filed upon the death of the first spouse in order to elect "portability," the unused balance is available to the surviving spouse, effectively permitting married individuals to pass $30,000,000 on to future generations without payment of federal gift or estate tax.

However, New Yorkers continue to deal with our estate tax regime, which remains unchanged from its last modification, effective April 1, 2014. For New Yorkers, the current exemption for 2025 is $7,160,000, per individual.

However, for married New Yorkers, what is not used upon the death of the first spouse is NOT available for use by the surviving spouse, essentially leaving New Yorkers in a "use it or lose it" situation.

While often thought of and referred to as an "exemption," leading one to believe that their estate will only pay estate tax to the extent their taxable estate exceeds the amount of their unused exemption, the word is somewhat of a misnomer as that is not the case.

For federal purposes, the "exemption" represents the value of a taxable estate, the estate tax on which will be fully offset by the available credit, resulting in no tax being due. A flat 40% tax will be imposed if one's taxable estate exceeds the amount of their remaining available exemption.

However, in New York, the exemption, which is referred to as the "basic exclusion amount," erodes once the New York state taxable estate exceeds $7,160,000, and disappears once the taxable estate exceeds 105% of the basic exclusion amount.

New York estate planning attorneys commonly refer to this as the "cliff," effectively making it more expensive for New Yorkers to die with an estate worth slightly more than $7,160,000, than to die with an estate that is worth exactly $7,160,000.

In other words, once the New York taxable estate exceeds 105% of the basic exclusion amount, even if only by one dollar, the entire taxable estate is subject to estate tax without the benefit of any exclusion.

To illustrate the difference between the federal and the New York state estate tax regime, assume a husband and wife own assets that will automatically pass to the survivor upon the first death (such as jointly held bank accounts, real property owned as tenants by the entirety, or retirement accounts where the surviving spouse is named as the beneficiary, etc.) worth $12,000,000.

Upon the first death, there will be no estate tax payable for either federal or New York state purposes since both federal and New York state law permit an unlimited marital deduction for assets passing to the surviving spouse.

However, upon the second death, the difference between federal and New York state law is striking. For federal purposes, the couple's combined available $30,000,000 exemption will shield their entire $12,000,000 of assets from federal estate tax.

For New York purposes, since the taxable estate of the survivor ($12,000,000) will be greater than 105% of their basic exclusion amount ($7,160,000), no exclusion is available and all of the couple's assets will be subject to estate tax. As a result, the estate of the surviving spouse will owe $1,386,800 in New York estate tax.

Had the couple properly planned their estates, there would be no tax due to New York state. Here is what they could have done: (i) changed the manner in which they owned their assets so that their assets did not automatically pass to the survivor, (ii) re-arranged ownership of these assets so that they were owned equally, but without there being any indication of how they would pass upon the first death, and (iii) prepared either a will or revocable trust containing a "credit shelter trust" provision.

A credit shelter trust provision provides that, upon the first death, assets having a value that does not exceed the decedent's basic exclusion amount will be held in trust for the benefit of the survivor (and issue) during the survivor's lifetime, and then pass to future generations upon the survivor's death, estate tax free.

Credit shelter trust provisions permit the surviving spouse and their children and grandchildren to have use of the income and principal, while the terms of the trust dictate how the remaining principal and income will be held or distributed upon the surviving spouse's death.

The assets held by the credit shelter trust will not qualify for the marital deduction and will be included in the taxable estate of the first to die, using the basic exclusion amount of the first to die, and effectively shielding those assets from estate tax.

As indicated earlier, in certain instances, it may be beneficial for a decedent to own less rather than more assets, at least for New York estate tax purposes. While the taxable estate of a New

Yorker that is less than their basic exclusion amount will not have any tax liability, a taxable estate that is greater than their basic exclusion amount—even by only a small amount—will be subject to a disproportionate New York estate tax.

For example, assuming the assets of the surviving spouse have a value of $7,260,000, only $100,000 more than their basic exclusion, the additional $100,000 will trigger a New York estate tax liability of $262,535.

After paying the tax liability, the decedent's heirs will receive $6,997,465. If the decedent's estate had a value of exactly $7,160,000, the estate would not be subject to any estate tax. The additional $100,000 of assets in excess of the decedent's basic exclusion amount effectively reduces the amount the decedent's heirs will receive by $162,535!

How might this result be avoided?

- Prepare comprehensive estate planning documents that include a credit shelter trust provision such as the one described above.
- Because there is no New York state gift tax, New York residents who have estates approaching the amount of their basic exclusion should consider making lifetime gifts. As a cautionary note, New York residents should be aware that any gifts made within three years of their death will be brought back into their estate for purposes of computing the New York state estate tax.
- As an alternative, or in addition, to making gifts to individuals, consideration should be given to making gifts to charities. Not only will gifts made to a charity reduce the taxable estate, they may also reduce one's income tax liability for the year in which the gift is made.
- New York residents can include a so-called "Santa Clause" provision in their will or revocable trust instrument. This provision makes a bequest to a charity if doing so effectively increases the amount that will pass to the decedent's family. In the above example, had the decedent included such a provision in their estate planning documents, $100,000 would have passed to a favored charity and the decedent's family would have received $7,160,000, not $6,997,465 ($7,160,000 - $262,355), an increase of $162,535.
- The surviving spouse should consider disclaiming assets that would otherwise pass to them upon the first death to avoid having their taxable estate "fall off the cliff."

Although the recent increase in the federal estate tax exemption provides significant relief for much of the country, New York's estate tax scheme presents certain risks and requires careful thought and planning.

New Yorkers should work with an estate planning attorney to maximize use of their federal exemption and mitigate state-level exposure. This can be accomplished through strategic gifting, trust structures, and charitable planning.

Ultimately, early and ongoing review of one's estate plan, and making modifications to the plan based on the current tax environment, are critical. There is no substitute for good planning!

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