

Delaware Estate Tax Repeal

Client Alert

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On July 2, 2017, Delaware Governor John Carney signed into law House Bill No. 16, as amended, repealing Delaware's estate tax for decedents who die after December 31, 2017. The repeal of Delaware's estate tax will provide a substantial benefit to not only Delaware residents with taxable estates but also the estates of many nonresidents who die owning real or tangible personal property located within Delaware.

Pursuant to the Delaware estate tax regime under Chapter 15 of Title 30 of the Delaware Code that will remain in effect for decedents dying before the end of 2017, Delaware imposes a tax upon a deceased Delaware resident's "Delaware taxable estate" at a graduated rate that is capped at 16%. The calculation of a Delaware taxable estate is largely tied to a decedent's modified federal taxable estate reduced by the federal applicable exclusion amount provided under Section 2010(c) of the Internal Revenue Code (\$5.49 million per individual in 2017). Similarly, Delaware imposes an estate tax upon the real and tangible personal property located within Delaware owned by nonresidents at the time of their death. Following the repeal of the Delaware estate tax after December 31, 2017, Delaware will no longer impose an estate tax regardless of the decedent's state of residence, the value of the decedent's estate, or the proportion of the decedent's property located within Delaware.

While the potential benefit conferred upon the estates of Delaware residents is fairly transparent, the potential magnitude of the benefit conferred upon the estates of nonresidents may be quite substantial as well. First, many residents of surrounding states and Washington, D.C. own vacation property in Delaware's popular beach resorts. Depending upon the value of the property and the size of the nonresident owner's estate, such property would have been subjected to Delaware estate tax liability. Now, as a result of the repeal of the Delaware estate tax, nonresidents owning real property in the State of Delaware will no longer be subject to Delaware estate tax.

Additionally, as noted in a recent article in *The New York Times*, Delaware has earned a national reputation as a leading jurisdiction for the storage of fine art, collectibles and other tangible personal property. See Graham Bowley, *Art Collectors Find Safe Harbor in Delaware's Tax Laws*, N.Y. Times, Oct. 25, 2015, at C1 (available at <https://www.nytimes.com/2015/10/26/arts/design/art-collectors-find-safe-harbor-in-delawares-tax-laws.html>). The absence of a state sales tax and the state's proximity to several of the nation's largest markets have helped to facilitate Delaware's growth in this area. Indeed, several nationally renowned art storage facilities have opened state-of-the-art facilities in Delaware to accommodate the growing demand, including showrooms and galleries, meeting spaces, private rooms, and other collection management services. Many high net worth art

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collectors have chosen to store their valuable artwork and collectibles in Delaware. With the repeal of the Delaware estate tax on nonresident's tangible property located in Delaware, nonresidents can now store their valuable art and collectibles in Delaware without the concern of paying a sizable Delaware estate tax if they die while owning the art. This should be a positive development for the art storage business in Delaware.

In conclusion, the repeal of the Delaware estate tax is likely to have effects that reach far beyond the borders of the state. Not only will the estates of Delaware residents benefit, but the overall cost associated with a nonresident's ownership of real or tangible personal property in the state has been reduced as well. By repealing its estate tax, Delaware has taken a significant step toward retaining its residents who have taxable estates and encouraging investment within the state from wealthy nonresidents.

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