



NEW YORK
CITY BAR

Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

By Facsimile and Regular Mail

March 11, 2010

The Honorable David A. Paterson
New York State Governor
Executive Chamber
State Capitol
Albany, NY 12224

Re: Letter in Support of A.9710-A/S.6610-A, Part BB (Budget Article VII) - an act to amend the tax law, in relation to the amount of the unified credit against the estate tax.

Dear Governor Paterson:

This letter is respectfully submitted by the Committee on Trusts, Estates and Surrogate's Courts and the Committee on Estate and Gift Taxation of the New York City Bar Association in support of that portion of A.9710/S.6610 which would amend N.Y. Tax Law § 951(a).

The repeal of the federal estate tax has significantly impacted the amount that can pass free of New York estate tax for decedents dying in 2010. Putting aside state constitutional arguments, the amount that can pass free of New York estate tax has been reduced to \$100,000 for decedents dying in 2010, as compared to the \$1,000,000 New York exemption figure that was in effect for decedents who died in 2009.

Section 951(a) of the New York Tax Law references the unified credit in effect in the Internal Revenue Code on the decedent's date of death, and limits the credit to the amount that would be allowed if the federal unified credit did not exceed the tax due on an estate of \$1 million. New York's estate tax is generally conformed to the Internal Revenue Code with all amendments enacted on or before July 22, 1998. However, N.Y. Tax Law § 951(a) provides that the unified credit against the estate tax is the federal unified credit in effect on the decedent's date of death, but not to exceed \$1 million. This provision was intended to incorporate periodic increases in the federal unified credit after 1998, up to the \$1 million limitation.

As a result of the repeal of the federal estate tax, the amount of the federal unified credit for decedents dying during the year 2010 is currently \$0. Because N.Y. Tax Law § 952(a) (taking into account the "anchoring provision" of N.Y. Tax Law § 951(a)) imposes a tax equal to the federal credit for state death taxes under Section 2011 of the Internal Revenue Code as it existed on July 22,

1998, the New York tax statutes¹ would exempt \$100,000 from New York estate tax for decedents dying in the year 2010.²

New York State Assembly Bill A.9710, Part BB, recognizes the unintended consequences of the repeal of the federal estate tax upon the New York estate tax, which would greatly expand beyond the New York legislature's intent the number of New York residents, and non-New York residents having real or tangible personal property situated in New York, who would be subject to the New York estate tax. Accordingly, an amendment to N.Y. Tax Law § 951(a) is needed to prevent this unintended result.

PROPOSED LEGISLATION

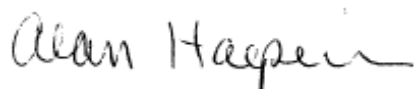
The proposed legislation addresses these unintended consequences of repeal of the federal estate tax by amending N.Y. Tax Law § 951(a) to fix the applicable exclusion amount for New York estate tax purposes at \$1 million independent of Congressional action on the federal estate tax. This would apply to all decedents dying on or after January 1, 2010. Specifically, Part BB would revise N.Y. Tax Law § 951(a) to read as follows (with the provisions containing the proposed amendments highlighted in bold):

“(a) Dates. For purposes of this article, any reference to the internal revenue code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before July twenty-second, nineteen hundred ninety-eight, and, unless specifically provided otherwise in this article, any reference to December thirty-first, nineteen hundred seventy-six or January first, nineteen hundred seventy-seven contained in the provisions of such code which are applicable to the determination of the tax imposed by this article shall be read as a reference to June thirtieth, nineteen hundred seventy-eight or July first, nineteen hundred seventy-eight, respectively. **Notwithstanding the foregoing, the unified credit against the estate tax provided in section two thousand ten of the internal revenue code shall, for purposes of this article, be the amount allowable as if the federal applicable exclusion amount were one million dollars.**”

RECOMMENDATION

We recommend that Part BB of Assembly Bill A.9710 be enacted as proposed.


Very truly yours,



Alan S. Halperin

Chair

Trusts, Estates & Surrogate's Courts Committee



Michael I. Frankel

Chair

Estate & Gift Taxation Committee

¹ A state constitutional argument can be made asserting that the amount of the New York estate tax exemption for decedents dying in the year 2010 is still \$1,000,000, because the New York Constitution generally prohibits the enactment of a law that incorporates by reference any other jurisdiction's future law (including any amendment to another jurisdiction's current law).

² This amount of \$100,000 is the sum of \$60,000 (which is the amount that IRC § 2011(b)(3) subtracts from the taxable estate to determine the amount of the “adjusted taxable estate” for computing the federal credit for state death taxes) and \$40,000 (which is the zero bracket amount under IRC § 2011(b)(1)).



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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

By Facsimile and Regular Mail

March 11, 2010

Robert L. Megna
Budget Director
New York State Division of the Budget
State Capitol
Albany, NY 12224

Re: Letter in Support of A.9710-A/S.6610-A, Part BB (Budget Article VII) - an act to amend the tax law, in relation to the amount of the unified credit against the estate tax.

Dear Mr. Megna:

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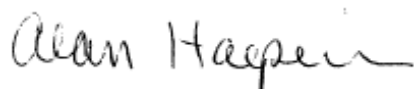
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RECOMMENDATION

We recommend that Part BB of Assembly Bill A.9710 be enacted as proposed.


Very truly yours,



Alan S. Halperin

Chair

Trusts, Estates & Surrogate's Courts Committee



Michael I. Frankel

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Estate & Gift Taxation Committee

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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

By Facsimile and Regular Mail

March 11, 2010

Hon. Carl Kruger
Senate Finance Committee Chair
New York State Senate
Legislative Office Building 913
Albany, NY 12247

Re: Letter in Support of A.9710-A/S.6610-A, Part BB (Budget Article VII) - an act to amend the tax law, in relation to the amount of the unified credit against the estate tax.

Dear Senator Kruger:

This letter is respectfully submitted by the Committee on Trusts, Estates and Surrogate's Courts and the Committee on Estate and Gift Taxation of the New York City Bar Association in support of that portion of A.9710/S.6610 which would amend N.Y. Tax Law § 951(a).

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PROPOSED LEGISLATION

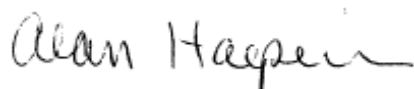
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RECOMMENDATION

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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

By Facsimile and Regular Mail

March 11, 2010

Hon. John DeFrancisco
Senate Finance Committee Ranking Member
New York State Senate
Legislative Office Building 802
Albany, NY 12247

Re: Letter in Support of A.9710-A/S.6610-A, Part BB (Budget Article VII) - an act to amend the tax law, in relation to the amount of the unified credit against the estate tax.

Dear Senator DeFrancisco:

This letter is respectfully submitted by the Committee on Trusts, Estates and Surrogate's Courts and the Committee on Estate and Gift Taxation of the New York City Bar Association in support of that portion of A.9710/S.6610 which would amend N.Y. Tax Law § 951(a).

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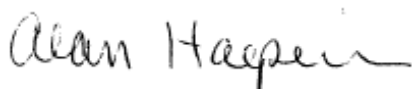
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Trusts, Estates & Surrogate's Courts Committee



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Contact: Maria Cilenti - Director of Legislative Affairs - mcilenti@nycbar.org - (212) 382-6655

By Facsimile and Regular Mail

March 11, 2010

Hon. Herman Farrell, Jr.
Assembly Ways & Means Committee Chair
New York State Assembly
Legislative Office Building 923
Albany, NY 12248

Re: Letter in Support of A.9710-A/S.6610-A, Part BB (Budget Article VII) - an act to amend the tax law, in relation to the amount of the unified credit against the estate tax.

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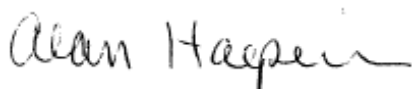
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March 11, 2010

Hon. Jim Hayes
Assembly Ways & Means Committee Ranking Member
New York State Assembly
Capitol Building 444
Albany, NY 12248

Re: Letter in Support of A.9710-A/S.6610-A, Part BB (Budget Article VII) - an act to amend the tax law, in relation to the amount of the unified credit against the estate tax.

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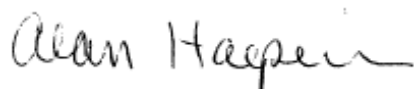
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