

**In a nutshell...** Tax collectors are never popular. Yet if the IRS lacks sufficient funds to do its job properly, that means fewer dollars all around for all federal programs, including national defense, Social Security and Medicare – *and* for reducing the deficit. Perhaps, as Ms. Olson suggests, Congress should change the way it approaches the IRS's budget and fund the IRS at whatever level Congress believes will "maximize tax compliance, particularly voluntary compliance, with due regard for protecting taxpayer rights and minimizing taxpayer burden."

### Changes afoot in New York?

On January 21, 2014, New York's Gov. Andrew Cuomo (D) introduced his comprehensive Executive Budget for New York's 2014-2015 fiscal year. The budget has a number of tax reform proposals, including "modernizing" New York's estate tax law and closing what it refers to as the resident trust "loophole." Here are a few highlights of this draft legislation:

- **Estate Tax.** For decedents dying on or after April 1, 2014, New York would begin lowering its top estate tax rate of 16% (this currently applies to taxable estates just over \$10 million), and increasing its \$1 million estate tax exclusion amount; by April 1, 2017, the top estate tax rate would have dropped to 10%, and the exclusion amount would have reached \$5.25 million. As of January 1, 2019, that exclusion amount would be indexed for inflation using the "cost of living adjustment," defined as the percentage by which the consumer price index (CPI) for 2018 exceeds the CPI for 2012; as of January 1, 2020, the cost of living adjustment would be the percentage by which the CPI for 2019 exceeds the 2018 CPI; in 2021, the adjustment would be the percentage by which the 2020 CPI exceeds the 2018 CPI, and so forth, in subsequent years. In addition, as of April 1, 2014, resident New York decedents would have to include "adjusted taxable gifts" (see below) made on or after that date in their New York *gross* estates if they were New York residents when they made the gifts; non-resident New York decedents would not include such gifts in their New York *taxable* estates unless the gifts were of real or tangible property located in New York, or of intangible property used in a New York trade or business.

**Comments.** The memorandum in support of this legislation states that New York's estate tax is "woefully out of date," and that it gives wealthy New Yorkers an incentive to leave the state. In part, the legislation would address this problem by lowering New York's estate tax rate, and eventually raising its estate tax exclusion to the federal basic exclusion amount, which it cites as \$5.25 million, indexed for inflation. Indeed, thanks to inflation-indexing, the basic exclusion amount was \$5.25 million in 2013, and in 2014, it is \$5.34 million – meaning that in 2014, a married couple can protect up to \$10.68 million from federal gift or estate tax, assuming they haven't made any prior gifts that used up some of this exclusion (these are the "adjusted taxable gifts" referred to above). Thus, New York's draft legislation targets a number (\$5.25 million) that is already stale. Nevertheless, the legislation would start indexing the New York exclusion for inflation as of 2019; presumably, its CPI references would successfully match New York's exclusion to whatever the federal exclusion then is.

In addition, including certain lifetime gifts made on or after April 1, 2014 in the New York estate tax computation could definitely increase a decedent's New York estate tax, which generally doesn't reflect those gifts. It goes without saying that a New Yorker currently contemplating a significant lifetime gift might want to complete that gift prior to April 1, 2014, given this draft legislation. But New Yorkers who haven't yet made such gifts might be reluctant to do so – they may not want to, and may not even be a New York resident at death.

- **The resident trust "loophole."** The memorandum in support of this legislation explains that it would make two "improvements" to the taxation of trusts. First, it would tax distributions of trust income accumulated in prior years ("accumulation distributions") to New York beneficiaries of non-resident trusts (generally, trusts created by someone who was not a New Yorker) and of tax-exempt resident trusts (generally, trusts created by a New Yorker that are exempt from New York income tax because they