

New York State Department of Taxation and Finance to Disregard Single-Member LLC Interests for New York Estate Tax


By Michael J. Cataldo and Paul T. Casas

In a recent New York State Advisory Opinion,¹ the New York State Department of Taxation and Finance advised that a federal income tax entity classification election could impact whether property held by a nonresident through a wholly owned limited liability company would be subject to the New York estate tax.

A New York resident contemplated forming a wholly owned Delaware limited liability company (LLC) for the sole purpose of contributing to it real property located in New York, and then permanently moving out of New York. The Department of Taxation and Finance was asked if such an LLC interest would be considered exempt intangible personal property or taxable real property for purposes of the New York estate tax if the LLC was disregarded for federal income tax purposes.²

The Department advised that a nonresident individual's ownership interest in real property located in New York would be considered taxable real property for purposes of the New York estate tax if held through a wholly owned LLC that is disregarded for federal income tax purposes. The Department ruled that because the LLC would be disregarded for federal income tax purposes, it would also be disregarded for New York estate tax purposes, and thus the real property held by the LLC would be treated as owned by the nonresident individual, and subject to the New York estate tax.

However, the Department stated that if the LLC elected to be taxed as a corporation for federal income tax purposes, such ownership interest would be considered intangible personal property exempt from the New York estate tax, noting that a nonresident individual's interest in a corporation, partnership, or trust holding real property located in New York has been held to be exempt intangible personal property.³

 ¹ TSB-A-15(1)M, May 29, 2015.

² N.Y. Tax. Law § 960(a) imposes an estate tax on real or tangible personal property located in New York State transferred by a nonresident decedent's estate. Article 16 of the New York State Constitution prohibits the state from imposing an estate tax on a nonresident decedent's intangible personal property.

³ *In re Estate of Havemeyer*, 17 N.Y.2d 216 (1966); *In re Estate of Finkelstein*, 40 Misc.2d 910 (N.Y. Surr. Ct. Rockland County 1963).

The New York estate tax rates are graduated, starting at three percent for the first \$500,000 of New York taxable estates,⁴ and rising to 16 percent once the New York taxable estates exceeds \$10,100,000.⁵ Individuals with New York real and tangible property interests should consider holding those interests through an entity other than one that is disregarded for federal income tax purposes to avail themselves of the exemption from New York estate tax for intangible personal property.

If you have any questions about the content of this alert, please contact one of the authors, the Pillsbury attorney with whom you regularly work, or one of the attorneys below.

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⁴ New York provides a credit that currently exempts New York taxable estates of up to \$3,125,000 from the estate tax. In the case of non-residents, this credit is available against the entire value of real and tangible personal property located in New York, regardless of the value of an estate's assets located outside New York. (N.Y. Tax Law § 952(c).)

⁵ See N.Y. Tax Law § 952(b) for a complete schedule of New York estate tax rates.