TAX

First Annual Increase to New York State's Estate Tax Exclusion

By Allison W. Tenenbaum

New York State Estate Tax Legislation, which became effective April 1, 2014, instituted annual increases to the applicable exclusion amount. From April 1, 2015 through May 31, 2016, the estate tax exclusion amount increases to $3,125,000 per person (previously $2,062,500 per person). Effective April 1, 2019, it is projected to be $5,900,000 per person, the equivalent of the Federal exclusion. The 2014 legislation is extremely beneficial to those residents who have taxable estates below the exclusion amount. A taxable estate that is less than or equal to the New York applicable exclusion amount will pay no New York estate tax. Those who exceed it, however, may need to re-evaluate their estate planning strategies.


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The 2014 legislation introduced a new concept, commonly called the "cliff." Before this legislation came into effect, an individual could leave an estate of $1,000,000 and not owe New York estate tax. If an individual had an estate in excess of the $1,000,000 threshold, New York estate tax would be imposed only on the assets above the $1,000,000. There was speculation that under the new legislation taxable estates exceeding 105 percent of the applicable exclusion amount would be subject to the New York estate tax on the entire taxable estate. This is probably not correct since there were changes to the tax rate table, and, as a result, estates valued in excess of 105 percent of the exclusion amount will be liable for the same tax as before the legislation became effective.

Unfortunately, the New York State law, unlike the Federal law, does not provide for "portability." Portability allows the surviving spouse to make use of the deceased spouse's unused exclusion. In 2015, the Federal exclusion is $5,430,000 per person. Therefore, under the Federal law, it would be possible for a surviving spouse to have an estate of $10,860,000 ($5,430,000 x 2) and upon his or her death, not owe Federal estate tax. Since New York has not adopted portability, each spouse is limited to his or her own applicable exclusion amount upon his or her death. In New York, if the individual does not use the entire exclusion amount, it is lost.

New York State residents must file a New York State estate tax return if the federal gross estate, increased by the amount of any gifts includible in their New York gross estate, exceeds the exclusion amount applicable on their date of death.

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EDUCATION

Defending Tuition Reimbursement Claims

By Candace J. Gomez

Many tuition reimbursement cases brought pursuant to the Individuals with Disabilities Education Act (IDEA) can be boiled down to the following scenario: the public school's Committee on Special Education (CSE) meets to create an Individualized Education Program (IEP) for a special education student; the student's parent disagrees with the IEP; the parent removes the student from the public school and places the student in a private school; the parent demands that the public school pays for the cost of the student's private school tuition and related services; the public school refuses; and the parent proceeds with an impartial hearing in the hopes that an impartial hearing officer will order the public school to pay the cost of the student's private school tuition and related services.


Candace J. Gomez

Within the general framework that was outlined above, we have an unlimited number of fact patterns that could ultimately determine whether a school district wins or loses. For example, the types and severities of students' disabilities range across a broad spectrum, and CSE's processes and the quality of the IEPs that they create are different. An impartial hearing often consists of days of witnesses' testimonies and hearing transcripts that are hundreds of pages in length.

So how does a school attorney stay on track when defending their client in this type of proceeding? Perhaps the most effective method is to shape the entire case around three points. A board of education may be required to reimburse parents for their expenditures for private educational services obtained for a student by his or her parents, only if: (1) the services offered by the board of education were inadequate or inappropriate, (2) the services selected by the parents were appropriate, and (3) equitable considerations support the parents' claim. *Florence County School District Four v. Carter*, 510 U.S. 7 (1993); *School Community of Burlington v. Department of Education*, 417 U.S. 333, 369-70 (1985). Any questions posed to a witness, any exhibits presented to the hearing officer, or any information contained in your briefs that do not further your mission concerning one of those three points will probably not prove to be very effective.

When showing that the services offered by the public school were adequate and appropriate, it's important to keep in mind that the IDEA does not articulate any specific level of educational benefits that must be provided through an IEP or mandate that schools maximize the potential of handicapped children. Instead, the IDEA provides only for a basic floor of opportunity which is "likely to produce progress, not regression" and provide an opportunity for more than "trivial advancement." *Walczak v. Florida Union Free School District*, 142 F.3d 119, 130 (2d Cir. 1998).

If a public school can "win" on the first point, then the hearing officer will

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