

### **SIGNIFICANT CHANGES PROPOSED TO NEW YORK ESTATE AND INCOME TAX LAWS**

The New York State Legislature is considering some significant proposed changes to the New York estate tax law, the tax treatment of gifts by New York residents, and New York income taxation of certain trusts. Some important provisions are highlighted below. All of these proposals are subject to further review and may change before the enactment of final legislation, but some provisions, if enacted, will apply as of April 1 of this year.

#### **Provisions of interest to all New Yorkers**

##### **1) Changes to NY Estate Tax Exemption Amount & NY Estate Tax Rate**

If enacted, the proposed law would make significant changes to the New York estate tax law.

The New York estate tax exemption amount (*i.e.*, the amount an individual can pass free of New York estate tax) would gradually increase from the current exemption amount of \$1 million to \$5.25 million over the next few years, with indexing for inflation after January 1, 2019.

For estates up to the exemption amount in any given year, there would be **no** New York estate tax.

The exemption is gradually phased out for estates above the exemption amount, with the result that for estates valued at 105% of the exemption amount or more, there would be no New York exemption, and the entire estate would be taxed for New York purposes.

The top New York estate tax rate would be gradually reduced from 16% to 10% over the next few years.

The net effect of these changes would be a reduction in New York estate tax payable for most estates, but the phase out of the exemption amount, if enacted, will create planning challenges in some situations.

##### **2) Opportunity to Make Gifts Prior to April 1, 2014 that Escape NY Tax**

Presently, New York does not impose a gift tax. If enacted, the proposed law would cause gifts made by a New York resident after March 31, 2014 in excess of the New York exemption amount to be taxed in the donor's estate for purposes of New York estate tax. The effect of this proposal would be a New York estate tax payable at death on the donor's cumulative lifetime gifts.

If you are a New York resident, you may wish to consider making gifts prior to April 1, 2014 to avoid exposing those gifts to New York estate tax at your death. Making gifts now may be particularly appealing to New York residents who have not yet used their entire federal exemption amount (which is currently \$5,340,000 per person in 2014).

### 3) NY Generation-Skipping Transfer (“GST”) Tax Repeal

The proposed law would also repeal the New York GST Tax, which had limited application.

#### Provisions related to trusts with NY grantors or NY beneficiaries

### 4) Impose NY Income Tax on NY Beneficiaries for Certain Trust Distributions

The proposed legislation would impose an additional New York income tax liability on New York resident beneficiaries of certain trusts. The liability may arise if (i) the trust itself is not subject to New York income tax, (ii) the trust makes a distribution to a New York beneficiary in any given year, and (iii) in prior years, the trust had accumulated rather than distributed out all of its income. In those circumstances, the New York resident may become liable for New York income tax on some or all of the trust’s accumulated income from prior years, but only up to the amount of the distribution that the beneficiary receives from the trust.

### 5) Impose NY Income Tax on NY Grantors of “ING Trusts”

The proposed law would also impose New York income tax on New York grantors of certain out-of-state trusts — commonly known as Irrevocable Non-Grantor Trusts or “ING Trusts”—which had previously not been subject to New York income tax. If enacted, the proposed law would subject grantors of ING Trusts that are not liquidated before June 1, 2014 to New York income tax.

\* \* \* \* \*

Careful estate planning is important for clients and their families to ensure that their goals are realized in a tax-efficient manner. If you have any questions about how the proposed New York state legislation may impact you as a New York resident or as a trust grantor, trustee, or beneficiary, please contact us.

**This alert is for general informational purposes only and should not be construed as specific legal advice. If you would like more information about this alert, please contact one of the following attorneys or call your regular Patterson contact.**

<u><b>Christopher C. Angell</b></u>	<b>212.336.2770</b>	<b><a href="mailto:ccangell@pbwt.com">ccangell@pbwt.com</a></b>
<u><b>Michael S. Arlein</b></u>	<b>212.336.2588</b>	<b><a href="mailto:msarlein@pbwt.com">msarlein@pbwt.com</a></b>
<u><b>Hugh J. Freund</b></u>	<b>212.336.2370</b>	<b><a href="mailto:hjfreund@pbwt.com">hjfreund@pbwt.com</a></b>
<u><b>Carolyn B. Handler</b></u>	<b>212.336.2480</b>	<b><a href="mailto:cbhandler@pbwt.com">cbhandler@pbwt.com</a></b>
<u><b>John Sare</b></u>	<b>212.336.2760</b>	<b><a href="mailto:jsare@pbwt.com">jsare@pbwt.com</a></b>
<u><b>Catherine Grevers Schmidt</b></u>	<b>212.336.2116</b>	<b><a href="mailto:cgschmidt@pbwt.com">cgschmidt@pbwt.com</a></b>

**IRS Circular 230 disclosure: Any tax advice contained in this communication (including any attachments or enclosures) was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication. (The foregoing disclaimer has been affixed pursuant to U.S. Treasury regulations governing tax practitioners.)**

To subscribe to any of our publications, call us at 212.336.2186, email [info@pbwt.com](mailto:info@pbwt.com), or sign up on our website, [www.pbwt.com/resources/publications](http://www.pbwt.com/resources/publications).

This publication may constitute attorney advertising in some jurisdictions.

© 2014 Patterson Belknap Webb & Tyler LLP