



**ROCKLAND COUNTY
BAR ASSOCIATION**

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RCBA NewsBrief

75 DEGREES AND SUNNY OR 15 DEGREES AND SNOWY? SOME TAX CONSIDERATIONS TO BOOT — OR TO KICK OFF THOSE BOOTS AND PUT YOUR SANDALS ON!

*Submitted by Lynne S. Hilowitz, Esq.,
Co-Chair of the Surrogate's Court and Estate Planning Committee*

THE NEW YORK TAX LAW

In an attempt to prevent the migration of aging New Yorkers to Florida, New York State enacted legislation retroactive to April 1, 2014, governing estate and gift taxes.

As of April 1, 2015, the exemption from New York State estate tax shall increase from \$2,062,500 (2014 amount) per person to \$3,125,000. It shall increase by \$1,062,500 each April 1st until 2017, when it will be \$5,250,000. Commencing January 1, 2019, the individual estate tax exclusion amount will increase with the cost of living and conform to the Federal exemption amount. The 2015 Federal exemption of \$5,430,000 per person will continue to rise with the cost of living. For 2014, it is \$5,340,000. This good Federal estate tax news is tempered by some tricky New York State pitfalls for New York decedent's estates, such as:

1. There is no portability; i.e. under Federal law, a surviving spouse can use the unused portion of the exemption of his or her predeceased spouse (the "DSUE").
2. In New York, there is a tax "cliff" if the estate of the decedent exceeds the exclusion amount by 5% (the "5% rule"). In other words, the excess over the exemption amount results in an elimination of the exemption and the estate pays a New York State estate tax on the value of the entire estate. Thus, if a New York State estate is \$2,062,500, the New York State estate tax is zero but if the estate is \$2,165,625, the estate tax is \$112,050.

3. The highest New York State estate tax rate is still 16%. This clearly still serves as a significant incentive for wealthy New Yorkers to relocate to Florida. Consider the following example for a single person whose estate is valued at \$8,089,000. For 2014, that estate would pay the same amount for Federal estate taxes as it would for New York State estate taxes, i.e. \$785,000 — even though the Federal rate is 40% and the New York State rate on that amount is 13.6%. This is the result of the elimination of the New York State exemption under the 5% rule.

4. New York State has enacted a transitional deemed gift tax effective through December 31, 2018. Any gift in excess of the standard \$14,000 annual exclusion (plus qualifying tuition and medical expenses) per beneficiary made during the three-year period prior to death will be added back to the estate for New York State estate tax purposes. This includes property located in another state. Be wary of outright gifts or gifts to irrevocable trusts by those in ill health who don't need to worry about long term health care costs.

5. Florida has no estate tax, and it also has no state income tax. Thus, there is no state income tax imposed on the sale of a gifted low-basis asset. For New York residents, the combined Federal and state capital gains income tax rate is 31.4%.

6. Until this year, if an irrevocable trust did not have a New York State trustee, no New York State tangible or real property and/or no New York State source income, the trust paid no New York State income taxes on distribution. Now, a new throwback rule in New York State will tax New York State residents on the accumulated income from the above sources when the income is distributed.

For those of us who also handle estate planning for New Jersey domiciliaries, the estate tax exclusion remains at only \$675,000, there is no portability in New Jersey and there is that nasty inheritance tax in certain inheritance situations.

SOME ESTATE PLANNING CONSIDERATIONS

Because portability does not exist in New York State, Wills and Trusts of married couples should be reviewed to ensure that maximum advantage is being taken of the estate tax exclusion amount.

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Classifieds

If couples have assets divided into the separate names of each spouse, the funding of credit shelter trusts is not too difficult. If couples own property and/or trusts jointly, disclaimer planning can be used to fund a trust at the first death if the estate planning documents have the appropriate provisions. Beneficiary designations for retirement plans must also be reviewed in this context.

For particularly large estates, consider the use of QTIP Trusts, including “Clayton QTIPs” and “Supercharged” Credit Shelter Trusts.

Single or married, consideration must also be given as to whether life insurance policies need to be owned by an irrevocable life insurance trust to lessen New York State and/or Federal estate taxes.

An important tax trap in lifetime gift planning is the loss in the step up in basis at death if gifts are made of appreciated property. In other words, gifting of an appreciated asset could save a 16% New York State estate tax (if it avoids the three-year look back period) but result in a capital gains tax of 31.4% to the donee who sells the property at a cost basis carried over from the donor.

The Internal Revenue Service and New York State’s Department of Taxation and Finance will be the ones to assert valuation discounts for minority interests in gifting situations!

CONCLUSION

For wealthy older folks in New York and New Jersey, consider establishing your domiciles in Florida, etc.. Best advice: live it up and take that cruise around the world while you are still healthy! And, no matter where you live, make sure your estate plans provide creditor protection and as much minimization of estate and income taxes as possible.

NOMINATIONS FOR AWARDS

We have a membership of many outstanding attorneys. Each year we recognize those that are nominated by their peers. If you would like to nominate someone for one or more of our awards, please fill out this form and fax (845-634-1055) or e-mail sandy@rocklandbar.org. Final decisions will be made by the Board of Directors of the Rockland County Bar Association

THE LIBERTY BELL AWARD *This award is presented on Law Day to a member of our community for outstanding service in promoting a better understanding or respect for the Constitution, the Bill of Rights and our institutions of government. Generally this award is usually given to non-lawyer.*

I wish to Nominate:

THE STERNS AWARD *Given in the memory of a member who has made significant contributions to the Bar Association and the People of Rockland County over the year—service above self on behalf of the association. This award is presented at the General Dinner Meeting in June.*

I wish to Nominate:

THE LIFETIME ACHEIVEMENT AWARD *Presented to an individual for exemplary achievements as an attorney or a judge over a career. This award is presented at the Annual Dinner.*

I wish to Nominate:

THE BALSAMO AWARD *This award is presented at the June General Dinner Meeting in memory of Joseph Balsamo, Esq., to a RCBA member who has gained significant respect from the members of the Bar and the public for his personal and professional contributions to both, while maintaining the highest form of integrity and professionalism while advocating for each.*

I wish to Nominate:

Lynne S. Hilowitz, Esq., of DaSilva & Hilowitz LLP, is an "AV" rated attorney (rated 5.0 out of 5.0) with offices located at 120 North Main Street, New City, New York 10956 (Tel. [845-638-1550](tel:845-638-1550) and email: office@dasilvahilowitz.com). She has been practicing law in New York since 1981; is a graduate of The Benjamin N. Cardozo School of Law of Yeshiva University; and is admitted to the New York, New Jersey and Florida Bars. Ms. Hilowitz' focus is estate planning and estate taxation; probate; and litigation regarding trust and estate matters. She is a former President of the Rockland County Bar Association and continues to serve as Chair of its Surrogate's Court and Estate Planning Committee. She is a past President of the Estate Planning Council of Rockland County, Inc. and continues to serve on its Board of Directors. Ms. Hilowitz is the author of numerous articles in New York State, Rockland County and American Bar Association publications and has been featured in articles appearing in various media in the areas of trusts, wills, estates, and estate taxation. She also is a former Chair of the New York State Bar Association's 4,000 member General Practice Section, its 9th Judicial District Representative, and is currently Co-Chair of its Trusts and Estates Law Committee. Ms. Hilowitz has been a guest on radio programs and has lectured extensively for attorneys at bar association seminars as well as for other disciplines and the public at various civic and professional functions.