

NJ Estate Tax Phaseout Hasn't Haunted T&E Practices

By David Gialanella

More than a half year into the increased New Jersey estate tax exemption, and months shy of the tax's outright elimination, the issue seems barely to have registered for lawyers at bulky trusts and estates practices.

They're not even so sure it will stay this way. Remarks by gubernatorial front-runner Phil Murphy indicating his support for such a tax means the phaseout's permanency is far from certain, more than one practitioner pointed out.

Either way, it appears the status of New Jersey's estate tax was never going to make or break a T&E practice. After all, last year's change—raising the exemption to \$2 million from \$675,000 for 2017, and repealing the tax for 2018—is not the first shift T&E practitioners have seen over the last several decades.

Mary Patricia Magee recalled how, when she began her practice in 1982, the federal estate tax

exemption, then at \$225,000, was to nearly triple within a few years, and the T&E bar was fretting over business.

"I said, how the hell are we going to make any money?" said Magee, of Lindabury, McCormick, Estabrook & Cooper's Red Bank office. The firm has an eight-member wills, trusts & estates practice. "We've always been faced with a planning environment full of tax uncertainty."

An influx of tax attorneys to T&E in the 1990s made it more tax-centric, she noted.

"We are really lawyers that advise families as to the dispensation of their assets, and taxes are just one aspect of that," she said.

Judson Stein of Genova Burns in Newark, which has three T&E lawyers and a handful more who handle some estate-related litigation and transactional matters, echoed the same sentiment. "Estate taxation is only one of a number of reasons to focus on estate planning," he said.



MARY PATRICIA MAGEE

PHOTO BY AINSIE LIBROWITZ

"But these other reasons don't seem to be as motivating," he added. "There is the concern among practitioners, which I share, that a lot of people will have another reason to procrastinate."

The New Jersey phaseout can make the T&E lawyer's job trickier, or lead to different sorts of work. Stein said some new clients might come with existing wills that provide for disbursements by reference to exemption limits rather than by

formula—and limits, as last year’s legislation illustrates, can change.

Michael Backer, chairman of the tax, trusts and estates department at Greenbaum Rowe Smith & Davis in Woodbridge, said his group has seen a slight uptick of late in “disclaimer wills,” which allow a survivor to avoid taxation on a portion of the inheritance by placing it in a trust for the survivor’s benefit.

Trends aside, T&E practitioners in large practices say there are numerous complex client issues unrelated to the estate tax, including special-needs trusts and litigation.

Even if the federal estate tax were eliminated, the gift tax would remain, Magee pointed out.

But not every practice handles complex matters, and not all lawyers doing T&E work do it full time.

The estate tax repeal, should it remain in place, “will wipe out a certain level of business,” said Anthony Vitiello, who heads the nine-lawyer T&E practice at Roseland’s Connell Foley. “The general practitioners who dabble will definitely feel a pinch.”

The type of work that commands large-firm T&E rates is finite. Connell Foley’s T&E practice bills

at hourly rates ranging from \$250 to \$650—the latter figure is on the higher end in New Jersey (and comparable to the top rate charged at Hackensack-based Cole Schotz, according to a previous Law Journal report.)

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Indeed, even high-end work doesn’t yield the right margins for some of the biggest firms: It was reported last year that Weil, Gotshal & Manges; Debevoise & Plimpton; Wilmer Cutler Pickering

Hale and Dorr; and Wilson Sonsini Goodrich & Rosati all jettisoned T&E practices.

But Magee, who’s a vice chairwoman of the New Jersey State Bar Association’s Real Property, Trust and Estate Law Section, said those in smaller T&E practices are also faring well, and not feeling any pinch from the New Jersey estate tax.

No one factor will change the practice, but that doesn’t mean the practice isn’t changing. Beyond the abandonment of T&E practices at megafirms, lawyers said there’s a dearth of young lawyers to replenish the practice.

Stein, who for decades taught a T&E course at Seton Hall School of Law, said classes comprised 20 to 25 students in the mid-1980s and eight to 10 students by the mid-2000s. At the American College of Trust and Estate Counsel, Stein added, “we struggle to find younger members.”

But, Stein said: “I don’t think it’s a bad time to launch a practice. I think they need to be proactive and find a way to reach people and teach them that these services are needed.” ■

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