

Bill Proposed In California Legislature Would Tax Transfer Of Wealth Over \$3.5 Million

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Earlier this week, amended SB-378 was introduced in the California Legislature providing for the reinstatement of an estate tax and the imposition of a new gift and generation-skipping transfer tax (collectively, “Transfer Taxes”) on California residents beginning January 1, 2021.

Currently, there are no California Transfer Taxes payable by a California resident or by a non-resident who owns property in California.

The bill follows the structure and rules of the federal Transfer Taxes, but with significantly lower exclusion amounts. The revenue generated by the California Transfer Taxes could be as much as \$1 Billion annually, all of which would be deposited into a Children’s Wealth and Opportunity Building Fund, funding programs and services that directly address and alleviate socio-economic inequality and creating “California Social Inheritance Accounts to counterbalance the uneven effects of intergenerational wealth transfer.”

How, When and To Whom Would This Apply?

Under SB-378, a 40% tax – the same rate as the current rate for federal Transfer Taxes – would be imposed on gifts by California residents made on and after January 1, 2021, and on estates of California residents dying on or after January 1, 2021. SB-378 provides an exclusion from the California Transfer Taxes, applied to cumulative lifetime gifts and transfers at death, of \$3.5 Million with no inflation adjustment. In contrast, under the 2017 Tax Cuts and Jobs Act, the current exclusion from federal Transfer Taxes is \$10 Million, adjusted for inflation – the inflation-adjusted amount is \$11.4 Million in 2019 – and will return to \$5 Million, adjusted for inflation, beginning January 1, 2026.

SB-378 provides a credit against the California Transfer Taxes for federal Transfer Taxes paid. As a result, California Transfer Taxes would be payable only on the value of the transfer in excess of the \$3.5 Million California exclusion amount up to the value of the federal exclusion amount then in effect. Transfers in excess of the federal exclusion would only give rise to the payment of federal Transfer Taxes. Thus, for example, based upon current federal law, a transfer of \$11.4 Million that generates no federal Transfer Taxes would exceed the California exclusion amount by \$7.9 Million and give rise to California Transfer Taxes of \$3.16 Million.

In addition to the imposition of California Transfer Taxes, SB-378 would impose filing and compliance requirements to report the California Transfer Taxes.

How Might SB-378 Become Law?

A 1982 California voter initiative prohibits the imposition of a California estate tax absent approval of the voters. Thus, even if SB-378 passes the California Legislature and is signed by Governor Newsom, it must



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still be approved by a majority of California voters before taking effect. SB-378 calls for a special election to be held concurrent with the next statewide general election in 2020 to obtain that voter approval. Only if SB-378 passes the California Legislature, is signed by Governor Newsom *and* approved by a majority of California voters would it take effect on January 1, 2021.

Open Questions And Planning Considerations

There is a long road before SB-378 would become law and many questions to be answered before then. For example:

- Clarification will be needed to determine who is a “resident” of California for purposes of California Transfer Taxes – will the determination be made in the same manner as for income tax residency or will there be a separate test?
- The bill appears to impose California Transfer Taxes only on California residents – how (or will) California Transfer Taxes be applied to a California non-resident who owns property in California?
- If a California resident taxpayer makes gifts before January 1, 2021, and then transfers an additional \$3.5 Million after that date, will the California Transfer Taxes be based upon the cumulative value transferred or based only upon transfers after January 1, 2021?

The answers to these and other questions could lead California residents, already weary of high income taxes, to take steps to establish and solidify residency outside of California before the California Transfer Taxes would be imposed, also raising the question of whether a “look back” period would apply for individuals who become California non-residents to avoid the California Transfer Taxes. Alternatively, the potential for a new California gift tax may lead California residents to consider accelerating their lifetime gift planning using the federal exclusion by making gifts before the California Transfer Taxes would take effect on January 1, 2021.

For more information on how this proposed bill could impact you, please contact a member of Greenberg Glusker’s Private Client Service Group:

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