

United States: Federal and New York State



Gideon Rothschild, Moses & Singer LLP

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TAXATION - GENERAL

1. When does the tax year start and finish in your jurisdiction and what are the tax payment dates/deadlines?

The US has a federal system, and in some areas state laws may apply. This chapter considers both the federal system and, when applicable, specific New York laws. Unless specifically stated otherwise, the answers in this chapter relate to federal laws.

The tax year starts on 1 January and ends on 31 December.

It is necessary to pay income and gift taxes due by 15 April. The taxpayer can obtain an extension to file the returns until 15 October.

Estate tax returns and payments are due nine months from the date of death. Extensions to file can be obtained for up to an additional six months.

TAXES ON GAINS AND INCOME

2. How are gains on property/assets owned by a foreign national taxed? What are the capital gains tax rates?

Taxation of income and capital gains depends on whether the foreign national is a US resident for income tax purposes or a non-resident alien (NRA) for income tax purposes (in relation to residency, see *Question 15*). An NRA is subject to US taxation on the following:

- Income derived from sources within the US, including:
 - dividends from domestic corporations;
 - rental income from real property located in the US; and
 - capital gains from the sale of real property located in the US.
- Income effectively connected with the conduct of a trade or business within the US.

Capital gains from the sale of real property are subject to a 10% withholding on gross proceeds. If the capital gains tax is less than this amount the taxpayer can apply for an exemption from withholding in advance.

Foreign nationals who are US residents for income tax purposes are taxed on their worldwide income, including capital gains, at US income tax rates (see *Question 15*).

3. How is income received by a foreign national taxed? Is there a withholding tax? What are the income tax rates?

NRAs are subject to tax on certain US-derived income (see *Question 2*). Dividends and other income received are subject to a 30% withholding tax, unless they are effectively connected with a US trade or business and the taxpayer elects to file, or a treaty provides for a lower tax rate.

Foreign nationals who are US residents for income tax purposes are taxed on their worldwide income at US progressive tax rates (see *Question 15*).

INHERITANCE TAXES

4. What is the basis of the inheritance tax or gift tax regime? Please explain whether the rate of tax depends on:

- How much the beneficiary receives.
- Who the beneficiary is.
- How wealthy the beneficiary is.

Federal tax

Estate tax is imposed on the transfer of the taxable estate of a deceased person (decedent), whether by will or by intestacy. Gift tax is imposed on transfers of property during a person's life.

The rate of tax does not depend on how much the beneficiary receives. The rate does not generally depend on who the beneficiary is, with some exceptions:

- **Transfers of assets to a spouse who is a US citizen.** Estate tax and gift tax are not imposed when assets pass to a US-citizen spouse.
- **Transfers of assets to a spouse who is not a US citizen.** The unlimited estate tax marital deduction is generally not available for property transferred to a non-US citizen spouse (although tax can be deferred if the property is transferred to a qualified domestic trust (QDOT)). The unlimited gift tax marital deduction is not available, although an annual exclusion of US\$100,000 (about EUR78,500) (indexed for inflation; in 2008 equal to US\$128,000 (about EUR100,480)) applies.

Generation-skipping transfer tax (GST tax) is imposed on gifts made to grandchildren or more remote descendants.

Estate tax is only imposed on assets in excess of the exemption amount (see *Question 6*).

State tax

Some states have an inheritance tax, which varies depending on the relationship of the inheritor to the deceased person (decendent). New York has an estate tax, but not a gift tax.

5. Does the inheritance tax or gift tax regime apply to foreign owners of property/assets?

For estate, gift and GST tax purposes, NRAs are subject to tax only on property that is situated within the US.

An NRA is entitled to a US\$13,000 credit (about EUR10,205) for estate tax, which means that up to US\$60,000 (about EUR47,100) of the estate is exempted. This is in contrast to the US\$2 million (about EUR1.6 million) exemption which is available for US-domiciled owners of property (see *Question 6*). In addition, an NRA's estate is only entitled to deductions on a proportionate basis relative to his worldwide estate. For example, if an NRA has worldwide assets of US\$10 million (about EUR7.8 million) and US property valued at US\$5 million (about EUR3.9 million) with US\$2 million in mortgage debt, the estate only receives a deduction of US\$1 million (about EUR0.8 million) in relation to the debt (unless it is non-recourse debt).

Except in relation to former US citizens or long-term "green card" holders (see *Question 16*), gifts of "intangible property" by an NRA are not subject to US gift tax. Therefore, an NRA can freely make gifts of interests in partnerships, regardless of where they are settled, which hold US real estate or tangible personal property. Gifts of tangible property or real estate situated in the US are subject to gift tax. An NRA can only exclude gifts that are subject to the annual exclusion (US\$12,000 (about EUR9,420) in 2008), and is not entitled to the US\$1 million (about EUR0.8 million) exemption (see *Question 6*).

US-domiciled foreign nationals are subject to estate, gift and GST tax to the same extent as US citizens (see *Question 15*).

6. What are the inheritance tax or gift tax rates? Please consider the following:

- Tax-free allowances.
- Exemptions (for example, for inheritances by spouses).
- Techniques to reduce liability (for example, gifting assets during the testator's lifetime, selling assets but retaining a life interest, establishing a trust or purchasing through an offshore company).
- Any other ways to reduce liability.

Federal estate and gift tax

The US estate and gift tax rates depend on the amount of property transferred:

- Up to US\$11,000 (about EUR8,635): the tax liability is 18% of the amount transferred.

- US\$11,000 to US\$20,000 (about EUR15,700): the tax liability is US\$1,800 (about EUR1,410) plus 20% on the excess over US\$11,000.
- US\$20,000 to US\$40,000 (about EUR31,400): the tax liability is US\$3,800 (about EUR2,980) plus 22% on the excess over US\$20,000.
- US\$40,000 to US\$60,000 (about EUR47,100): the tax liability is US\$8,200 (about EUR6,440) plus 24% on the excess over US\$40,000.
- US\$60,000 to US\$80,000 (about EUR62,800): the tax liability is US\$13,000 (about EUR10,205) plus 26% on the excess over US\$60,000.
- US\$80,000 to US\$100,000 (about EUR78,500): the tax liability is US\$18,200 (about EUR14,290) plus 28% on the excess over US\$80,000.
- US\$100,000 to US\$150,000 (about EUR117,750): the tax liability is US\$23,800 (about EUR18,680) plus 30% on the excess over US\$100,000.
- US\$150,000 to US\$250,000 (about EUR196,250): the tax liability is US\$38,800 (about EUR30,460) plus 32% on the excess over US\$150,000.
- US\$250,000 to US\$500,000 (about EUR392,500): the tax liability is US\$70,800 (about EUR55,780) plus 34% on the excess over US\$250,000.
- US\$500,000 to US\$750,000 (about EUR588,750): the tax liability is US\$155,800 (about EUR122,300) plus 37% on the excess over US\$500,000.
- US\$750,000 to US\$1 million (about EUR0.8 million): the tax liability is US\$248,800 (about EUR194,680) plus 39% on the excess over US\$750,000.
- US\$1 million to US\$1.25 million (about EUR0.9 million): the tax liability is US\$345,800 (about EUR271,450) plus 41% on the excess over US\$1 million.
- US\$1.25 million to US\$1.5 million (about EUR1.2 million): the tax liability is US\$448,300 (about EUR351,920) plus 43% on the excess over US\$1.25 million.
- More than US\$1.5 million: the tax liability is US\$555,800 (about EUR436,300) plus 45% on the excess over US\$1.5 million.

However, there is a unified credit. In effect, the estate of US-domiciled decedents is exempted on amounts of up to US\$2 million (about EUR1.6 million) for decedents that die in 2008 and US\$3.5 million (about EUR2.7 million) for decedents that die in 2009. Therefore, in 2008 the estate tax takes effect as a flat tax of 45% once the credit is exhausted. However, the tax-free exemption for NRAs is only US\$60,000 (see *Question 5*).

Up to US\$1 million of lifetime gifts by US domiciliaries is exempted from gift tax. When an NRA is liable to gift tax, he can only exclude gifts of up to US\$12,000 (about EUR9,420) (see *Question 5*).

Additional spousal exemptions can apply to estate and gift tax (see *Question 4*).

New York estate tax

The tax-free exemption for New York estate tax is US\$1 million. On US\$1,000,001 the tax is US\$38,000 (about EUR29,830), and rises to 16% on estates over US\$10 million (about EUR7.8 million). The estate gets a tax deduction for its state tax on its federal tax return. There is no New York gift tax.

7. Are there any other taxes on death or on lifetime gifts?

There are no other taxes on death or on lifetime gifts, although some states also have an inheritance tax.

BUYING PROPERTY

8. Are there any other taxes that a foreign national needs to consider when buying assets/property in your jurisdiction? For example:

- Purchase and gift taxes.
- Annual rates.
- Wealth taxes that apply to foreign nationals with assets above a certain value in your jurisdiction.

There are no other taxes that a foreign national needs to consider when buying assets or property in the US.

9. What property holding structures are available in your jurisdiction?

Corporations, partnerships and limited liability companies are available in the US.

INTERNATIONAL AGREEMENTS

10. Has your jurisdiction entered into one or more double taxation treaty(ies) with other jurisdictions, so that tax suffered in your country is deducted from the other jurisdiction's tax liability and vice versa? If so, please provide examples (including any treaties with the UK and the US).

The US has entered into a large number of income, estate, and gift tax treaties. More detailed information can be obtained from the Internal Revenue Service (IRS) website at www.irs.gov/businesses/small/article/0,,id=186064,00.html and www.irs.gov/businesses/international/article/0,,id=96739,00.html.

SUCCESSION REGIMES

11. What is the succession regime in your jurisdiction (for example, is there a forced heirship regime)?

Succession law depends on the law of the individual state. In New York, a decedent can freely dispose of all of his or her property by a will or trust. However, a spouse is entitled under statute to one-third of the decedent's net assets (see *Question 32*). A minority of states have a community property regime (see *Question 31*).

Rules on intestacy depend on the law of the individual state (see *Question 36*).

12. If there is a forced heirship regime in your jurisdiction, please state whether:

- It can be avoided (for example, by buying assets through an offshore or other entity and/or holding assets in joint names).
- It takes into account assets received by beneficiaries in other jurisdictions.
- The forced heirship rights are mandatory on the forced heir or whether the forced heir can agree to a different distribution during the testator's lifetime.
- There are any other ways for a foreign owner of assets to avoid the forced heirship regime.

Not applicable.

13. Are property/assets owned by a foreign national subject to your succession laws or the laws of their original country?

Generally states apply the succession law of the domicile of the decedent for movable property, and the law of the jurisdiction where the property is located for immovable property.

In New York, the following rules apply:

- **Real property.** This is determined by the law of the jurisdiction of the *situs* of the real property (that is, where the real property is located).
- **Personal property.** On intestacy, the New York courts apply the law of the decedent's domicile at death (see *Question 15*). This also generally applies to all issues concerning the validity of a will which disposes of personal property.

However, a non-domiciled testator can designate New York law as the applicable law under the will. In that case, New York courts will apply New York law to all property located in the state. This defeats the rule that the law relating to personal property is governed by the law of the decedent's domicile at death (see *above*).

14. Do your courts accept a reference back to your jurisdiction where your laws have referred the succession question back to the foreign national's home country and that country's courts have refused jurisdiction because the question concerns immovable property?

This varies depending on the jurisdiction (New York does accept a reference back in those circumstances).

DOMICILE AND RESIDENCE

15. Does your jurisdiction have concepts of residence and domicile? In what context(s) are they relevant and how do they impact on a taxpayer?

The following are resident for income tax purposes:

- A lawful permanent resident of the US at any time during the calendar year (a green card holder).
- An individual who is present in the US for 183 days or more during the current calendar year.
- An individual who is present in the US for more than 31 days and less than 183 days during the current calendar year but who meets the "substantial presence test". The substantial presence test is a three-year weighted average, which if it totals to more than 183 days will subject the individual to worldwide taxation. This operates according to the following formula:
 - multiply the number of days in the US in the current year by a factor of one;
 - multiply the number of days in the US in the immediately preceding year by one-third;
 - multiply the number of days in the US in the second preceding year by one-sixth.

If the total exceeds 183 the person is deemed a resident unless he can qualify under a "closer connection" test.

- An individual who makes an election to be treated as a resident alien.

Individuals who are resident for income tax purposes are subject to US tax on their worldwide income.

Residence for estate and gift tax purposes depends on domicile. To be domiciled requires:

- Being physically present in the jurisdiction.
- Having a present intention to remain indefinitely.

Therefore, it is possible to be treated as a resident of the US for the purposes of income tax, but not for the purposes of estate and gift tax. Individuals who are domiciled for the purposes of estate and gift tax are subject to the estate tax in the same way as a US citizen.

16. Does your jurisdiction impose any tax when a person leaves (for example, an exit tax)? Are there any other consequences of leaving (particularly with regard to individuals domiciled in your jurisdiction)?

Exit tax is imposed on expatriation over the net unrealised gain on an expatriate's worldwide assets, as if those assets were sold for their fair market value on the day before the expatriation date. Expatriation applies on the renunciation of US citizenship or the relinquishment of a green card by a long-term green card holder (that is, an individual who has held a green card for more than seven years). Exit tax is charged at the capital gains rate (see *Question 2*).

17. Does your jurisdiction have any particular rules affecting temporary residents?

Temporary residents can be subject to income tax on worldwide income if they meet the residency tests (see *Question 15*).

OVERSEAS PROPERTY

18. How are residents in your jurisdiction with property/assets overseas taxed?

Residents with property and assets that are overseas can be taxed on worldwide income if they are resident for income tax purposes (see *Question 15*).

TRUSTS

19. Are trusts (or an equivalent structure) recognised in your jurisdiction? Please describe the trust (or equivalent structure), including:

- How it is taxed.
- How its residence status is established.

Trusts can be settled under all US state laws. There must generally be some connection with the jurisdiction (such as the residence of the trustee, settlor or the property transferred to the trust).

Generally, trusts are governed by the law of the designated state, except in the case of real property where the applicable law is the law of the jurisdiction where the real property is situated. Trusts are subject to income tax at progressive rates depending on the amount of taxable income:

- Up to US\$2,200 (about EUR1,730): the tax liability is 15% of the income.
- US\$2,200 to US\$5,150 (about EUR4,040): the tax liability is US\$330 (about EUR260) plus 25% on the amount over US\$2,200.

- US\$5,150 to US\$7,850 (about EUR6,160): the tax liability is US\$1,067.50 (about EUR840) plus 28% on the amount over US\$5,150.
- US\$7,850 to US\$10,700 (about EUR8,400): the tax liability is US\$2,764 (about EUR2,170) plus 35% on the amount over US\$10,700.

20. Does your jurisdiction recognise trusts created for foreign persons that are governed by the law of another jurisdiction?

The US recognises trusts created for foreign persons that are governed by the law of another jurisdiction.

21. What are the tax consequences of importing/exporting a trust to/from your jurisdiction?

If a trust is deemed to be a domestic trust, it is subject to US taxation on all income. Foreign trusts are taxed as NRAs and are therefore subject to US tax only on US-source income (see *Question 2*). Distributions of income from foreign trusts to US persons are subject to tax (and may be subject to an accumulation penalty if the foreign trust makes distributions in excess of its current year income which represents accumulated income from a previous year).

WILLS AND ESTATE ADMINISTRATION

22. Is it essential for an owner of assets in your jurisdiction to make a will in your jurisdiction? Does the will need to be governed by the laws of your jurisdiction?

It is not essential for an owner of assets in the US to make a will in the US. However, without a will the laws of intestacy will govern the distribution of the estate (see *Question 36*).

23. What are the formalities for making a will in your jurisdiction? Do they vary depending on the nationality, residence and/or domicile of the testator?

The formalities vary depending on the state. If a will is made under New York law, it must be either:

- Signed by the testator in the presence of two witnesses over the age of 18 who are not named in the will as beneficiaries.
- Signed by the testator and, within 30 days of execution, acknowledged by him to two witnesses.

Other provisions apply under specific circumstances (for example, if the testator is not physically able to sign the will).

24. Is it possible to make a post-death variation (that is, are there any special rules which apply if testamentary provisions or the provisions of intestacy rules are varied after the date of death by the agreement of the beneficiaries, or are such variations treated as lifetime dispositions by the beneficiaries)?

A beneficiary can disclaim all or part of a bequest under a will or a disposition under intestacy.

The rules concerning disclaimers vary by jurisdiction. In New York, the disclaimer must be:

- Made within nine months of death.
- Served on interested parties.
- Filed in court.

The beneficiary must not have accepted any of the benefits of the amount disclaimed and cannot direct who receives the disclaimed property. If the disclaimer is made in the timeframe specified by the US Internal Revenue Code and state law, there will be no state or US gift tax consequences to the beneficiary.

25. Please describe how/to what extent wills made in another jurisdiction are recognised as valid/enforced in your jurisdiction. Does your jurisdiction recognise a foreign grant of probate (or its equivalent) or are further formalities required?

A will that is declared valid in another jurisdiction will also be valid in the various states. The transfer of real property in a particular state usually requires ancillary probate of the will in that state.

26. Are there any particular practical issues that are relevant where individuals from another jurisdiction die in your jurisdiction?

Funeral chapels generally accept instructions from the decedent's spouse or an immediate family member. However, if there are none, and a nominated executor gives transportation or cremation instructions, the executor must usually produce a copy of the will as proof that he has been named as executor.

27. What is the extent of the role of the executor(s) and what powers does he have? Who is responsible for the administration of the estate or does it vest in the heirs without vesting initially in the personal representatives?

During administration of the estate the executor has full power to deal with the decedent's assets, subject to the oversight of the probate court. Generally, the executor's duties are to:

- Gather assets.
- Pay or contest the decedent's debts.
- Pay bequests under the will or (in the case of intestacy) make distributions.

Vesting rules are specific to the various states. In New York, real estate and specifically bequeathed personal property is deemed to vest immediately at death, bypassing the executor's administration. Different rules apply if the estate is insolvent.

28. What is the procedure on death in your jurisdiction for tax and other purposes in terms of:

- Establishing title and gathering in assets (including any particular considerations for non-resident executors)?
 - Paying taxes?
 - Distributing?
-

Establishing title and gathering in assets

The procedure varies according to the state. Generally, the executor files a petition in the probate court and obtains letters testamentary which authorise him to gather and re-title assets from the decedent's name into the name of the estate. States vary as to whether they will permit non-resident or non-domiciliary executors. In some states (for example, Florida) executors must be residents of the state or blood relatives. In most states NRAs cannot qualify as executors. New York permits them to act, but a non-domiciliary alien may act only if there is also a New York resident executor.

If title of an asset is not evident from the record title, all interested parties must accept proof of ownership or the executor must make proof to a court of proper jurisdiction.

Generally, assets are transferred simply on the executor's instructions. However, certain assets, particularly real property, require the appointment of an ancillary executor in the jurisdiction where the asset is located before it can be transferred of record (that is, a transfer deed is recorded in the public records).

Paying taxes

An executor is responsible for paying all income and estate taxes out of estate funds. Taxes must be paid generally within nine months of death unless the estate applies for extension with a good cause (for example, in the case of illiquid assets). Under US and state law the executor generally has the right to be reimbursed for estate taxes paid out of the estate on assets paid directly to others, such as life insurance proceeds (unless the will provides otherwise).

Distribution

The rules for distributions to beneficiaries vary depending on the state. In New York, distributions can be made at any time after the will has been admitted to probate (or death in the case of intestacy). However, New York law provides that an executor is personally liable to a claimant if the estate has insufficient assets to pay the claim because of premature distributions. Therefore, a prudent executor waits until New York's statutory safe harbour period has lapsed before making distributions to a beneficiary. The state harbour period is seven months from the date that the court gave the executor authority to act. Final distributions are typically not made until all taxes, debts and claims have been paid.

29. Are there any time limits/restrictions/valuation issues that are particularly relevant to an estate with a foreign element?

Generally, there are no time limits, restrictions or valuation issues that are particularly relevant to an estate with a foreign element.

30. Is it possible for a beneficiary to challenge a will/the executors/the administrators? If so, how?

Beneficiaries and others with standing can bring an action in court to contest a will on the basis that the will is invalid for one of the following reasons:

- The incapacity of the testator.
- Undue influence at the time of execution.
- Improper execution.
- Forgery.
- Existence of a later will.

In New York, beneficiaries cannot contest the will unless they would receive a larger amount if the will were not probated than if it were.

A beneficiary can bring an action in court against an executor or administrator for breach of statutory duty. In addition, a beneficiary or another with standing can also challenge the appointment of the executor or administrator. In New York the grounds for opposing the appointment are:

- Dishonesty.
- Improvidence (for example, lack of prudence in the management of resources).
- Substance abuse.
- Other unfitness for the execution of the office.

After the will has been admitted to probate and the executor appointed, a beneficiary can challenge the actions of the executor by alleging that the executor deprived the beneficiary of his proper bequest or share of the state because he either:

- Breached his fiduciary duty of honesty and neutrality.
- Neglected to properly administer the estate.

CO-OWNERSHIP

31. What are the laws regarding co-ownership and how do they impact on taxes, succession and estate administration?

The types of co-ownership are:

- **Tenancy in common.** Tenants in common own separate shares in the property and can dispose of those shares as

they wish. The ownership interest is part of the joint tenant's estate for both estate tax and distribution.

- **Joint tenancy with right of survivorship.** A joint owner with right of survivorship has an ownership interest in the entire property and at death the survivor or survivors become the sole owner(s). For estate tax purposes, if the joint ownership is with a US spouse who is a citizen, only 50% of the value is included in the decedent's estate. If the joint ownership is with a non-US citizen or third party, 100% of the value of the property is subject to estate tax unless the surviving co-owner can document his or her contribution to show that the property was not acquired entirely through the decedent's contribution. The property is valued for estate tax purposes as at the date of death, multiplied by a fraction, which has the decedent's contribution to the original cost as numerator, and the original cost of the property as denominator.
- **Joint tenancy by the entirety.** This is a form of joint tenancy with right of survivorship, where the joint owners are husband and wife. The property is valued for estate tax purposes at 50% of the value at the date of death, unless the surviving spouse is not a US citizen, in which case 100% of the value is subject to estate tax (although the property can be transferred to a QDOT, in which case tax is deferred (see *Question 4, Federal tax*)).

In addition, nine US states (for example, California) have a community property system which applies to property that was acquired during the marriage. That property is owned in common by husband and wife and each has an undivided one-half interest in the property. The decedent's will can dispose of his or her share. The 50% share does not automatically pass on death but is administered by the executor.

FAMILIAL RELATIONSHIPS

32. What is the relevance of matrimonial regimes in trust or succession law (that is, what regimes, if any, are there)? Are the rights of cohabitants/civil partners (whether in same-sex couples or otherwise) in property or other assets protected by law?

State law determines succession law. In New York, individuals can dispose of their property by a will or trust. However, a spouse is statutorily entitled to one-third of the decedent's net assets. That one-third share is comprised of:

- The assets transferred by will (testamentary assets).
- Assets called "testamentary substitutes" (which may have been transferred prior to death, for example, to an irrevocable trust for the settlor's benefit).

State law also determines the rights of cohabitants and/or civil partners. Generally, they are not included in succession statutes and their rights are protected only under wills, trusts, non-testamentary forms of ownership (see *Question 31*), and/or beneficiary designation (such as life insurance or retirement plans).

33. Please describe how the following terms are defined in law:

- **Divorced.**
- **Married.**
- **Adopted.**
- **Legitimate.**

Divorced

This is defined as the legal separation of a husband and wife made by the judgment or decree of the court.

Married

This is defined as the legal union of one man and one woman as husband and wife.

Adopted

This is the legal process under state law in which a child's legal rights from and duties towards his natural parents are terminated and similar rights from and duties toward that child's adoptive parents are substituted.

Legitimate

This is the legal process under which children born prior to marriage are automatically placed on the same legal footing as those born in lawful wedlock.

MINORITY

34. What rules apply during the period when an heir is a minor?

A guardian is appointed with the duty of managing the property of the minor during the period of minority. The definition of minority varies from state to state but typically individuals are considered minors until they attain the age of 18 or 21.

CAPACITY

35. What happens when a person loses capacity? Does your jurisdiction recognise powers of attorney (or their equivalent) made under the law of other jurisdictions?

When a person loses capacity, if there is a power of attorney then that power of attorney governs the management of the incapacitated person's property. If there is no power of attorney then a court-appointed guardian will manage the property.

Whether a power of attorney made under the law of another jurisdiction is recognised in the US depends on the law of the particular US state. In New York, the relevant statute does not address this issue. However, an amendment of the General Obligations Law is currently being considered which would add a section 5-1512 providing that a power of attorney executed in another

jurisdiction which complies with the law of that other jurisdiction or New York law is valid in New York regardless of whether it concerns an individual who is domiciled in New York.

Health care decisions are governed either by a health care proxy or living will. If neither of these is in existence, then the court-appointed guardian will make the decisions.

INTESTACY

36. What, different rules, if any, apply to the intestate?

Intestacy laws vary from state to state. Under New York law, the following rules apply, depending on who has survived the decedent:

- **Surviving spouse and issue.** The first US\$50,000 (about EUR39,250) plus one-half of the residuary estate passes to the surviving spouse and the balance passes to the decedent's issue.
- **Surviving spouse but no issue.** All of the decedent's estate passes to the decedent's spouse.
- **Surviving issue but no spouse.** All of the decedent's estate passes to the decedent's issue.
- **No spouse or issue.** All of the decedent's property passes to the decedent's parents, if any, or if none, to the decedent's siblings. If the decedent has no siblings, his estate will be distributed to more remote relatives.

CONTRIBUTOR DETAILS

Gideon Rothschild
Moses & Singer LLP
 T +1 212 554 7806
 F +1 917 206 4306
 E grothschild@mosessinger.com
 W www.mosessinger.com

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MOSES & SINGER LLP



Gideon Rothschild

Direct: 212.554.7806

Facsimile: 917.206.4306

E-mail: grothschild@mosessinger.com

Gideon Rothschild, a well-respected name in the field of trusts and estates, is co-chair of Moses & Singer's Trusts and Estates and Wealth Preservation practice. Gideon's practice is focused in the areas of domestic and international estate planning and asset protection, including the use of sophisticated estate planning techniques in the representation of high-net-worth individuals. He distinguishes himself from his peers by educating his clients on the non-tax benefits available with trusts and other vehicles to achieve both tax savings and wealth preservation.

A frequent lecturer and author on asset protection and estate planning for the multi-national client, Gideon is the recipient of several honors and awards, including "America's Leading Lawyers for Wealth Management" by *Chambers USA* and "Top 100 Attorneys" serving private clients by *Worth/Robb Report*.

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The Chrysler Building
405 Lexington Avenue
New York, NY 10174-1299
T: 212.554.7800
F: 212.554.7700
www.mosessinger.com

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