

NEW YORK STATE RENEWS THE THREE-YEAR CLAWBACK FOR GIFTS

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Generally, Federal estate and gift taxes are imposed on a person's right to transfer property to another person during life or upon death. State rules may differ from the Federal regime, imposing either an estate tax, inheritance tax, or gift tax or some combination of these taxes.

New York State limits its taxation to an estate tax on the transfer of property at the time of death. There is no gift or inheritance tax. But as of April 1, 2014, gifts made by a N.Y. resident between April 1, 2014, and December 31, 2018, were "clawed back" (added back) to the giver's New York State taxable estate if the gifts were made within three years of their death. A gift was not added back if it was made (i) when the decedent was not a N.Y. resident, (ii) before April 1, 2014, or (iii) on or after January 1, 2019.

The clawback was designed to prevent wealthy New Yorkers from making gifts shortly before their deaths to avoid New York estate tax while still taking advantage of the high Federal estate and gift tax exclusion.

The rule was set to expire on January 1, 2019 – the same time the state estate tax would equal the anticipated (pre-2017 tax reform) Federal estate tax exemption, thus eliminating the need for the clawback rule. But, Federal tax reform doubled the Federal exclusion amount (to roughly twice the N.Y. exemption), creating the need, once again, to extend the clawback to prevent revenue losses from deathbed gifts.

On April 12, 2019, as part of the New York Fiscal Year 2020 Budget, New York State extended the three-year clawback on gifts through December 31, 2025, after which the Federal tax exclusion amount is expected to align with the New York exemption.

The renewed clawback does not apply to the gifts made at certain times and under certain circumstances:

- When the decedent was not a N.Y. resident
- Before April 1, 2014
- Between January 1, 2019, and January 15, 2019 (the brief period in 2019 prior to the announcement of the Governor's executive budget on January 15, 2019)
- With respect to a gift of real or tangible property located outside N.Y.
- On or after January 1, 2026

If none of these exceptions apply, gifts made by a N.Y. resident within three years of their death will be added back to the giver's New York State taxable estate.