

# NEW YORK STATE MAKES MAJOR CHANGES TO ESTATE AND GIFT TAX LAW

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## Tags

New York Estate and Gift Tax

**New Exclusion Amount:** Prior to April 1, 2014, an estate was required to file a New York State estate tax return if the total of the federal gross estate plus the federal adjusted taxable gifts and specific exemption exceeded \$1 million (the “basic exclusion amount”) and the individual was either: (i) a resident of the state at the time of death or (ii) a resident or citizen of the U.S. at the time of death but not a resident of the state, whose estate includes real or tangible personal property located in the state. (Other rules apply to individuals who were not residents or citizens of the U.S., but who died owning real or tangible personal property located in the state.)

Recent N.Y.S. legislation has increased the basic exclusion amount as follows:

- For individuals dying on or after April 1, 2014 and before April 1, 2015 - \$2,062,500
- For individuals dying on or after April 1, 2015 and before April 1, 2016 - \$3,125,000
- For individuals dying on or after April 1, 2016 and before April 1, 2017 - \$4,187,500
- For individuals dying on or after April 1, 2017 and before January 1, 2019 - \$5,250,000

After January 1, 2019, the basic exclusion amount will be indexed for inflation from 2010, which should link the state exclusion amount to the federal amount.

**Estate Tax “Cliff.”** The basic exclusion amount is not a true exclusion, but rather an estate tax “cliff.” The basic exclusion amount equates to an applicable credit amount. For New York taxable estates that are between 100% and 105% of the basic exclusion amount, the credit amount is rapidly phased out and *eliminated entirely* if the New York taxable estate exceeds 105% of the basic exclusion amount. Therefore, if a resident decedent’s taxable estate exceeds the basic exclusion amount by more than 5%, the *entire* taxable estate will be to be subject to New York estate tax.

**No Change to Top Estate Tax Rate.** The top estate rate remains 16%.

**No Portability.** The New York State legislation did not include Federal “portability” whereby the executor of the deceased spouse can elect to transfer the deceased spouse’s unused applicable exclusion amount to the surviving spouse.

**Gift Add Back.** Prior to the law change, there was no gift tax in New York and no additional estate tax on gifts although the amount of lifetime taxable gifts made by a New Yorker may have caused the estate tax rate to increase. Under the new law, the New York gross estate of a resident decedent will be increased by the amount of any taxable gifts for federal gift tax purposes (not otherwise included in the decedent's federal gross estate) made during the three-year period ending on the decedent's date of death, but not including any gift made: (1) when the decedent was not a resident of New York State; (2) before April 1, 2014; or (3) on or after January 1, 2019.

**Throwback/Accumulation Tax.** Accumulation distributions (limited to undistributed net income accumulated in a taxable year commencing after December 31, 2013) by exempt resident trusts, generally not subject to New York tax, to New York beneficiaries will be subject to an accumulation tax. An exempt resident trust is a trust created by a New York domiciliary that has no trustee domiciled in New York, no trust property located in New York and no New York source income. These changes would be effective immediately and will be applicable to tax years beginning on or after January 1, 2014. The tax will not be imposed on distributions of accumulated income by exempt resident trusts (except ING trusts) made before June 1, 2014. Nonresident trusts are not subject to this tax.

**ING Trusts.** Incomplete gift, nongrantor trusts ("ING Trusts"), which had received favorable federal private letter rulings, had been established to minimize state taxes. The ING Trust is established in a jurisdiction, such as Delaware, that does not impose a state fiduciary income tax and does not tax distributions to out-of-state beneficiaries. Further, neither the trust nor its beneficiaries would normally be subject to state income tax in the beneficiaries' state of domicile on either the income or distributions of an out-of-state nongrantor trust. The new law now subjects ING Trusts to New York income tax by treating those trusts as grantor trusts for New York income tax purposes. This change would be effective immediately and be applicable to tax years beginning on or after January 1, 2014. Income earned by ING trusts that are liquidated on or before June 1, 2014 is not subject to tax.

