

*After the Federal Tax Cut and Jobs Act**...where do you go from here...literally***Tri-state Estate Tax Overview: New York, Connecticut & New Jersey**

Thinking about a move in the tri-state area? Downsizing during retirement? Looking for a place to raise a family? Curious about your neighboring states or whether your own state's transfer tax system was impacted by recent federal tax reform? Cassin's estate planner's overview of important tri-state estate tax considerations is intended to answer some of the questions you may have about such a move.

FEDERAL OVERVIEW

The Tax Cut and Jobs Act of 2017 (TCJA) doubled the amount that can pass free of estate/gift taxes from \$5.6 million to \$11.2 million making it possible for a couple to transfer a combined \$22.4 million during their lifetime and/or at death. For a great portion of U.S. citizens tax planning on the federal level became obsolete.

The increase in the Federal exemption amount does not mean that planning is not necessary to ensure that your assets go to the intended beneficiary(ies) or that the right individuals are appointed as executor and/or trustee over your assets for surviving spouses and minor children. Consideration is needed for asset protection and other creditor issues if you own a business or are dealing with addiction and/or spendthrifts. Life events give rise to important issues that estate planning attorneys can address in a well-crafted plan that suits their clients' objectives and is sensitive to family dynamics.

In addition, unless there is legislative action, TCJA will sunset on January 1, 2026 at which time the Federal exemption amount will revert to its pre-2018 level, as indexed for inflation. Also, TCJA did not affect portability, i.e. an election to transfer a deceased spouse's unused exemption amount (DSUE) to his or her surviving spouse. And, while the Federal generation-skipping transfer (GST) tax also doubled and still matches the estate tax exemption amount; as before TCJA, the GST tax is not portable. No changes were made to the annual gift tax exclusion amount which was indexed to \$15,000 per person/year as of January 1, 2018. So, continuing a gifting plan that takes advantage of the annual gift tax exclusion should not be forgone. Indexing of the new TCJA federal exemption amounts is tied to a new index, the chained-CPI, which many tax analysts anticipate rising at a slower rate than the previously used CPI index.

The maximum Federal estate tax rate is 40%.

NEW YORK

Estate and Gift Tax – The State of New York imposes an estate tax on the transfer of property from any deceased individual who, at the time of his or her death, was either a resident of New York Stateⁱⁱ or a non-resident who owned real or tangible personal property located in the state.ⁱⁱⁱ For a resident, the decedent's gross estate is equal to his or her federal gross estate reduced by real and tangible personal property located outside of New York, and, increased by certain limited powers of appointment^{iv} and the amount of most post-2013 taxable gifts made by the decedent within three years of date of death.^v From the resident decedent's gross estate the executor (or administrator where the decedent died intestate) may deduct such items of deduction allowed under the IRC^{vi} (whether or not a federal returns is actually filed) except to the extent that such deductions relate to real or tangible personal property located outside of the state.

Includible gifts are any taxable gifts^{vii} made within three years of the decedent's date of death and not already included in the federal gross estate. It does not include real or tangible property located in another state or outside of the United States.

New York's estate tax exemption amount is referred to as the basic exclusion amount or BEA. In March 31, 2014 Governor Cuomo increased the BEA dramatically but he did so over a time, with the last increase set to phase-in on January 1, 2019 when it would equal the federal exemption amount, as adjusted for inflation. Since the enactment of TCJA, New York has not revised its BEA and the last phase-in of BEA will go into effect on January 1, 2019. However, practitioners should not be fooled by TCJA. New York's BEA is tied to the federal exemption in effect prior to TCJA, or, \$5,000,000 as adjusted by inflation using the CPI (not chained-CPI). Therefore, the present New York BEA of \$5,250,000 for the period beginning on April 1, 2017 and ending on December 31, 2018 did not change with the enactment of TCJA.

Non-residents owning real and tangible property in New York are subject to the state's estate tax. Cooperative apartments are not real property. Condominiums held in S-corporations with a business purpose are also considered intangible personal property and not part of a non-resident's New York gross estate. New York taxes estates on the decedent's real and tangible personal property located in the state at the time of death and adds back into the taxable estate gratuitous transfer(s) after April 1, 2014 made while the decedent was a resident of New York and consisting of (1) real and tangible personal property located in the state and (2) intangible personal property used in a trade, business or profession carried on in New York.

When Gov. Cuomo increased the BEA, he also established a "Cliff" that phases out the BEA for both residents and non-residents. The phase-out is referred to as a "Cliff" because New York taxable estates that exceed 105% of the BEA will have no benefit of the exemption—it is completely phased-out. For estates valued between 100% and 105% of the "Cliff" consideration should be given to use of the "Santa-clause" to increase the amount that can pass to heirs while also giving to charitable organizations.

- A New York decedent's unused basic exclusion amount is not portable to his or her spouse.
- The State does allow a QTIP (qualified terminal interest property) election whether or not a federal estate tax return is filed.
- New York does not have an inheritance tax.
- New York does not impose a gift tax. But, as previously noted, post 2013 gifts made within three years of death may be brought back into the taxable estate for estate tax purposes.
- New York does not have a generation skipping transfer tax.
- New York imposes a maximum estate tax rate of 16% on the value of a decedent's taxable estate in excess of \$10,100,000.
- Buyers from estates owning real property will generally require a tax waiver to close on a sale.
- The state estate tax return (Form ET-706) is due nine months after date of death.
- Unless there are errors or special circumstances, the New York State Tax Department will provide a closing letter four to six months after filing to certify that no tax is due or to serve as a final receipt for the tax due.

NEW JERSEY

Estate Taxes – New Jersey's estate tax was repealed by Governor Christie on October 14, 2017 with an effective of January 1, 2018. The new law also eliminates the tax on real and tangible property of a non-resident decedent.

Inheritance Tax – New Jersey's inheritance tax is still effective. The inheritance tax is based upon classes of beneficiaries. Income tax of individuals and trusts

Class A	Surviving Spouses, parents, children, grandchildren	Exempt
Class C	Brothers and sisters and children-in-law	Subject to tax after built-in exemptions.
Class D	Nieces, nephews, aunts, uncles, friends, and non-relatives	Subject to Inheritance Tax
Class E	Charitable Institutions	Exempt

- Since New Jersey does not impose an inheritance tax on assets passing to a spouse, the use of QTIP elections are not applicable.
- New Jersey does not impose a generation-skipping transfer tax.
- New Jersey excludes from taxation many types of insurance proceeds and retirement benefits. It is usually inadvisable to name your estate as a beneficiary, which is often the default election.

Gift Tax – none

CONNECTICUT

Estate tax reformed in 2017 to mirror Federal exemption amounts and modified again after TCJA – Connecticut’s Governor Malloy signed a state budget bill on October 31, 2017^{viii} that increased its state estate tax exemption amount from \$2,000,000 to \$11,180,000 by the year 2019. It did so by tethering the state’s exemption amount to the Federal estate tax exemption amount, including TCJA’s application of chained-CPI as an index for annual inflation adjustments. Note the date—the Connecticut bill was passed before TCJA.

Realizing Connecticut’s fiscal crisis over unfunded pensions its government recently passed another bill that phases in the increase in its exemption amount over an additional three-year period; beginning January 1, 2023 the Connecticut exemption amount will be the same as Federal. However, this also means that if TCJA’s estate tax exemption laws sunset on December 31, 2025, both the federal and Connecticut estate tax exemption amount will revert to the pre-TCJA amount of \$5,000,000 as adjusted, and incidentally, will then be the same as the State of New York. Odder things have happened.

Connecticut’s increase in its exemption amount will phase-in over three years: \$2,600,000 in 2018; \$3,600,000 in 2019; \$5,100,000 in 2020; \$7,100,000 in 2021; \$9,100,000 in 2022; and then, from 2023 until December 31, 2025 the Connecticut exemption will match the federal estate tax exemption amount, which is currently \$11,180,000. Again, unlike New York which uses the former 2014 CPI index for annual inflation adjustments, Connecticut’s inflation index is tied to the same federal index (chained-CPI) and, therefore, federal and Connecticut exemption amounts will be the same from 2023 until the end of 2025. The Connecticut estate tax is payable six-months from date of death.

CT Gift Tax remains but is similarly tied to Federal exemption amount by 2023.

Connecticut is the only state that still has a gift tax.

Special state considerations:

- Connecticut does not have portability of a deceased spouses unused exemption amount.
- Connecticut allows a reverse QTIP election so that during the years that the Connecticut exemption amount is less than the federal exemption amount an executor can make a QTIP election for marital trust if such tax planning is warranted.
- Connecticut allows a step-up in basis for assets includible in the decedent’s taxable estate.
- There is a cap on the maximum estate tax payable. Max. estate tax is presently \$20million but will decrease to \$15 million.
- The Connecticut generation-skipping transfer tax does not apply to generation-skipping transfers after December 31, 2004.
- If you are wondering what happened to Connecticut’s Succession Tax, it was repealed and does not affect estates of persons dying after December 31, 2004.

TRANSFER TAXES

	Federal	New York	New Jersey	Connecticut
Estate Tax	Yes	Yes	No	Yes
Inheritance Tax	No	No	Yes	No
Gift Tax	Yes	Repealed – certain gifts within three years of death includible in estate tax	No	Yes
Generation Skipping Transfer Tax	Yes	No	No	No
Basic Exclusion Amount (BEA)	\$11,180,000 with annual cost of living adjustment based on Chained-CPI	\$5,490,000 for 2018 with annual cost of living adjustment based on Federal 2014 index.	N/A	2018=\$2,600,000 2019=\$3,600,000 2020=\$5,100,000 2021=\$7,100,000 2022=\$9,100,000 2023 = Federal exemption amt.
Estate/Gift (if applicable) Tax Brackets/Rates	<u>Lowest:</u> \$0-\$10,000 @ 18% <u>Highest:</u> Over \$1,000,000 @ 40% Note: tax is on the gross taxable less deductions and plus taxable gifts. From this tentative tax certain credits, gifts taxes paid, and the BEA tax equivalent is subtracted.	<u>Lowest:</u> \$0-\$500,000 @ 3.06% <u>Highest:</u> Over \$10,100,000 @ 16%	<u>Based upon Heir's relationship to Decedent</u> Class A - surviving spouse, parents, children, grandchildren = no estate tax Class B – eliminated = n/a Class C – brother, sister, children-in-law = over \$25,000 @ 11% - 16% (after built-in exemptions) Class D – niece, nephew, aunt, uncle, friend, non-relative = 15% - 16% Class E – charitable institutions = no estate tax	<u>Lowest:</u> on taxable estate over BEA @ 10% in 2020, 10.8% in 2021, and 11.6% in 2022. In 2023 and beyond there is a single rate of 12% <u>Highest:</u> 12% <u>CAP</u> presently \$20 million which will decrease to \$15 million in 2019. This is the estate tax on estates of \$129,000,000.
Portability	Yes	No	No	No
Special Considerations	TCJA sunsets on December 31, 2025.	'Cliff' remains which eliminates the BEA for taxable estates that exceed 105% of the State's BEA		The phase-in of CT's increased exemption amount is from 2019-2023 and may sunset with the federal law at the end of 2025.

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SUMMARY:

Federal estate tax doubling of the estate tax exemption amount may leave individuals feeling that estate planning is no longer a major concern. We will continue to see life-events drive individuals to see their trusts and estate attorney. For example:

- a child is born and clients ask who should be named guardian,
- divorce happens and both parents and divorcing partners come in to ensure that assets are passing in according to their wishes which may now be different than before separation,
- deaths occur and, again, we reassess to whom and how assets should be divided.

Economic factors will also remain a driving force for the wealthier client. For example:

- those with accumulated wealth in excess of the Federal \$11.2 million exemption amount (\$22.4 million for a couple)
- and all clients who are reconsidering their home state selection after TCJA.

Changes in tax laws creates pivotal moments to reassess plans and take advantage of new possibilities. This is one of those moments.

If you are considering a change in domicile, please see a qualified estate planner or tax professional to ensure that you take all the necessary steps to make an effective change.

Sincerely yours,

Mari J. Galvin, Practice Chair
mgalvin@cassinllp.com
(914) 517-6906

Joseph M. Cassin, Chairman
jcassin@cassinllp.com
(914) 517-6924

ⁱ Tax Cut and Jobs Act, Pub. L. No. 115-97.

ⁱⁱ N.Y. Tax §954-58.

ⁱⁱⁱ N.Y. Tax §960.

^{iv} N.Y. Tax §957 brings back into the taxable estate of a NY resident the value of property passing as a result of the decedent's exercise of a limited power of appointment that was created prior to Sept. 1, 1930.

^v N.Y. Tax §954 (3) adds back into the taxable estate of a NY resident the value of taxable gifts (as defined under section 2503 of the internal revenue code) made within three years of date of death and not otherwise included in the decedent's federal gross estate, except any gift(s): (1) made by the decedent when he or she was not a resident of New York, or (2) made before 4/1/2014, or (3) that was of real or tangible personal property located outside of New York.

^{vi} N.Y. Tax §955 (d) for federal deductions allowed see IRC §2032(b) special deduction rules where alternate valuation is elected, IRC §2046 disclaimers, IRC §2053 expenses, indebtedness and taxes, IRC §2054 losses, IRC §2055 transfers for public, charitable and religious purposes, and IRC §2056 bequests to surviving spouse (but see N.Y. Tax §955 (c) regarding the making of a qualified terminable interest property election and deductibility for New York estate tax purposes).

^{vii} Taxable gifts are defined as gifts under section 2503 of the Internal Revenue Code.

^{viii} On October Ct. Gen. Assembly, S.B. No. 1502, 2017.
