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New York's Latest Legislative Session: What Passed, What Didn't, What's Next

By Sharon L. Klein

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The 2025-2026 legislative session began on Jan. 8, 2025 and adjourned in June, 2025. Here are some of the most significant developments so far in 2025.

What Passed

Personal Income Tax Rate Changes (2025-2026 Executive Budget, enacted May 9, 2025)

New York currently has nine income tax brackets, with rates ranging from 4% to 10.9%. The Budget will reduce the rates of the first five brackets (those with taxable income up to $215,400) by 0.2% over two years, 0.1% in 2025 and 0.1% in 2026.

The high-income tax surcharge, slated to expire in 2027, was extended through 2032. The surcharge increases top rates from 8.82% to 9.65% for joint filers with taxable income over $2,155,350 ($1,077,550 for single), to 10.3% for all taxpayers with taxable income over $5,000,000 and to 10.9% for all taxpayers with taxable income over $25,000,000.

Three-Year Gift Add-Back Extended but Recharacterized as Debt to Facilitate Federal Deduction

(2025-2026 Executive Budget, enacted May 9, 2025)

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New York Tax Law §954(a)(3) includes a three-year gift add-back provision, which requires gifts made within three years of death to be included in the New York gross estate for estate tax purposes. Originally set to expire on Dec. 31, 2025, this add-back rule was extended through the end of 2031.

The provision is problematic because the New York estate tax attributable to assets added back is not deductible for federal estate tax purposes since only state death taxes paid on assets "includible in the federal gross estate" qualify for the deduction (Internal Revenue Code (IRC) §2058).

These gifts, artificially added back for New York estate tax computation purposes, are not includable in the federal gross estate.

Ironically, this left the estates of individuals who died within three years of gifting in a worse position than if they had done no planning: they were potentially subject to top 16% New York estate taxes, yet if they died owning the assets, they would be entitled to a federal deduction

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for state death taxes, which could effectively reduce the top rate to 9.6% (16% New York tax deductible against a top 40% federal estate tax rate = 9.6%).

To address this problem, the final budget classifies the New York estate tax attributable to the add-back as debt of the decedent under IRC §2053(a)(3), with the intent of making it a deductible debt from the federal gross estate.

New York's Corporate Transparency Act Materially Narrowed…For Now

Modeled on the federal Corporate Transparency Act (CTA), the New York LLC Transparency Act (NYLTA), which was originally enacted on Dec. 22, 2023, was amended and signed by Gov. Kathy Hochul on March 1, 2024, (A.8544/S.8059). The new law is slated to take effect on Jan. 1, 2026.

Originally under NYLTA, which incorporates many provisions of the CTA, LLCs formed or authorized to do business in New York were required to provide information about each beneficial owner.

However, on March 26, 2025, the Treasury Department removed the requirement for U.S. companies and U.S. persons to report beneficial ownership information to the Financial Crimes Enforcement Network under the CTA and narrowed the scope of the rule to foreign reporting companies.

Because many key terms in NYLTA cross-reference the CTA, without statutory amendment it appears that NYLTA would only apply to foreign LLCs authorized to do business in New York. Whether the legislature chooses to revise NYLTA to broaden its scope back to domestic LLCs remains to be seen.

Proposal to Permit Electronic Wills (Passed Both Houses, Not Yet Enacted; Awaiting Delivery to the Governor)

In June 2025, both houses passed the New York Electronic Wills Act (A.7856A/S.7416A), which allows for electronic signature, attestation and notarization of wills. An "electronic will" means a will executed electronically in compliance with the statute and subsequently filed with the court.

The will must be signed by the testator or by another individual in the testator's physical presence and directed by the testator. At least two witnesses must sign in the physical or remote presence of the testator and within 30 days after witnessing.

The will must be electronically filed with the New York State Unified Court System within 30 days of execution.

The testator may revoke an electronic will at any time by executing a subsequent will or a separate writing executed with the formalities of a will indicating intent to revoke, or by removing the electronic will from the court system. Removal from the system constitutes revocation. The Act is to take effect 545 days after becoming law.

The proposal has been opposed, including by the New York City Bar Association, over critical concerns, including ambiguities and inconsistencies with traditional will execution requirements, falling short of establishing the necessary legal safeguards and exposing testators, beneficiaries, and the courts to significant legal ambiguity and uncertainty.

Proposal to enact Medical Aid in Dying Act (Passed Both Houses, Not Yet Enacted; Awaiting Delivery to the Governor)

The proposed Medical Aid in Dying Act (A.136/S.138) would allow a mentally competent, terminally ill patient with no more than six months to live to request medication to be self-administered to hasten death.

The law would provide detailed procedures and protections for patients against abuse and immunities to health care providers, including a physician who prescribes the medication. The cause of death under the new law would be listed as the underlying terminal illness. Insurance benefits cannot be denied for actions taken in accordance with the Act.

A number of jurisdictions, including California, Colorado, District of Columbia, New Jersey, Oregon, Vermont, and Washington have some form of this legislation and several more states have introduced it.

Proposal to Revise Commissions of Individual Trustees of Charitable Trusts (Passed Both Houses, Not Yet Enacted; Awaiting Delivery to Governor)

Individual trustees of wholly charitable trusts and trustees of non-charitable trusts are compensated differently under current law. A proposal to eliminate that discrepancy has been introduced many times over the years but has never passed.

The proposal was reintroduced this legislative session (A.8300/S.8373). Under Surrogate's Court Procedure Act §2309(5), a trustee of a wholly charitable trust is entitled to only 6% of the annual income collected.

The proposal would provide commissions to individual trustees of wholly charitable trusts at the same rates as individual trustees of non-charitable trusts, with a reduced amount of 80% of the rates for a non-charitable trust with a principal value of up to $20 million, and a reduced amount of 50% on the principal value in excess of $20 million. Corporate trustees will still be entitled to reasonable compensation at published rates.

As with non-charitable trusts, the charitable trust commissions would be payable one-third from income and two-thirds from principal.

Proposal to Allow Foreign Born Adoptees of Any Age to Obtain New York Birth Certificate (Passed Both Houses, Not Yet Enacted; Awaiting Delivery to Governor)

Currently, only children born outside the U.S. who are adopted before age 18 can receive a New York birth certificate. Adoptees born abroad and adopted after their 18th birthday, and those adopted abroad by New York residents who do not obtain a New York birth certificate prior to their 18th birthday, are precluded from obtaining a New York state birth certificate, leaving many adult adoptees reliant on foreign documents that may be inaccurate, in a different language, or unavailable.

The proposal (A.1944/S.3765) would replace the word "child" in the current statue with "person of any age," removing the age restriction. The change in eligibility would be retroactive.

What Didn't Pass in 2025

Legislation to Reduce Recordkeeping Duties of Traditional Public Notaries (Passed Assembly)

Legislation allowing Electronic Notarization (N.Y. Exec. Law §135-c), became effective Jan. 31, 2023. The law establishes requirements and procedures for electronic notarization yet extends the requirement to keep a detailed log of all notarial acts performed for ten years to *all* notaries, including both electronic notaries and notaries who only provide traditional in-person services.

Objections were raised that this recordkeeping was excessively time-consuming and onerous.

For attorney-notaries, the detailed logs also raised concerns about attorney-client privilege and confidentiality.

A proposal to exempt traditional non-electronic notaries from the new record keeping requirements passed both houses in 2024, but was vetoed by Gov. Hochul on Nov. 22, 2024, who cited concerns about consumer protection and fraud.

A proposal (A.7683/S.6910) was reintroduced in 2025 to override the governor's veto and abolish notarial recordkeeping for wet ink notarizations. The proposal was opposed by a number of professional organizations on the basis that mandatory notarial record-keeping laws are an essential protection.

Proposal for New York City Millionaire's Tax (Introduced in Assembly)

This proposal (A. 8953), the "Fair Share Act," would authorize New York City to impose an additional local income tax of 2% on city residents earning over $1,000,000 annually.

Proposal Requiring Principals to Notify Co-Trustees and Co-Beneficiaries When Signing Power of Attorney (POA) (Introduced in Both Houses)

On Dec. 16, 2022, Gov. Hochul vetoed a proposal (A.4601/S.8892) which provided that, when a principal who is a trustee of a trust signed a POA that allowed the agent to affect the trust and the agent was not a co-trustee, the principal had to notify all other co-trustees of the signing and identify the agent.

Similarly, if a beneficiary signed a POA and the agent was not a co-beneficiary, the principal had to notify all other beneficiaries of the signing and identify the agent. The justification for the proposed change was to prevent a nonparty raiding the trust and taking all the funds.

However, with regard to a trustee, fiduciary duties are personal and cannot be delegated. With regard to a beneficiary, it is unclear how a beneficiary's agent could raid a trust.

The veto message (Veto Message—No 111) also included the justification that "the notice requirement called for in the bill with respect to beneficiaries may pose challenges since beneficiaries of a trust are not always known to be beneficiaries."

A substantially similar proposal was reintroduced in the 2025-2026 legislative session (A.8430/S.4549).

What's Next

New York has two-year legislative sessions. For the 2025-2026 session, all bills that did not pass in 2025 will remain live for the 2026 year, scheduled to begin in January, 2026. The following bills may gain traction for 2026:

Proposal to Fully Decouple from Federal Opportunity Zone Tax (Passed Senate)

Federal law grants investors in Qualified Opportunity Zones (QOZ) three benefits: 1. defer capital gains until sale or Dec. 31, 2026, 2. increase basis (reduce gain) by 10% if QOZ investment is held for five years/15% if held for seven years before Dec. 31, 2026, and 3. completely exclude gain for QOZ investments held at least ten years. New York's 2021-2022 Executive Budget eliminated the first two benefits. This proposal (A.3246/S.3340) would eliminate the third.

Proposal to Disqualify Surviving Spouse of Marriage Annulled or Voided After Death (Passed Senate)

Under New York law, a marriage can be annulled post-death. However, to determine elective share rights (the right of a surviving spouse to take a share of a decedent's estate, in New York typically one-third), the marital status of the parties at the time of death controls.

Under Estates, Powers, and Trusts Law (EPTL) §5-1.2, the right of election exists unless: (1) the marriage was annulled or divorce occurred *prior* to death, or (2) the marriage is considered void due to bigamy or incest.

Accordingly, if annulment occurs *after* death, the statute technically allows a right of election to proceed if the parties were married on the decedent's date of death.

Cases have highlighted a specific type of elder abuse, in which an individual, commonly a caretaker, nefariously marries an individual who is incapable of validly entering into a marriage. For example, in *Campbell v. Thomas*, 73 A.D.3d 103, 897 N.Y.S.2d 460 (2010), Howard Thomas was diagnosed with terminal cancer and severe dementia.

After Howard's daughter, his primary caregiver, took a one-week vacation, leaving him in the hands of a caregiver, Nidia, she returned to find that Nidia had married Howard. Despite the fact that the children successfully had the marriage annulled after Howard's death, Nidia asserted a right of election.

Although Nidia would be considered a surviving spouse under the plain meaning of the statute, the court determined that equitable principles required the departure from the statute's plain meaning because it would defy equitable principles to allow Nidia to profit from her own wrongdoing.

Although it was able to use its equitable powers, the court did call upon the legislature to examine revisions to the law that would prevent unscrupulous individuals from exploiting the elderly.

This proposal (A.7069/S.4999) would amend the EPTL by disqualifying as surviving spouse an individual whose marriage was annulled before or after the death of the decedent.

Proposal to Repeal Requirement for Nonresident Attorneys to Maintain Physical New York Office (Passed Senate)

To practice in New York, Judiciary Law §470 requires nonresident attorneys admitted to practice in New York to maintain a physical office in the state. A bill (A.3849/ S.2422) was introduced to repeal this requirement.

When the law was originally enacted in 1909, a central concern was serving attorneys located outside New York and communicating across state lines. According to advocates of the bill, modern transportation and communication technologies have rendered the law outmoded.

With modern-day mechanisms for serving attorneys outside the state and New York law providing a jurisdictional basis for out-of-state service, supporters maintain there is no reason to require a brick-and-mortar office.

Prior attempts to repeal the law have been made, as recently as 2023, when a bill passed both houses, but was vetoed by Gov. Hochul in Dec. 2023 on the basis that the state has a responsibility to ensure adequate oversight and regulation of all attorneys practicing in the state.

May New York's Infamous Moiety Rule RIP with Creation of Multiple Person Accounts (Introduced in Assembly)

New York Banking Law (NYBL) §675 creates two potentially troublesome presumptions when a deposit is made into a joint bank account in the name of the depositor and another person.

First, each account holder has the immediate ability to withdraw one-half of the deposited funds, which creates an irrevocable gift of one-half of the account to the other account holder, regardless of whether any funds are actually withdrawn (New York's infamous "Moiety Rule").

Second, on the death of one account holder, the balance automatically vests in the survivor. Since

many individuals open these types of accounts for convenience purposes only (for example an elderly person wishing to allow a child to write checks on their account), the statute can often thwart the intent of the depositor.

The presumption of an immediate gift also translates to immediate gift tax consequences if the gift exceeds the current annual exclusion amount and is not covered by the marital deduction.

A proposed law (A.9230-B/S.9383A) introduced in 2024 would have revoked the Moiety Rule. Account funds would have belonged to account owners during their lifetimes according to each owner's contribution, creating a tenancy in common during lifetime.

No intention to make a gift was to be imputed from opening an account in multiple names or from making an additional deposit to an account.

The bill was vehemently opposed by a number of professional organizations on the basis that, despite being well-intentioned, it was excessively broad, with the potential to increase litigation, complicate estate planning, confuse consumers, and impose significant operational burdens on banks.

On Dec. 13, 2024, while recognizing the need to modernize the moiety rule, Gov. Hochul vetoed the proposed legislation. The proposal (A.8549A) was reintroduced in 2025.

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