

WAIT! I THOUGHT THAT NEW YORK DIDN'T HAVE A GIFT TAX?!?

By: Anthony J. Grizanti

If you thought that, you'd be right.....sort of. Here's the story behind the story.

Until 2000, New York imposed a tax on the gratuitous transfer of property. This tax was separate from and in addition to the federal gift tax scheme. The New York gift tax was repealed in 2000 and remains so today. However, in 2014, New York completely revamped its estate tax law. In addition to gradually increasing the exemption level from \$1,000,000 in 2014 to \$5,000,000 on January 1, 2019, the new law requires that any gifts made by the decedent during the three year period ending on the date of death are included as part of the decedent's New York gross tax estate. These gifts, however, are not included in the decedent's gross tax estate for federal estate tax purposes and do not qualify for the federal deduction for state death taxes. Excluded from this rule are gifts made before April 1, 2014, and after December 31, 2018, and those gifts made at such times as a decedent was not a resident of New York.

Example:

Decedent has a taxable estate of \$4,000,000 and made lifetime gifts of \$1,000,000. Under the old law, the lifetime gifts would not be taken into account in determining estate taxes due New York, which would amount to \$280,400.

Under the new law, the decedent's taxable estate is increased to \$5,000,000 because of the gifts and the New York estate tax due is now \$391,600.

An additional consideration:

The top estate tax rate on property included in a decedent's federal and New York gross estate is 40% for the federal tax and 16% for New York. However, because estate taxes paid to New York on property includible in the decedent's federal gross estate are deductible in determining the federal estate tax, the top effective New York rate is 9.6% ($16\% - [16\% \times 40\%]$). As a result, gifts added back to the decedent's estate under the new law will be subject to an additional tax of 6.4% as compared **to** having the same property included in the decedent's gross estate (in other words, if the gifts were not made in the first place). This is so because the New York tax on the gifts does not qualify for the federal state death tax deduction.

Example:

Decedent's taxable estate is	\$10,100,000
He made lifetime gifts of	\$ 1,000,000
Federal Estate Taxes are	\$ 1,790,880
New York Estate Taxes are	\$ <u>1,242,800</u>
Total Taxes	\$ 3,033,680

If the gifts had not been made:

Federal Taxes are	\$ 1,726,880
New York Taxes are	\$ <u>1,242,800</u>
Total Taxes	\$ 2,969,680

Difference:	\$ 3,033,680
	<u>-2,969,680</u>
	\$ 64,000

\$64,000 is 6.4% of the value of the \$1,000,000 gifts

And there you have the whole story.