ESTATES UPDATE 2014

By David N. Adler

The year in trusts and estates was highlighted by the imposition of new New York State estate tax rules, notably with respect to increased threshold for many resident decedents, coupled with a series of procedural laws primarily expanding the options for fiduciaries in trust and accounting scenarios.

HISTORY

As was noted last year in this column, the federal estate tax rules were solidified at a lifetime maximum exemption amount of $5,000,000 and indexed for inflation (this year - $5,340,000). Further, the concept of portability was also preserved, consisting of the fact that any unused portion of a spouse's exemption amount, may be utilized by the surviving spouse. In the event that portability is elected on the decedent's federal estate tax return, up to $10,680,000 could now be passed federally estate tax free by the second spouse to die.

This contrasted heavily with the New York State exemption equivalent of $1,000,000 which had remained static for many years. As such, only the first $1,000,000 operated as an exclusion from New York State estate taxes, over 4,000,000 less than the federal exclusion amount.

NEW YORK ESTATE TAXATION

Effective April 1, 2014, the Governor, in his 2014-2015 budget legislation, made significant changes to New York's estate tax laws. As this constituted an anticipated, and mid year immediate change, this Update Article would not have been timely if delivered to the Bar after the first of the year, as was normal custom. Kindly accept the timing of this Article, as an attempt to include important midyear developments as part of the overall summary of relevant legislation.

Essentially the basic New York exclusion amount (amount exempt from tax) is being gradually increased over a five year period to equal the federal exemption amount. Specifically, from April 1, 2014 to March 31, 2015 the exclusion is $2,062,500; from April 1, 2015 to March 31, 2016 it is $3,125,000; from April 1, 2016 to March 31, 2017, it is $4,187,500; from April 1, 2017 to March 31, 2018 it is $5,250,000. From January 1, 2019 forward, the New York State exclusion is scheduled to be equal to the federal exclusion (approximately $6,000,000) amount. . . . Continued on page 7

Need help with alcohol, drugs or gambling?

Call the Lawyers Assistance Committee Confidential Helpline 718-307-7828

DETERMINATION OF TAX

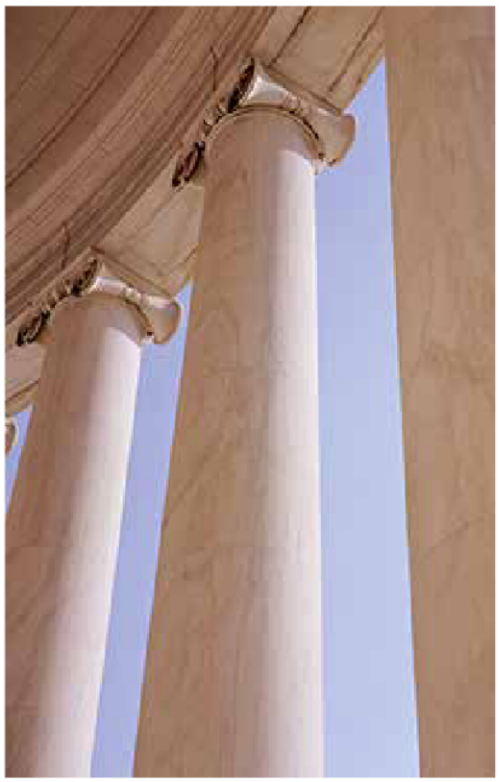
One of the purported goals of this legislation was to prevent high net worth individuals from leaving New York State for more tax friendly domiciles. Yet, due to the mechanics of computation of the new New York State exclusion amount, it does not offer the same benefits to those whose estates exceed the state exclusion amount.

Essentially for estates at or beneath the present New York exclusion amount, an applicable credit offsets the computed tax, resulting in a true exemption from New York estate taxes. Yet once the exclusion amount in that year is exceeded (ie. this year greater than $2,062,500); the credit is adjusted and decreased as the size of the taxable estate increases. The new law contains credit computations for estates within 105% of the exclusion amount, and for those exceeding 105% the exclusion amount.

For estates within 105% of that year's exclusion amount, a reduced credit is available against the tax, thereby creating a somewhat better tax scenario than existed before the legisla-tion, yet taxability remains.

For estates greater than 105% of that year's exclusion amount, no credit whatsoever is allowed, essentially voiding any state tax benefit for larger estates. As such, the entire estate is subject to New York estate taxation.

These two larger estate scenarios seem to fly in the face of the purported primary goal of the legislation; the tax benefits decrease, as the estates increase past the new thresholds for exclusion. Further, the federal concept of portability does not apply to New York State.



For planners, allocation of assets between spouses to offset the loss of one's state exclusion amount remains a consideration, in conjunction with utilization of a by pass trust (credit shelter trust), to formally preserve each individual's exclusion amount.

QDOT

Qualified Domestic Trusts permit the federal marital deduction to apply to a transfer to a NON-US Citizen surviving spouse. Traditionally in order to qualify for this deduction, a federal estate tax return was required to be filed, even if the taxable estate was less than the federal threshold. Now, if no federal return is required to be filed (ie. the taxable estate is less than 5,370,000) there is no requirement to transfer funds to a NON-US Citizen spouse in a Qualified Domestic Trust they may be transferred outright if said transfers would, in fact, qualify for the estate tax marital deduction on their own.

Read More »

ESTATES UPDATE 2014 *Continued*

DECANTING

In 2011, significant revisions were made to the New York State decanting statute (EPTL 10-6.6). Decanting is a mechanism whereby a trustee who had authority/discretion to invade the principal of a trust may utilize said principal in creation of a new trust.

This legislation was discussed at greater length in this column at the time of its inception. Certain technical clarifications were made over the past year to that statute, significantly broadening fiduciary power. For example, a trustee with unlimited discretion to invade trust principal could decant to a new trust excluding all successor or remainder beneficiaries of the original trust. The interest of a discretionary income beneficiary of the original trust may be continued in the new trust. Finally, the decision to decant requires a majority determination of trustees so acting, not a unanimous one.

ACCOUNT OF FIDUCIARIES

Prior law provided that a resigning fiduciary must formally settle his account judicially (SCPA§715,716). The new law permits the Court to approve an informal settlement of the resigning fiduciary's account, while preserving the Court's ability to compel a judicial accounting. Thus the option for an easier, less formal transition between fiduciaries now exists.

QUEENS COUNTY

Our seminar last year focused exclusively on primary and intermediate level estate planning. It included an analysis of the new federal estate tax law, along with the application and benefits of Credit Shelter Trusts, Qualifying Terminable Interest Trusts and Grantor Retained Annuity Trusts in light of the new law. We thank moderator and Surrogate Peter J. Kelly, and speakers John McFaul and David Schoenhaar for excellent presentations. It is anticipated that our fall seminar shall address fiduciary responsibility in a variety of proceedings. I trust you all had an enjoyable summer.