New York State
Department of
Taxation
and Finance

Instructions for Completing Petition to Determine Estate Tax

Form TT-86.5

Taxpayer Services Division

TT-86.5-I (3/90)

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Introduction

Article 26 of the New York State Tax Law imposes an estate tax on the transfer of the New York **taxable assets** of a deceased individual. It is a tax levied, at graduated rates, on the entire taxable estate rather than on the distributive shares received by each recipient of property.

The New York estate tax law was amended on July 24, 1985, to conform, with modifications, to the provisions of the federal Tax Reform Act of 1984. These amendments brought the New York estate tax law into conformity, with modifications, to the federal Internal Revenue Code of 1954 and all amendments enacted on or before July 18, 1984.

This publication is intended to help the person responsible for settling the estate of a deceased person prepare and file Form TT-86.5, *Petition to Determine Estate Tax*. Form TT-86.5, print date 9/83 or later, should be filed for estates of decedents dying on or after January 1, 1983. For estates of decedents dying before January 1, 1983, contact this department for proper forms and information. Form TT-86.5 is used in a formal tax proceeding in the appropriate Surrogate's Court, which is petitioned to either fix the estate tax or exempt the estate from tax, based on the facts reported in the Petition to Determine Estate Tax. The authority of the surrogate to determine the estate tax is granted under provisions of both the Tax Law and the Surrogate's Court Procedure Act.

Information may be obtained by contacting:

NYS Tax Department
Taxpayer Assistance Bureau
W. A. Harriman Campus
Albany, NY 12227

1 800 641-0004
(518) 485-8585 (outside NYS)

Forms can be obtained by calling:

1 800 462-8100
(518) 438-1073 (outside NYS)

Payment verification, interest and penalty calculation:

(518) 457-4263

Privacy Notification

Our authority to require this personal information, including social security numbers, is found in section 171, subdivisions First and Fourteenth, and subsection (a) of section 962 of the Tax Law, as well as Article 20 of the Surrogate's Court Procedure Act.

We will use this information primarily to determine New York State estate tax liabilities under Article 26 of the Tax Law. We will also use it for administrative purposes and for any other purpose authorized by law.

Your failure to provide the required information may subject you to civil and/or criminal penalties under the Tax Law or the Penal Law.

Our authority to maintain this information is found in section 171, subdivision Fourteenth, and subsection (a) of section 962 of the Tax Law. This information will be maintained by the Director, Data Management Services Bureau, NYS Tax Department, Building 8, Room 905, W.A. Harriman Campus, Albany, NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from outside New York State, call (518) 438-8581.

Instructions

Section 1 - General Statement

The New York gross estate and total New York deductions will be the same as the total federal gross estate and the total federal deductions, whether or not a federal estate tax return is required to be filed, modified as explained in Section 14, *Gross Estate of a Resident Decedent*, and Section 15, *Adjustment of Deductions from the Federal Gross Estate*.

The New York gross estate shall be valued as of the date of death or under the alternate valuation method (see Section 12, *Alternate Valuation*).

When a federal estate tax return must be filed, New York State requires that a copy of the federal estate tax return be submitted with the New York State *Petition to Determine Estate Tax*. (For more specific instructions, see Section 11, *Completing the Petition*.)

The New York taxable estate is determined by subtracting the amount of deductions authorized by the statute from the value of the gross estate. Different provisions of the statute control the determination of the net tax liability for estates of New York residents and estates of nonresidents. The decedent's **domicile** is the controlling factor in determining residency.

Section 2 - Time for Filing

Although the New York State *Petition to Determine Estate Tax* is not required to be filed within any specific period, the estate tax becomes due at the time of the decedent's death, and 80% payable within six months. (For more specific information regarding the payment of tax, see Sections 4 to 6.)

Section 3 - Place of Filing

Contact your local Surrogate's Court (or call 1 800 641-0004) to determine the number of copies required and the place of filing.

When Form TT-86.5 is to be filed with the Tax Department, the proper address is:

NYS Department of Taxation and Finance
Transaction and Transfer Tax Bureau - Estate Tax
W. A. Harriman Campus
Albany, NY 12227

Section 4 - Payments

A. **Estate Tax**

Regardless of a decedent's county of residence or the place of filing, payment of estate tax should be made by check or money order payable to the *Commissioner of Taxation and Finance* and mailed directly to the following address with a covering letter identifying the name and social security number of the decedent, date of death and county of residence.

NYS Deparment of Taxation and Finance
Processing Division - Estate Tax Accounts
Room 500, Bldg. 8
W. A. Harriman Campus
Albany, NY 12227

If you want the department to acknowledge receipt of your estate tax payment, please include a *copy* of your letter of payment and a self-addressed stamped envelope.

B. **Court Fees**

Contact the County Surrogate Court for fees and method of payment.

Section 5 - Extensions of Time to Pay New York Estate Tax

A. The time for payment will be extended, upon application to the department, when the total New York estate tax imposed exceeds 5% of the net estate. Extensions may be granted when payment of any part of the tax within the first nine months would impose undue hardships upon the estate. Extensions may not exceed four years from the date of death and annual installments may be required (Tax Law section 962(k)(6)). Form TP-133, *Application for Extension of Time to Pay Estate Tax*, must be completed and mailed to the following address for a request to be considered.

NYS Deparment of Taxation and Finance
Transaction and Transfer Tax Bureau - Estate Tax
W. A. Harriman Campus
Albany, NY 12227

B. In addition to the extension of time to pay the estate tax provided under section 962(k) of the Tax Law, when a large part of an estate consists of an interest in a closely held business, the estate representative may elect, under section 962(f) of the Tax Law, to apply for deferred payment of estate tax. This extension is based upon section 6166 of the Internal Revenue Code, as incorporated in New York Tax Law.

An estate will not be allowed to defer payment of the New York estate tax under section 962(f) of the Tax Law if the estate is required to file a federal estate tax return and either does not elect, or is not allowed, to pay the federal estate tax in installments under section 6166 of the Internal Revenue Code.

The time limit for making this election for New York estate tax is nine months from the date of death. However, where the estate is required to file a federal return and obtains an extension of time to file the federal return, the time for making the election for New York will be the extended due date of the federal return, generally 15 months from the date of death (Tax Law, section 962(f)). Form TP-415.1, *Application for Deferred Payment of Estate Tax*, must be completed in triplicate and mailed to the address in section 5, paragraph A above to request deferred payment. For information on making a protective election for deferred payment, contact the department at the ***Information*** number listed at the top of page 3.

Section 6 - Interest

For estates of decedents dying on or after January 15, 1983

Note: Special rules apply to estates of decedents dying prior to January 15, 1983, regarding computation of interest on underpayments and overpayments. Refer to instructions TT-86.5-I with a print date of 10/88 or earlier.

A. **Underpayment of Tax**

1. To avoid the assessment of interest, at least 80% of the tax as finally determined must be paid within six months of the date of death and the balance paid within nine months of death.
2. Interest is not charged on payments of tax, including partial payments, made within six months of death.
3. Simple interest of ½% per month is charged on payments of tax made after six months but not later than nine months after death (maximum 1½%). Interest is not charged on these payments if 80% of the tax was paid within six months.
4. Interest, compounded daily, is charged from the date of death to the date of payment on tax remaining unpaid after nine months. Rates may be adjusted periodically and can vary during the period of time the tax remains unpaid.
5. a. Where an extension of time for payment of the tax is granted and payment made within the period of extension, interest is charged from the beginning of the tenth month to the date of payment on the amount of tax the extension applies to. Interest is computed at the rate or rates applicable during the time the tax remains unpaid and is compounded daily.

   b. When the tax is not paid during the period of extension and in accordance with the terms of extension, interest is charged from the date of death to the date of payment. Interest is computed at the rate or rates applicable during the time the tax remains unpaid and is compounded daily.

B. **Overpayment of Tax**

Interest on overpayments of tax is paid from the date of the final determination of the Surrogate Court, computed at the rate or rates in effect during such period and is compounded daily. No interest is paid unless the tax, including the overpayment, is paid prior to the entry of the final determination (Tax Law section 962(k)(7)).

Section 7 - Penalty for Underpayment of Tax

If the tax is not fully paid within nine months from the date of death, or within the period of extension, or is not paid in accordance with the terms of the extension, a penalty is imposed at the rate of one-half of 1% per month or fraction thereof (not to exceed 25% in total) on the taxes remaining unpaid beyond the ninth month, unless the surrogate determines nonpayment was due to reasonable cause and not willful neglect (Tax Law section 962(k)(5)(A)).

Section 8 - Refunds of Overpayments

To request a refund of estate tax, Form TT-80, *Application for Refund of Estate Tax*, should be completed and submitted with the TT-86.5 to the applicable place of filing.

Note: To request a refund of estate tax after the TT-86.5 has been filed, submit completed Form TT-80, *Application for Refund of Estate Tax*, to:

NYS Department of Taxation and Finance
Processing Division - Estate Tax Refund Unit
Building 8
W. A. Harriman Campus
Albany, NY 12227

A. 1. When a temporary payment of estate tax is made prior to the entry of an order fixing tax in Surrogate's Court and the amount of such temporary payment exceeds the tax as finally determined by the surrogate, a refund of the overpayment may be requested within six years from the date the order is entered (Tax Law section 249-aa 2).

2. A refund may be requested within one year from the date an amended order reducing estate tax is entered in Surrogate's Court. An amended order may be requested within two years from the date the order fixing tax is entered (Tax Law section 249-aa 1).

3. A refund may be requested within one year from the date a supplemental order fixing tax is entered in Surrogate's Court (Tax Law section 962(b)(5)).

4. If the reduction in tax is the result of a federal determination, an amended order must be entered (or applied for) within one year from the date of the determination (Tax Law section 962(b)(5)(A.)).

B. 1. Interest is paid on overpayments at the rate or rates in effect on or after January 15, 1983, compounded daily from the date of the final determination of the Surrogate (Tax Law section 962(k)(7)).

2. For temporary payments made prior to January 15, 1983, interest is paid on overpayments under the provisions of law existing at the time of payment (Tax Law section 249-z(b)).

Section 9 - Election Under IRC Section 2210
(Tax Law section 962(e))

The executor of an estate may elect to be relieved of the liability for payment of the estate tax to the extent the liability is assumed by an employee stock ownership plan (ESOP) or worker-owned cooperative. Refer to IRC section 2210 for comprehensive requirements, limitations on amount of tax paid by an ESOP, and the allowance of the payment of estate tax in installments under IRC section 6166.

A. **Assumption of Estate Tax Liability**

1. An employee stock ownership plan (ESOP) or worker-owned cooperative is permitted to assume liability for the payment of the New York State estate tax where the estate has transferred employer securities to the plan or cooperative. Employer securities are generally defined under IRC section 409(l)(1) as readily tradable common stock issued by the employer.

2. The amount of the liability assumed by the ESOP or cooperative may not exceed the value of the securities transferred to the ESOP or cooperative by the estate.

3. A written election agreement must be signed by the executor and plan administrator of the ESOP or cooperative guaranteeing the payment of the estate tax and interest assumed by the ESOP or cooperative, and filed with the department no later than nine months after the date of the decedent's death.

4. Where a federal estate tax return is required to be filed, this election will not be allowed for New York unless a similar election is made and allowed for federal estate tax.

Note: As a result of the federal repeal of the Internal Revenue Code section 2210, estates of decedants dying after July 12, 1989, that are required to file a federal estate tax return, will not be allowed this election for New York estate tax purposes.

B. **Forms Required**

Where the requirements for a valid assumption of liability for New York State estate tax are met by the ESOP or cooperative, the following are required.

1. The executor must file Form TT-86.5, *Petition to Determine Estate Tax*, for that part of the New York State estate tax the executor is required to pay.

2. The administrator for the ESOP or cooperative must file Form TT-86.5, *Petition to Determine Estate Tax*, for that part of the New York State estate tax the plan or cooperative is required to pay.

Section 10 - Supplemental Documents

Copies of the following documents are required to be filed with the *Petition to Determine Estate Tax*, where applicable: decedent's last will; federal estate tax return filed; final federal determination of estate tax liability; death certificate; all supporting documentation.

For a decedent who was not a resident of New York State, New York Form TT-141A, *Estate Tax Domicile Affidavit*, must be completed and attached to the *Petition to Determine Estate Tax*.

Section 11 - Completing the Petition to Determine Estate Tax
(New York Form TT-86.5)

A. When the federal gross estate is insufficient to require the filing of a federal estate tax return, the assets composing the gross estate must be entered on Form TT-86.5 under the appropriate schedules A through I, and the deductions entered under schedules J through N. Omit the schedules on pages 4 and 5 of the petition. The word ***None*** should be writted across any schedule that does not apply. If there is insufficient space for all entries under a printed schedule, you may attach supplements to the schedule.

B. When a federal Form 706 is required to be filed, attach a copy of Form 706 and all schedules and supporting documents. Complete the *Petition to Determine Estate Tax* through page 6 and omit New York schedules A through N.

Section 12 - Alternate Valuation

The value of property included in the decedent's gross estate may be calculated as of either the date of death or an alternative date, which is generally six months after the date of death (Tax Law section 954(b)).

A. 1. When an executor elects the alternate valuation authorized by section 954(b) of the Tax Law, the election must be indicated on line 4, page 2, of the *Petition to Determine Estate Tax*. Should alternate valuation be elected for federal estate tax purposes, it must also be elected for New York State purposes. However, the election may be made for New York State purposes when no federal estate tax return is required.

2. If the alternate valuation method is elected, all property included in the gross estate must be valued on this basis. However, any property sold, distributed, exchanged, or otherwise disposed of within six months after the decedent's date of death must be valued as of the date of disposal. (Refer to section 954(b) of the Tax Law.)

3. If the alternate valuation method is elected, any accrued income with respect to any item of principal includable in the gross estate (e.g., accrued interest to the date of death, outstanding dividends which were declared to stockholders of record on or before the date of the decedent's death, accrued rent to the date of death on leased realty or personal property) is property of the gross estate on the date of death and includable in the alternate valuation. Items of this nature should be reported under the column heading *Alternate Value*.

4. The columns on the individual schedules in the petition headed *Alternate Valuation Date* and *Alternate Value* should not be used unless the alternate valuation is elected.

B. Where no federal estate tax return is required to be filed, the following rules shall apply:

1. The election must be made no later than one year and nine months after the date of decedent's death. Once made, this election is irrevocable.

2. The alternative valuation method may be elected only if such election will **decrease both:**

a. the value of the gross estate at the valuation date, **and**

b. the amount of estate tax liability.

Section 13 - Special Use Valuation of Certain Real Property Devoted to Farming or Closely Held Businesses

The estate representative may elect to value qualified real property that is devoted to farming or used in a closely held business on the basis of its actual use rather than its fair market value.

A written agreement must be signed by each person having an interest in the qualified real property for which the election is made. The agreement must contain an express consent to personal liability by the qualified heir in the event of recapture of additional estate tax due either to premature cessation of qualified use or disposition of the property.

A. This method of valuation is authorized by section 954-a of the Tax Law, which conforms, with certain modifications, to section 2032A of the federal Internal Revenue Code.

1. When an estate is required to file a federal estate tax return and either does not or may not elect special use valuation for federal estate tax purposes, the estate will not be allowed to elect special use valuation for New York estate tax purposes.

Where the election is made for federal purposes and an extension of time to file the federal return was granted, the time allowed for making the election for New York is also extended. When an estate makes the election on an original but late-filed federal estate tax return, the election for New York may be made at the same time. However, the election for New York will not be considered timely and will not be allowed if made at a later time.

If a protective election is made for federal estate tax purposes, a protective election may be made for New York estate tax by filing a copy of the federal protective election along with an affadavit stating that a similar election is requested for New York estate tax. After the Internal Revenue Service determines that the estate qualifies for special use valuation based on the values as finally determined or agreed upon, the estate files Form TT-86.5, *Petition to Determine Estate Tax*, using the special use values.

Note: For information on requesting an extension of time to pay the estate tax, refer to Section 5 of these instructions.

2. When a federal estate tax return is not required, the election for New York State estate tax purposes must be made no later than **nine** months from the date of death.

B. Where the special use valuation election is made and the requirements substantially complied with, the executor will be allowed a reasonable period of time, not exceeding 90 days, to correct simple technical errors which prevent the election from being valid. Information which may be supplied within the time allowed, includes social security numbers and addresses of qualified heirs, and signatures of all persons having an interest in the property, which are required on the written agreement to value the property based upon its current use. The 90-day period will commence following the mailing of written notification to the estate that a defect exists.

C. Real property may qualify for this election when **all** of the following conditions are met:

1. the decedent was a United States citizen or resident at the time of death;

2. the real property is located in New York State;

3. the real property was, on the date of the decedent's death, being used as a farm for farming purposes or in a trade or business other than farming.

4. the real property was acquired from or passed from the decedent to a qualified heir of the decedent;

a. A *qualified heir* is a member of the decedent's family who acquired the real property from the decedent or to whom the property has passed.

b. A decedent's family members are: (1) ancestors; (2) spouse; (3) lineal descendants of the decedent, of the decedent's spouse, or of the decedent's parents; and (4) the spouse of any descendant mentioned in item (3).

Note: A legally adopted child of a decedent is treated as a decedent's child by blood.

5. the real property was owned and used in a qualified use by the decedent or a member of the decedent's family during five of the eight years preceding the decedent's death;

6. there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business for periods totaling at least five years out of the eight-year period ending on the date of the decedent's death;

   a. If, on the date of the decedent's death, the material participation requirement for the decedent is not met and the decedent was either retired and collecting Social Security benefits, or disabled for a continuous period ending with death, then the time period for material participation for the decedent is a period totaling at least five out of the eight-year period ending on the earlier of (1) the date the decedent began receiving Social Security benefits, or (2) the date the decedent became disabled.

   b. *Material participation* is determined in a manner similar to income tax provisions relating to whether or not income is subject to self-employment taxes.

      Additional factors to be considered in making this determination include (1) employment and management; (2) financial risk; (3) residence; and (4) other miscellaneous considerations. Consult IRC Regulations 20.2032-A for further information.

   c. Active management of a farm or other business by a surviving spouse shall be treated as material participation by the surviving spouse.

      (1) *Active management* means the making of the management decisions of a business other than the daily operating decisions.

      (2) Active management by a surviving spouse may be *tacked* on to the material participation of a disabled or retired spouse (the first decedent) in order to qualify the property for special use valuation in the surviving spouse's estate (the second decedent) where the spouse survives the first decedent by fewer than eight years (i.e., to satisfy the five of eight years' test). See IRC section 2032A(b)(5)(C).

7. at least 50% of the adjusted value of the gross estate must consist of the adjusted value of the real and personal property used in farming or in a closely held business on the date of decedent's death;

   a. *Adjusted value* is the value of property determined without regard to its special use value. The value is reduced for unpaid mortgages on the property or any indebtedness against the property if the full value of the property is included in the gross estate.

   b. Tangible personal property, such as farm equipment and livestock, used in conjunction with the qualifying property, must be valued at its fair market value.

8. at least 25% of the adjusted value of the gross estate must consist of the adjusted value of such qualified real property.

Note 1: For purposes of the 50% and 25% tests, the value of the property is considered at its fair market (highest and best use) value.

Note 2: *Adjusted value of the gross estate*, referred to in numbers 6 and 7 above, is the adjusted value of the **federal** gross estate determined without reference to paragraphs (1) through (4), subsection (a) of section 954 of the Tax Law.

D. In no case may this special valuation process reduce the gross estate (i.e., reduce the fair market value of the qualified property) by more than $750,000.

E. Property passing in trust qualifies for this special valuation.

F. Since qualifying real property may be valued on the basis of its *actual use* value rather than on the basis of its *highest and best use* value, **two** real estate appraisals will be necessary, one for each specific valuation method.

Example 1
qualifying farm property at *highest and best use* value $2,000,000
qualifying farm property at *actual use* value ..... -1,000,000
difference between *highest and best use* and *actual use* value $1,000,000
Maximum reduction in gross estate limited to $750,000

Example 2
gross estate at *highest and best use* value $600,000
qualified real property at *highest and best use* value ..... $300,000 (having $50,000 mortgage)
adjusted value of gross estate 50% test = *adjusted value* of qualified real property (300,000 - 50,000) ..... $250,000 = (45.45%) *

* Property would not qualify for special farm valuation.

Example 3
gross estate at *highest and best use* value ..... $750,000 (includes $300,000 real property value and $300,000 value of machinery)
qualified real property at *highest and best use* value ..... $300,000 ($200,000 mortgage on farm)
adjusted value of gross estate ..... $550,000 ($750,000 - $200,000)
50% test 600,000 - real and personal
-200,000 - mortgage ..... $400,000 = 72.72%
25% test 300,000 - real
-200,000 - mortgage ..... $100,000 = 18.18% *

* Fails to qualify for special farm valuation (must meet both percentage tests).

G. When the estate otherwise qualifies for the portion satisfying the percentage tests, other remaining real property used in a qualified use cannot be valued under the special use valuation rules when it passes to persons who are not qualified heirs. Real property is eligible for special use valuation only to the extent that it passes to qualified heirs.

H. Special use valuation may be elected for standing timber (growing trees) as part of qualified woodlands, as an interest in real property rather than valuing it as other growing crops.

Note: For additional information regarding definitions, involuntary conversions or exchanges of qulaified property, personal liability of qualified heir for additional taxes, recapture taxes, special liens and qualified woodlands, refer to sections 958-a and 962 of the Tax Law and section 2032A of the IRC.

Section 14 - Gross Estate of a Resident Decedent

The New York gross estate of a deceased resident means the federal gross estate as defined in the Internal Revenue Code, whether or not a federal estate tax return is required to be filed, with the following modifications (Tax Law section 954):

A. reduced by the value of real property or tangible personal property having an actual situs outside New York State; (Bank accounts are intangible personal property and may **not** be subtracted from the federal gross estate even if held in banking institutions outside New York State (Tax Law section 956).)

B. increased by the value of all property passing under a limited power of appointment created by a person who died prior to September 1, 1930, and exercised by the present decedent by Will or by any other type of disposition (Tax Law section 957);

C. increased by the value of all gifts made by the decedent prior to 1983, that occurred within three years of death and are not includable on federal schedule G (Tax Law section 954(a)(3));

D. reduced by the full value of qualified terminable interest property included in the federal gross estate under the provisions of IRC section 2044;

E. increased by the full value of qualified terminable interest property includable in the New York gross estate under the provisions of section 954(a)(4) of the Tax Law;

F. reduced by the amount of federal **gift tax** included on federal schedule G;

G. increased by the amount of New York State **gift tax** paid by the decedent or the decedent's estate for gifts made within three years of death.

Section 15 - Adjustment of Deductions From the Federal Gross Estate

A. Deductions from the federal gross estate are reduced by the value of any expenses, claims against the estate, unpaid mortgages, debts, or losses during administration which are specifically attributable to real or tangible personal property having an actual situs outside New York State (Tax Law section 956(b)).

B. Federal marital and charitable deductions are adjusted as follows:

1. reduced by the value of any real or tangible personal property having an actual situs outside New York State which passes or has passed to the surviving spouse or a qualified charitable organization (Tax Law sections 956(b) and (c));

2. increased by the value of property passing under a limited power of appointment created prior to September 1, 1930, which passes or has passed to the surviving spouse or a qualified charitable organization (Tax Law section 957(c)).

Section 16 - Additions to Tax for Valuation Understatements

Where a valuation understatement results in the underpayment of tax imposed, there is added to the tax an amount equal to the applicable percentage of the underpayment.

A. A valuation understatement occurs if the value of any property reported on an estate tax return is 66⅔% or less of the amount determined to be the correct valuation.

B. The *amount added* ranges from 10% to 30% of the amount of the underpayment, depending on the amount of valuation understatement and is determined as follows:

1. If the value reported is 50% or more but not more than 66⅔% of the correct value–an addition to tax equal to 10% of the underpayment attributable to the undervaluation is imposed.

2. If the value claimed is 40% or more of the correct value, but less than 50% of the correct value–the addition to tax is 20% of the amount of tax underpayment.

3. If the value claimed is less than 40% of the correct value–the addition to tax is 30% of the amount of tax underpayment.

C. No additional amount is added if:

1. the claimed valuation is more than 66⅔% of the correct value of the asset, or

2. the resulting underpayment of New York State estate tax is less than $1,000.

D. The addition to tax may be waived in whole or in part by the Surrogate if it is shown that there is a reasonable basis for the valuation claimed or return and that the claim was made in good faith.

Section 17 - Simultaneous Death

Where there is no sufficient evidence that persons have died otherwise than simultaneously, refer to section 2-1.6 of the Estates, Powers and Trusts Law for provisions governing inclusions of assets in the gross estate, unless specific provisions have been made in the Will, trust instrument, deed, or contract of insurance for the disposition of property.

Section 18 - Recapitulation Schedule

A. When the estate is required to file a federal estate tax return, Form 706, the following steps should be taken:

1. omit schedules A through N of Form TT-86.5;

2. attach a copy of the federal return, including schedules, to each *Petition to Determine Estate Tax*;

3. on page 3 of Form TT-86.5, enter the federal gross estate on line 10 of the *Recapitulation* schedule; omit lines 1 through 9;

4. due to certain modifications to the Internal Revenue Code, as contained in the New York

State Tax Law, it may be necessary to adjust the federal gross estate (These adjustments are explained in Section 15.); complete schedules I through VI, on pages 4 and 5 as necessary and attach supporting documents requested; enter the net difference from *Schedule II*, page 4, on line 11 of the *Recapitulation* schedule, page 3.

B. When the estate is not required to file a federal estate tax return, Form 706, the following steps should be taken:

1. complete schedules A through N as applicable;
2. enter the totals from each schedule on the corresponding line of the *Recapitulation* schedule, page 3 of Form TT-86.5;
3. if alternate valuation is elected, also enter the totals from the *Alternate Value* column of each schedule onto the corresponding line in the *Alternate Value* column of the *Recapitulation* schedule; enter the total (Gross Estate) of the *Alternate Value* column on lines 10 and 12 of the schedule;
4. omit schedules I and VI on pages 4 and 5.

Section 19 - Tax Computation Schedule

A. **Lines 1 through 8**

The New York estate tax is determined as follows:

1. apply the unified tax rates (Table A of these instructions) to the tentative tax base, which is the sum of the taxable estate (tranfers at death) and the adjusted taxable gifts (taxable gifts made after 1982 that are not includable in the gross estate);
2. determine the amount of the allowable unified credit using Table B of these instructions and reduce the tentative tax by this amount;
3. reduce the balance by the amount of New York gift taxes paid or payable by the decedent or the estate for gifts made after 1982;
4. reduce the balance by other allowable credits which may be applicable to the estate.

Lines 2 and 7

When the *adjusted taxable gifts* of the decedent (line 2) include *split* gifts, Worksheets #1 and 2 on page 6 of Form TT-86.5 should be used to compute the total adjusted taxable gifts and gift taxes paid (line 7). Special rules for *split* gifts apply if:

1. the decedent's spouse predeceased the decedent;
2. the previously deceased spouse was the donor of the gifts which were split with the decedent (under the rules of IRC section 2513, i.e., one-half of gift was considered as made by the decedent);
3. the decedent was the *consenting spouse* for those split gifts (in accordance with the provisions of IRC section 2513); and
4. the split gifts were included in the previously deceased spouse's gross estate (in accordance with the provisions of IRC section 2035).

If **all** four of the conditions are met, **do not** include these gifts on line 2 of the *Tax Computation Schedule* and do not include the gift taxes paid/payable on these gifts on line 7 of the *Tax Computation Schedule*. These adjustments are included in *Worksheet #1*, at line 3, and *Worksheet #2*, at line 8.

Instructions for Worksheet #1

Line 1 - Enter the total amount of lifetime taxable gifts made by the decedent after 1982 for which a gift tax return was required to be filed, whether or not includable in the decedent's gross estate. Taxable gifts are the amounts used to compute the tax, after deducting the annual exclusion.

Line 2 - Enter the amount of taxable gifts made by the decedent after 1982, the value of which is includable in the gross estate and for which a gift tax return was required to be filed. (These gifts would include transfers with a retained interest or transfers of life insurance.)

Line 3 - Enter the amount of taxable gifts made after 1982 by the decedent's **previously deceased spouse** which meet the four conditions stated above.

Line 5 - This figure represents the amount of all taxable gifts made by the decedent (or considered to have been made due to *split* gifts) after 1982 which are not includable in the gross estate. Enter this amount on line 2 of the *Tax Computation Schedule*.

Instructions for Worksheet #2

Line 1 - Enter the total amount of lifetime taxable gifts made by the decedent after January 5, 1972, for which a gift tax return is required to be filed.

Line 2 - Enter the amount of taxable gifts made by the decedent before January 1, 1983, for which a gift tax return is required to be filed. (This amount should also be included in the amount shown on line 1 above.)

Line 3 - Using Table A of these instructions, compute the tax for each amount entered on lines 1 and 2 respectively.

Line 5 - This figure represents the gift tax for taxable gifts made after 1982.

Line 6 - Compute the amount of unified credit allowable against the amount shown on line 5, using the credit allowance given in Table B.

Line 8 - Enter the amount of tax payable on gifts made after 1982 by the decedent's previously deceased spouse which meet the four conditions previously stated.

Line 10 - Enter the amount of taxes payable by the decedent's spouse on gifts made by the decedent as the donor-spouse and which are included in the decedent's gross estate which were treated as *split* gifts.

Line 11 - For estate tax purposes, this figure represents the amount of gift taxes paid/payable on gifts made after 1982, which exceeds the appropriate unified credit. Enter this amount on line 7 of the *Tax Computation Schedule*. (This line takes the place of the credit for gift taxes paid, formerly allowed under section 959-a of the Tax Law; see item D. ***Line 11***, page 11 of these instructions.)

Table A
Tax Rate Schedule *

Taxable Amount Over	Taxable Amount Not Over	Tax is	
$ 0	$ 50,000	2% of such amount	
50,000	150,000	$ 1,000 + 3% of excess over	$50,000
150,000	300,000	4,000 + 4% of excess over	150,000
300,000	500,000	10,000 + 5% of excess over	300,000
500,000	700,000	20,000 + 6% of excess over	500,000
700,000	900,000	32,000 + 7% of excess over	700,000
900,000	1,100,000	46,000 + 8% of excess over	900,000
1,100,000	1,600,000	62,000 + 9% of excess over	1,100,000
1,600,000	2,100,000	107,000 + 10% of excess over	1,600,000
2,100,000	2,600,000	157,000 + 11% of excess over	2,100,000
2,600,000	3,100,000	212,000 + 12% of excess over	2,600,000
3,100,000	3,600,000	272,000 + 13% of excess over	3,100,000
3,600,000	4,100,000	337,000 + 14% of excess over	3,600,000
4,100,000	5,100,000	407,000 + 15% of excess over	4,100,000
5,100,000	6,100,000	557,000 + 16% of excess over	5,100,000
6,100,000	7,100,000	717,000 + 17% of excess over	6,100,000
7,100,000	8,100,000	887,000 + 18% of excess over	7,100,000
8,100,000	9,100,000	1,067,000 + 19% of excess over	8,100,000
9,100,000	10,100,000	1,257,000 + 20% of excess over	9,100,000
10,100,000		1,457,000 + 21% of excess over	10,100,000

* This tax rate schedule applies to all dates of death after March 31, 1959, and also to gifts made after 1982.

Table B
Unified Credit

1. If the tentative tax is $2,750 or less, the credit is the same as the tax.
2. If the tentative tax is greater than $2,750 but less than $5,000, the credit is the amount by which $5,500 exceeds the tax.

Example:

New York State tentative Tax	$4,000
allowance	5,500
unified credit	$1,500

New York State tentative tax	$4,000
unified credit	1,500
net tax	$2,500

3. If the tentative tax is $5,000 or more, the credit is $500.

B. **Line 9**

Agricultural exemption credit - Credit is allowable against the New York estate tax imposed on the estate of any person dying after August 10, 1977, for interests in real property devoted to farming qualifying under section 954-a of the Tax Law.

1. The interests in property eligible for exemption are limited to qualified **real** property that was owned by the decedent, and has vested in a qualified heir, and which continues to be employed in a *qualified use*. *Qualified use*, as used in this section of the Tax Law, means qualified real property used in the trade or business of **farming**. The exemption is allowable to the extent of the first $200,000 in value of such qualified property and to the extent of one-half the value of such qualified property in excess of $400,000.

2. A credit is allowed against the exempt amount, as stated above, in accordance with subsection (a) of section 958-a of the Tax Law.

3. When the agricultural credit is claimed, attach a copy of New York Form TP-411 to Form TT-86.5, showing how the amount of credit was determined, and enter the amount on line 9.

C. **Line 10**

Credit for tax on prior transfers - A credit is allowed against the estate tax for all or part of the New York estate tax paid with respect to the transfer of property to the present decedent (transferee) by or from a person (transferor) whose estate was taxed under Article 26 and who died within 10 years before, or within two years after, the date of the present decedent's death (Tax Law section 959).

1. There is no requirement that the property be identified in the estate of the transferee, or that it be in existence on the date of the transferee's death. It is sufficient that the transfer of the property was subject to New York estate tax in the estate of the transferor and that the specific period of time has not elapsed.

2. Where the transferee was the transferor's surviving spouse, no credit is allowed with respect to property received from the transferor to the extent that a marital deduction was allowed the transferor's estate in connection therewith.

3. Credit for prior taxes cannot reduce the net New York estate tax below the amount of the federal credit for state death taxes. (If the federal credit for prior taxes is determined by Part II of the federal computation, this limitation shall not apply.)

4. When a claim for prior tax credit is made, attach a copy of Form TT-190, pages 1 and 2, to Form TT-86.5, showing how the amount of credit was determined and enter the amount on line 10. Instructions for completing this form are contained on the form itself.

D. **Line 11**

When a New York gift tax has been paid under Article 26-A for gifts made prior to 1983, and upon the donor's death any part of such gift is required to be included in the value of donor's New York gross estate, a credit is allowed for the New York gift tax attributable to the portion of such gifts included in the gross estate.

1. The credit is reduced by that portion of any credits allowed under subsection (b) of section 952, and section 958-a of the Tax Law in proportion to the value that the included gift bears to the New York gross estate minus total deductions for any marital deduction or charitable bequests.

2. When the credit for gift taxes is claimed, attach a copy of New York Form TP-412 to the *Petition to Determine Estate Tax* showing how the amount of credit was determined and enter the amount on line 11. Instructions are contained on the form.

3. No credit is allowed for any New York gift tax paid on gifts made after 1982. The tax paid on gifts made after 1982 is used in computing the amount for line 7.

Lines 12 and 13

The total of all allowable credits should be deducted from the gross tax (estate tax before other credits) to arrive at the New York net estate tax. This net estate tax figure is entered on line 13 of Form TT-86.5. In preparing the order, the entries thereon will be made from the figures shown on the Recapitulation and Tax Computation schedules.

Section 20 - Nonresidents

When it is claimed that the decedent died having a legal domicile outside New York State, an *Estate Tax Domicile Affidavit*, Form TT-141A, must be completed and submitted with Form TT-86.5.

A. A tax is imposed on the transfer of real property and tangible personal property having an actual situs in New York State from the estate of a nonresident decedent if such property is:

   1. includable in the federal gross estate, or

   2. would be includable in the New York gross estate under section 957 of the Tax Law, if the decedent was a resident of New York State at the time of death.

B. The tax is an amount which bears the same ratio to the tax that would be due if the decedent had **died** a resident of New York State, as the value of all real and tangible personal property located in the state bears to the value of the New York gross estate determined as if the decedent had been a resident. This provision is expressed in the following formula:

$$\frac{\text{a. Value of real and tangible personal property having an actual situs in New York State}}{\text{b. Value of New York gross estate determined as if decedent were a resident}} \times \text{c. Net tax computed as if decedent were a resident of New York} = \text{d. New York State non-resident tax}$$

1. *a.* is the total of all real property in New York State and all tangible personal property with a situs in New York State. Tangible personal property includes cars, boats, airplanes, home furnishings and paintings. Jewelry, coin collections and cash stored in safe deposit boxes within New York State are tangible personal property with a situs in New York. Bank accounts in New York banks, and stocks and bonds of New York corporations are not treated as tangible personal property for purposes of the New York State estate tax.
2. *b.* is the New York gross estate from line 12 of the *Recapitulation* schedule on page 3 of Form TT-86.5.
3. *c.* is the New York net estate tax (computed as if a New York resident) from line 13 of the *Tax Computation Schedule* on page 1 of Form TT-86.5.
4. *d.* is the nonresident tax payable.

C. Enter the amount of nonresident tax in the area marked *Net New York Estate Tax*, on page 1 of Form TT-86.5 below line 13 and attach a schedule to the form, showing the computation.

D. Estates of nonresident decedents may complete the entire Form TT-141A, including the schedules and tax computations and submit it to the department along with the tax payment, if any, in lieu of a tax proceeding. In such case, expenses will be limited to funeral expenses and outstanding mortgages. Use of alternate valuation is not permitted.

Instructions for Schedules A to N

Schedules A - N of the *Petition to Determine Estate Tax*, Form TT-86.5, must be completed when the estate is not required to file a federal estate tax return.

The following instructions refer to the individual schedules. Unless the executor elects to value the estate as of the alternate valuation date, do not fill in the alternate valuation date or alternate value on any of the schedules.

Section 21 - Schedule A - Real Estate

A. Describe each parcel of real estate including any improvements thereon. Include the property address (street or road, city, town or village), section, block and lot numbers, and the place of record of the deed. State the exact right, title or interest the decedent had in such property.

B. Enter the assessed value and fair market value as of the decedent's date of death. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither one being under any compulsion to buy or to sell. The listed value must be supported by market information or a contract of sale. In most cases, an appraisal by a qualified real estate appraiser will be required.

C. If the alternate valuation date is elected, also enter the date and fair market value as of that date.

See information under *Instructions*, Section 13, concerning valuation of certain real property devoted to farming or used in closely held business. Two appraisals are needed for this *special valuation* allowance--one appraisal giving the highest and best use value, and one appraisal giving the actual use value. Enter the date of death value based on qualified use in the column for date of death value and, if elected, the value based on qualified use, determined as of the alternate valuation date in the column provided for alternate value. Attach a schedule showing how the values were computed.

D. If any item of real estate is subject to a mortgage for which the decedent's estate is liable, i.e., if the mortgage indebtedness may be a claim against other property of the estate, or if the decedent was personally liable for the mortgage, report the full value of the property in the *Value at Date of Death* column and enter the amount of the outstanding mortgage under *Description* in this schedule. The amount of the unpaid mortgage may be deducted on *Schedule K* of this form.

E. Real property which the decedent had contracted to purchase should be listed in this schedule at its full value and not just the equity therein. The unpaid portion of the purchase price is deducted under *Schedule* K of this form.

F. All rents accrued but uncollected on the date of death should be apportioned to the date of decedent's death and entered in this schedule.

G. Jointly owned real property is listed in *Schedule E*.

Section 22 - Schedule B - Stocks and Bonds

List stocks and bonds included in the decedent's gross estate, numbering each item in the left-hand column.

A. **Description**

1. Description of stock should indicate number of shares, whether common or preferred, issue, par value where needed for identification, price of share, exact name of corporation and the principal exchange upon which it is sold or, if not listed on a stock exchange, the post office address of the principal business office, the state in which incorporated, and the date of incorporation.
2. Description of bonds should include quantity and denomination, name of obligor, kind of bond, date of maturity, interest rate, interest due dates. State the exchange upon which listed, or if unlisted, the principal business office of the company.
3. Include the CUSIP number if available. The CUSIP (Committee on Uniform Security Identification Procedure) number is a nine-digit number assigned to all stocks and bonds traded on major exchanges and to many unlisted securities. Usually, the CUSIP number is printed on the face of the stock certificate. If the CUSIP number is not printed on the certificate, it may be obtained through the company's transfer agent.

B. **Valuation**

1. In the case of stocks and bonds listed on a stock exchange, the mean between the highest and lowest quoted selling prices on the date of death, or the alternative valuation date if alternate valuation is properly elected, shall be considered the fair market value per share or bond. If there

were no sales on the valuation date, the value shall be determined by taking the mean between the highest and lowest sales on the nearest trading date before and the nearest trading date after the valuation date, and by prorating the difference between these mean prices to the valuation date. The result, as the case may require, must then be added to or subtracted from the mean price computed for the nearest trading date before the valuation date.

For example, assume that sales of stock nearest the date of death (June 15) occurred two days before (June 13) and three days after (June 18), and that on such days the mean sale prices per share were $10 and $15, respectively. The price of $12 shall be considered as representing the fair market value of a share of such stock as of the valuation date. If the security was listed on more than one exchange, use the records of the exchange where the security is principally traded or the composite listing of combined exchanges if available in a publication of general circulation. In valuing listed stocks and bonds, the executor should observe care to consult accurate records to obtain values for the applicable valuation date.

2. If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of such issuing companies, copies of the letters furnishing such quotations or evidence of sale should be attached to the schedule.

3. Accrued interest on bonds should be computed to the valuation date and reported separately.

4. Report on this schedule, as separate items, any dividends that have not been collected at death but which are payable to the decedent or his estate because decedent was a stockholder of record on the date of his death.

5. Dividends declared on shares of stock prior to the death of the decedent but payable to stockholders of record on a date after his death are not includable in the decedent's gross estate for estate tax purposes. However, in a case where the stock is being traded on an exchange and is selling ex-dividend on the date of the decedent's death, the amount of the dividend should not be included in the gross estate as a separate item but should be added to the ex-dividend quotation in determining the fair market value of the stock as of the date of death.

6. Inactive unlisted stock and stock in closed corporations should be valued upon the basis of the company's net worth and earning capacity using the rules contained in Section 2031 of the Internal Revenue Code and applicable regulations. Complete financial and any other data the estate uses to determine value should be submitted with Form TT-86.5, including balance sheets (particularly the one nearest the valuation date) and statements of the net earnings or operating results and dividends paid for each of five years immediately preceding the valuation date. If there were any sales of these securities within a reasonable period before or after the valuation date, furnish a statement of such sales, showing the number and prices of shares sold.

7. Securities reported as having no value, having nominal value or being obsolete should be listed last. Copies of correspondence or statements used to determine their value or worthlessness, should be attached.

C. Bonds exempt from federal and/or state income taxes are not exempt from estate taxes unless exempted by a specific provision for estate tax.

Section 23 - Schedule C - Mortgages, Notes and Cash (including bank deposits)

Mortgages and notes held by the decedent and cash including bank deposits must be included on this schedule. Jointly owned assets must be reported on *Schedule E*.

The classes of property reportable in this schedule should be listed in the following order:

A. **Mortgages** (receivables)

List: (1) face value and unpaid balance; (2) date of mortgage; (3) name of maker; (4) property mortgaged; (5) interest dates and rate of interest; (6) date to which interest was paid; and (7) date of maturity. Add accrued interest to date of death.

Example: Bond and mortgage of $20,000, unpaid balance $14,000; dated January 2, 1985; John Doe to Richard Roe; 1 Any Street, Newtown, Vermont; 7% interest, payable January 2 and July 1; paid to July 1, 1988; due January 2, 1995.

Where the asset listed represents a *second* mortgage, make a special notation to this effect. The estate may be requested to furnish a copy of the contract.

B. **Notes** (receivables)

For all promissory notes held by the decedent, give similar data as requested in item *A* above.

C. **Contract by Decedent to Sell Land**

List: (1) name of purchaser; (2) date of contract; (3) description of property; (4) sale price; (5) initial payment; (6) amount of installment payment; (7) unpaid balance of principal and accrued interest; (8) interest rate; and (9) date prior to death to which interest had been paid.

D. **Cash in Possession**

List separately from bank deposits.

E. **Cash in Banks, Savings and Loan Associations, and other Types of Financial Organizations**

List: (1) name and address of each financial organization; (2) amount in each account, (3) serial number; and (4) nature of account, indicating whether checking, savings, time deposit, etc.

Section 24 - Schedule D - Insurance on the Decedent's Life

Include in this schedule the proceeds of all insurance on the decedent's life if the decedent possessed **incidents of ownership** in the policy. State whether the proceeds are payable to the estate or to a named beneficiary. For each policy, attach a copy of Federal Form 712 (Life Insurance Statement) provided by the insuror. If the insured named someone **irrevocably** as beneficiary, thereby divesting himself/herself of all incidents of ownership, including all rights of reversion worth more than 5% of the value of the insurance policy, the proceeds are not includable in the assets of the estate. However, see item *F*. below.

A. **Incidents of Ownership** in a policy include:

1. the right of the insured or estate to its economic benefits;
2. the power to change the beneficiary;
3. the power to surrender or cancel the policy;
4. the power to assign the policy or to revoke an assignment;
5. the power to pledge the policy for a loan;
6. the power to obtain from the insurer a loan against the surrender value of the policy;
7. a reversionary interest if the value of the reversionary interest was more than 5% of the value of the policy immediately before the decedent died. (An interest in an insurance policy is considered a reversionary interest where, for example, the proceeds are payable to the insured's estate or payable as the insured directs if the beneficiary dies before the insured.)

B. In order for a life insurance policy to be considered an *insurance contract* there must be an element of risk involved. The risk must be an actuarial one under which the insurer stands to suffer a loss if the insured does not live for the expected period of time.

C. The more common forms of insurance which are regarded as life insurance are ordinary life, limited payment life and endowment. Included in this schedule would also be proceeds of accident insurance policies, amounts paid under group insurance and under double indemnity clauses and death benefits by fraternal beneficial societies operating under the lodge system.

D. Where the decedent had a *retirement income* insurance policy, or if life insurance was purchased by a decedent's employer as part of a pension plan, the benefits payable at the time of a decedent's death may be includable in the gross estate under various sections of the Internal Revenue Code, as conformed to by New York State, depending upon the facts of the particular situation.

E. Where the decedent, at the time of death, owned a life insurance policy **on the life of another individual** see Section 26 - Schedule F, *Other Miscellaneous Property*.

F. If the decedent made a gift of a life insurance policy on his/her life to another individual, see Section 27 - Schedule G, *Transfers During Decedents Life*.

Section 25 - Schedule E - Jointly Owned Property

Include all property, whether real estate or personal property (including bank accounts), in which the decedent held, at the time of death, an interest either as a joint tenant, a tenant by the entirety or as an owner of community property.

Property held by the decedent as a tenant in common should not be listed here, but the value of the interest should be reported on *Schedule A*, if real estate, or if personal property, on the appropriate schedule. The value of the decedent's interest in a partnership should be reported on *Schedule F*.

A. **Qualified Joint Interests**

All property, both real and personal, held by the decedent and decedent's surviving spouse as *qualified joint interests* should be reported at full value in part *1.* of this schedule, with the total of all such assets entered on line 1(a). **One-half** of the amount on line 1(a) should be entered on line 1(b) and included in the ***Total*** of the schedule. Under the *Description* column, describe the property reported in the same manner as stated in these instructions for Schedules A, B, C, and F.

Special rules allow for the treatment of certain property held jointly between spouses to be considered *qualified joint interests*. If joint interests meet the requirements, as given below, one-half of the value of such *qualifying joint interests* is included in the gross estate of the first spouse to die. (Applicable to estates of decedents dying after September 30, 1983; refer to instructions with a print date of 10/88 or earlier for older estates.)

A *qualified joint interest* means any interest in property **held** by the decedent and decedent's surviving spouse as either tenants by the entirety or joint tenants with the right of survivorship, but only if the spouses are the only joint tenants. Interest in property which meets either of these two requirements is includable in the gross estate of the first spouse to die and should be reported in part *1. of Schedule E*. This rule applies even if the surviving spouse furnished the total consideration for the property.

B. **All Other Joint Interests**

Property held jointly by the decedent and someone **other than** a surviving spouse should be reported in part *2.* of this schedule. For each item of property reported, enter the name of the surviving joint tenant. The description of the property reported r
the same information as set forth in these
for Schedule A, B, C, and F.

Generally, you must include the full value
property in the gross estate, unless you ca
a part of the property originally belonged to the
tenant or tenants, and was never received or acquired by them from the decedent for less than adequate and full consideration in money or money's worth, or unless you can show that part of the property was acquired with consideration originally belonging to the surviving joint tenant or tenants. In this case, you may exclude from the value of the property an amount proportionate to the consideration furnished by the other tenant or tenants.

When property was acquired by gift, bequest, devise, or inheritance by the decedent and another person or persons as joint tenants, and their interests are not otherwise specified or fixed by law, there should be included only such fractional part of the value of the property as is obtained by dividing the full value of the property by the number of joint tenants.

If you believe that less than the full value of the entire property is includable in the gross estate for tax purposes, you must establish the right to include such lesser value by submitting proof of the extent, origin, and nature of the decedent's interest and the interest(s) of decedent's co-tenant or co-tenants.

Section 26 - Schedule F - Other Miscellaneous Property

Include in this schedule all items of the gross estate not reportable under any other schedule, such as the following: debts due the decedent (other than notes and mortgages reported on *Schedule C*); interests in business, gains, patents, rights, royalties, judgments; shares in trust funds; reversionary or remainder interests; claims (including the value of the decedent's interest in a

claim for refund of income taxes or the amount of the refund actually received); the unused portion of pension benefits; leaseholds; farm products and growing crops; livestock; farm machinery; automobiles; household goods and personal affects including wearing apparel; articles of artistic or intrinsic value; insurance on the life of another (the value of such insurance is the cost of replacing the policy and not the cash surrender value; federal Form 712, Part II, may be filed to establish the value). Damages recovered for personal injury to a decedent (pain and suffering) resulting in the death of the injured person are includable in the decedent's gross estate (see Estates, Powers and Trusts Law 11-3.3). (Wrongful death damages are not includable in the decedent's gross estate since the damages awarded are paid directly to the decedent's distributees – see EPTL 5-4.4.)

A. The written appraisal of an expert should be filed with the petition when any one article included among the household and personal effects has a marked artistic or intrinsic value in excess of $3,000, or any collection of similar articles is valued at more than $10,000.

B. If the decedent owned any interest in a partnership or unincorporated business, submit: financial statements as of the valuation date and for the five years preceding death; salaries of the decedent and of any partners; and the method of accounting for goodwill. The same information should be furnished, and the same methods followed, as explained previously in the instructions for valuing closely held corporations.

C. Qualified Terminable Interest Property (QTIP) - For estates of decedents dying after 1982, an estate representative may elect a marital deduction for certain qualified terminable interest property that passes to the surviving spouse (see instructions for *Schedule M*). Also, if an intervivos gift of terminable interest property is made between spouses after 1982, the donor may elect a marital deduction for qualifying property.

When the **spouse who received the property dies**, the value of any property in which the spouse had a qualifying income interst in for life and for which a marital deduction was previously allowed, under either election (estate tax or gift tax), is includable in his/her gross estate and reportable in this schedule. However, any part of the property disposed of before death, is not includable in the gross estate. (Refer to IRC Section 2044.)

1. QTIP property included in a donee-spouse's estate will be treated as passing from that spouse for estate tax purposes.

2. When the gross estate includes the value of this marital deduction property, the estate may recover the estate tax applicable to this property from the recipients(s) of that property, unless the decedent's Will directs otherwise. (Refer to EPTL 2-1.12.)

Section 27 - Schedule G - Transfers During Decedent's Life

You must complete *Schedule G* if the decedent made any of the transfers described below.

A. The decedent's gross estate must include the total amount of New York State gift taxes paid by the decedent or the estate, on gifts made by the decedent or decedent's spouse during the three-year period ending on the date of the decedent's death, **whether or not the gift is includable in the gross estate.** The date of the gift, not the date of the payment of the gift tax, determines whether the tax paid is included in the gross estate. **Do not** include any *federal* gift tax paid.

If gifts to a third party are *split* with a spouse and the transferred asset is included at **full** value in the estate of the first spouse to die, the total gift tax paid by both spouses should be included. If, however, such split gift is included at half-value in the estate of the first spouse to die, include only the gift tax paid by the deceased spouse. See instructions for Worksheets #1 and 2 under Section 19, *Tax Computation Schedule*.

B. All gifts or transfers made after June 30, 1978, and before 1983, that occurred **within** three years of the date of the decedent's death, must be included in the gross estate, with the following exceptions: (Decedents dying after 1985 are not subject to this provision.)

1. any bona fide sale made for full and adequate consideration in money or money's worth;

2. any gift or transfer (other than life insurance policies) for which no gift tax return was required to be filed for a donee for a calendar year because the gift did not exceed the $3,000 annual exclusion.

   a. The gross estate should include the date of death value of all life insurance policies transferred within the three year period ending on the date of the decedent's death, even if the gift value was less than the allowable annual exclusions.

   b. If a gift tax return was required to be filed, the value of the gift is includable in the gross estate at date of death value (or alternate valuation) without reduction for the annual exclusion.

C. Transfers made after 1982 and within three years of death are not includable in the gross estate (except gifts of life insurance on decedent's life) unless the decedent retained an interest in or power over the property transferred, such that it would be includable in the gross estate as one of the following:

1. transfers with retained life estate (IRC section 2036);
2. transfers taking effect at death (IRC section 2037);
3. revocable transfers (IRC section 2038);
4. proceeds of life insurance (IRC section 2035).

D. If the decedent possessed incidents of ownership in an insurance policy on his or her own life and gratuitously transferred, within three years of death, all rights in the policy, the full date of death value is includable on this schedule even if no gift tax return was required to be filed due to the annual exclusion.

E. If a stockholder irrevocably transfers shares of stock for less than adequate and full consideration after June 22, 1976, and retains any interest therein, the value of the stock is includable in the transferor's estate, provided the transferor has not relinquished such interest more than three years prior to his or her death.

1. The *retention of the right to vote* (either direct or indirect) shares of stock in a *controlled corporation* is considered a retention of enjoyment of the transferred shares.

2. A *controlled corporation* is a corporation in which the decedent owned or had a right to vote (either alone or with any other persons) representing at least 20% of the total combined voting power of all classes of stock.

F. All transfers made under the terms of a trust agreement must be reported, regardless of the date of transfer. A copy of the trust agreement must be submitted. If it is claimed that the transfer is not taxable, the basis for exclusion from the gross estate must be given.

G. Generally, all transfers made within three years of death are includable in the gross estate for the limited purpose of determining the estate's qualification for any of the following:

1. special use valuation;
2. deferral of estate taxes when the estate consists mainly of an interest in a closely held business; (The estate must meet the *35% test* both with and without the inclusion of such gifts in order to be eligible for the deferred payment plan.)
3. determining property that is subject to estate tax liens; **or**
4. stock redemption (under IRC Section 303) to pay estate taxes.

All gifts to a surviving spouse made within three years of the donor's death are includable in the gross estate for the purpose of determining the estate's eligibility for the special treatments indicated above, even though no gift tax return was required to be filed because of the unlimited marital deduction (effective October 1, 1983).

H. Transfers made in settlement of marital rights - **For estates of decedents dying after July 18, 1984**

A deduction from the decedent's taxable estate will be allowed for agreed-upon post-death property transfers to a former spouse made under a **written** agreement in settlement of marital or property rights and divorce occurred within the 3-year period beginning one year before the execution of the agreement. Where the transferor dies prior to completing the transfers covered by the **written** agreement, no estate tax will be imposed with respect to the property transferred by the estate provided the transfers are made to the former spouse in settlement of his or her property rights or to provide a reasonable allowance for the support of minor children of the marriage.

Property transfers not covered by a written agreement are not exempt from estate tax unless the transfer occurs in satisfaction of a court order.

For reporting purposes, the asset (property transferred) would be includable in the decedent's gross estate under IRC Section 2043(a) and allowed as a deduction under IRC Section 2053(e) based on IRC Section 2043(b)(2).

I. In all cases, the value of gifts or transfers includable in the gross estate is the value of the transferred property at the date of death or alternate valuation date, consistent with the estate's election of the valuation date of the estate tax return.

J. 1. If, after June 30, 1978, a person makes a *qualified disclaimer* with respect to any interest in property, the estate and gift tax provisions apply to the disclaimed interest in the same manner as if there had never been a transfer to the person making the qualified disclaimer. A person so making a *qualified disclaimer* will not be considered as having made a gift to the person to whom the disclaimed interest passes. A *qualified disclaimer* is an irrevocable and unqualified refusal by a person to accept an interest in property. Such disclaimer must meet all of the explicit conditions enumerated in section 2518 of the Internal Revenue Code as conformed to by New York State. (The provisions of this section relate in the same manner to IRC section 2046, regarding estate tax.) A surviving spouse can, under this rule, disclaim an interest in property that, as a result and without direction on his/her part, passes to a trust in which he/she has an income interest.

2. For transfers made after 1982, local law (state) will be applicable to determine the identity of the transferee, **but the transfer need not satisfy any requirements of the local disclaimer statute.** The disclaimer will be considered an effective disclaimer for estate tax purposes if all other requirements of IRC section 2518 are met. Renunciation (disclaimer) of property interests is provided for in EPTL 2-1.11.

Section 28 - Schedule H - Powers of Appointment

The gross estate includes the value of property interests over which the decedent had a **general power of appointment** on the date of death and the value of property interests over which the decedent exercised or released the power during his or her lifetime, if the exercise or release was: (1) a transfer within three years of death (as described in IRC section 2035), or (2) transfer with a retained life interest in the property appointed (as described in IRC section 2036), or transfer with a retained reversionary interest in the property appointed (as described in IRC section 2037), or (4) a transfer with a retained power to alter, amend, revoke, or terminate the appointment (as described in IRC section 2038).

A. A power of appointment refers to the **power** given to the **donee of the power**, authorizing the donee to control, with certain limitations, the ultimate disposition of the property subject to the power (e.g., a power given to the decedent by the Will of another person or under a trust created by another person). It includes all powers that exist in substance and effect regardless of the wording used in creating the power or how they are identified and regardless of local property law.

B. A **general power of appointment** is a power that can be exercised in favor of the decedent (donee of the power), the decedent's estate, decedent's creditors, or the creditors of the estate, with certain exceptions (see IRC section 2041). It includes the unlimited power to use income or corpus or both for the decedent's benefit.

1. Property subject to a general power of appointment **created after October 21, 1942**, is includable in the decedent's gross estate if the power is possessed (owned) on the date of death, or if the power was exercised or released (disposed of) by the decedent during lifetime in such a way that if the power were a transfer of property owned by the decedent, the property would be includable in the gross estate.

2. Property subject to a general power of appointment **created before October 22, 1942**, is

includable in the decedent's gross estate **only if exercised** - either by the decedent's Will or by a transfer during the decedent's lifetime in a manner which would make a transfer of the decedent's own property includable in the gross estate.

C. Limited power of appointment **created prior to September 1, 1930**

This particular power and the property covered by the power applies to property conveyed before September 1, 1930, which was not subject to New York State estate or death taxes in the estate of the grantor of such power, by virtue of the law then in effect, with the expectation that a deferred tax would be paid by the grantee (donee) of the power upon the exercise of the power. The value of the property passing under such limited power of appointment must be added to the federal gross estate of a deceased resident if the limited power of appointment is exercised by the decedent by Will or by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includable in the gross estate as a transfer under IRC section 2035, 2036, 2037 or 2038.

D. A copy of the instrument or agreement granting any of the powers stated above, as well as a copy of the instrument by which the power was exercised or released, must be attached to Form TT-86.5. If the estate contends that property passing by a power of appointment is not taxable, the reasons must be set forth in the schedule.

Section 29 - Schedule I - Annuities

A. Annuities under IRC section 2039(a) and (b), *Unqualified* plans

The gross estate includes the value of an annuity or other payment receivable by any beneficiary following the death of the decedent under any type of contract or agreement entered into after March 31, 1931, including employee plans or agreements.

Where the plan is a *qualified* plan as determined under IRC Section 401, an exclusion or partial exclusion may apply. Payments made from a *qualified* plan are described in *B.* below.

1. *Annuity or other payment* (as relating to both unqualified and qualified plans) refers to one or more payments extending over a period of time. Payments do not have to be made in equal amounts or at regular intervals.

2. The tests for the includability in the gross estate of payments to a beneficiary revolve about the rights of the primary annuitant and also who paid for the annuity. The gross estate generally includes the value of the contract or other agreement attributable to contributions of both the decedent and the employer, if made by reason of employment. Where someone, such as a spouse, contributed a portion or all of the cost of the purchase of an annuity, the gross estate does not include that part of the date of death value of the annuity or other payment receivable by the surviving beneficiary that such contributions (to the cost of the annuity) bear to the total cost.

3. *Contract or agreement* includes any arrangement, understanding, or plan that resulted from the decedent's employment.

4. A combination annuity contract and life insurance policy on the decedent's life (e.g., a *retirement income* policy with death benefits) that matured during the decedent's lifetime so that there was no longer an insurance element (risk) at the time of death, is taxed as an annuity under the rules governing an *unqualified* plan.

B. Annuities under IRC section 2039(a) and (e)

Qualified employee benefit plans and Individual Retirement Arrangements, including self-employed H.R. 10 (Keogh) plans (see *Example*).

Special rules control the exclusion from the gross estate of annuity or other payments from a *qualified* employees' pension or other benefit plan and individual retirement plans. (Refer to IRC section 2039(c) for the various types of qualified employee pension plans included.) These various plans are also referred to as *approved plans*. **For decedents dying after July 24, 1985**, the exclusion is generally not applicable and the entire value must be included in the estate (see exceptions in number *7.*, page 19).

Individual Retirement Arrangements, as specified in IRC section 2039(e), are treated as *approved plans* if they meet the criteria of a *qualified annuity*.

1. *Qualified annuity*, as relating to approved plans means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary, other than the executor, for life or over a period of at least 36 months after the date of decedent's death. If payments are to be received by the beneficiary for **less than** 36 months, payments are considered to be made in a lump sum and reportable as such in accordance with applicable law (see number *6.*, page 18, for discussion on lump-sum payments).

2. For an annuity payable for the life of a beneficiary, the date of birth of that beneficiary should be given. If the annuity is payable for a term of years, the duration of the term and the date on which payment began should be given.

3. If the annuity or other payment under a qualified plan is receivable by the executor or the estate, or for the benefit of the decedent's estate, the entire value is **includable** in the gross estate, regardless of contributions.

4. a. Where the decedent made contributions to the cost of the plan, the amount includable in the gross estate is that portion of the date of death value of the plan that the decedent's contribution bears to the total amount of all contributions to the plan.

   b. The exclusion applies **only** with respect to the gross estate of a decedent on whose behalf the plan was established. It **does not** apply to the estate of a decedent who was merely a beneficiary entitled to benefits under the plan.

Example

Includable value of annuity benefits, from a ***qualified*** pension plan, that are attributable to the decedent's contribution:

Decedent's annuity contributions	$11,686	Annuity Reserve	Total Retirement Benefit
Accumulated interest on above contributions	228		
Employer's contributions	71,955		
Monthly payment to beneficiary	355		
Age of *beneficiary* at decedent's death	60 years old		
Actuarial factor for a 60-year-old person [1]	7.4491		
Monthly actuarial factor	1.0450		

[1] Based on the federal 10% *Unisex* actuarial Table A in federal Publication 448, effective for estates of decedents dying after November 30, 1983, and prior to May 1, 1989.

Computation:

$355 x 12 = $4,260 x 7.4491 = $31,733.17 x 1.0450 = $33,161.16
$33,161.16 = Value of annuity of beneficiary

$$\frac{\text{Annuity reserve}}{\text{Total retirement benefit}} \times \text{Value of annuity} = \text{Value to be included in gross estate}$$

$$\frac{\$11,914.00}{\$83,869.00} \times \$33,161.16 = \$4,708.88$$

5. **Individual Retirement Arrangements**

Note: For decedents dying after July 24, 1985, these plans generally can not qualify for exclusion because an election as to payment of benefits is generally revocable.

a. If all contributions to an Individual Retirement Arrangement (self-employed H.R. or Keogh plan or individual retirement plan) were deductions for income tax purposes (i.e., contributions did not exceed the allowable annual limitations), the entire value of the individual retirement plan, **If taken as a *qualified annuity***, is treated as attributable to employer contributions.

b. If any contribution to or for an individual retirement plan was not allowed as an income tax deduction, the gross estate will include that portion of the date of death value of the plan which the amount not allowed as an income tax deduction (the *excess* contributions) bears to the total amount paid to or for such plan.

Example

Amount actual contributed to plan during lifetime	$100,000
Maximum contributions allowable	75,000
Excess amount contributed ($100,000 - $75,000)	25,000
Value of plan at death	50,000
Amount to be included in gross estate	$\frac{25,000}{100,000} \times 50,000 = \$12,500$

6. **Lump-Sum Distributions from *Qualified Plans***

a. *A lump-sum distribution* from a qualified plan means payment, within one tax year, of the balance credited to an employee's account from either a qualified annuity contract purchased by an employer, or a qualified trust that is a pension plan, stock-bonus plan or profit-sharing plan.

b. The pension (employer's) portion of a lump-sum distribution from a qualified plan payable to a beneficiary may be excluded from the gross estate if the recipient(s) of the lump-sum payment irrevocably elects, in writing, to treat the lump-sum payment as taxable income in the year received, without applying income averaging and without benefit of the capital gains rule. If this election is made, a written statement must be attached to Form TT-86.5 (whether or not a federal Form 706 is required to be filed), giving the recipient's name, address, and identification number (usually the social security number). If income averaging is elected by the recipient(s), the **full** amount of the lump-sum payment is includable in the gross estate. (See additional limitations in 7.)

c. A lump sum distribution from an Individual Retirement Arrangement or H.R. 10 is not a distribution from a *qualified plan* and does not qualify for exclusion.

Example

Includable value of a lump-sum payment, from a qualified pension plan receivable after 1978 by a named beneficiary of a deceased person where the income averaging option is **not** elected:

Decedent's annuity contributions	$5,000	Annuity Reserve	Total Retirement Benefit
Accumulated interest on above contributions	4,500		
Employer's contributions	35,000		
Lump sum payment	32,000		

Computation:

$$\frac{\text{Annuity reserve}}{\text{Total retirement benefit}} \times \text{Lump-sum payment} = \text{Value to be included in gross estate}$$

$$\frac{\$9,500}{\$44,500} \times \$32,000 = \$6,828.80$$

7. **Limitations of Exclusion**

   a. For most decedents dying after December 31, 1982, and prior to July 25, 1985, the total amount that may be excluded from a decedent's estate for payments from approved plans is limited to $100,000.

   b. For most decedents dying after July 24, 1985, no exclusion is allowed for such payments from an approved plan.

   c. **Exceptions to Limitations**

      (1) There is no limitation on the amount excludable from the gross estate, attributable to employer's contributions for any decedent who, regardless of the date of death, was a participant in an approved plan, was retired and receiving benefits under the terms of the plan, and had irrevocably elected the form of retirement benefit, including the form of any survivor's benefits, by December 31, 1982.

      (2) The exclusion from the gross estate of up to $100,000 in aggregate will be allowed for the value of payments attributable to the employer's contributions where the decedent did not meet the qualifications in (1) above but had irrevocably elected the form of benefits not later than July 24, 1985, had retired under the terms of the plan not later than December 31, 1985, and had received benefits by such date, or was deceased on such date.

Section 30 - Schedule J - Funeral and Administration Expenses

Deductions under this schedule, as well as under Schedules K and L, are limited to the value of property included in the gross estate which is *subject to claims.* Property *subject to claims* generally relates to those assets subject to probate and may be defined as property includable in the gross estate which, or the avails of which, would, under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the decedent's estate, except that the value of the property shall be reduced by the amount of deductible losses incurred during the settlement of the estate arising from fires, storms, or other casualties or from theft when such losses are not compensated for by insurance or otherwise. (Expenses incurred in administering property **not** subject to claims should be listed on *Schedule L.*)

On *Schedule J*, itemize funeral expenses and expenses incurred in administering property subject to claims. List the names and addresses of persons to whom the expenses are payable and describe the nature of the expenses.

Include in this schedule the following types-of expenses:

A. Itemized funeral expenses **actually expended** by the executor. Funeral expenses must be reduced by any V.A. payments or social security death benefits which are **paid directly to a funeral director.**

B. Expenses of administering property and settling the estate, if not deducted in the estate's income tax return, should be itemized, giving names and addresses of persons to whom payable and exact nature of particular expense. Where an amount is estimated, indicate that fact. Administration expenses are limited to such expenses as are **actually and necessarily incurred** in the administration of the estate (i.e., collection of assets, payment of debts, and distribution of property based on the terms of the decedent's Will or the laws of intestacy to persons entitled to such property). These expenses include (a) executor's commissions, (b) attorney's fees, (c) miscellaneous expenses.

   1. Executor's commissions are allowed on the **distributable** assets, i.e., on assets which the executor actually takes possession of and actually distributes (does not include assets passing outside the Will and/or by operation of law or specifically devised real property). Commissions allowed are governed by rates as prescribed by section 2307 of the Surrogate's Court Procedure Act.

   2. Attorney's fees are those incurred for services that benefit the estate and should be deducted in the amount paid or reasonably expected to be paid, in accordance with section 20.2053-3(c) of the Federal Code and Regulations.

   3. Miscellaneous expenses include court costs, Surrogate fees, accountant's fees, appraiser's fees, executor/administrator bonds, and necessary expenses incurred in preserving and distributing estate assets. Expenses for selling property of the estate, including real estate broker's commissions, are **not** deductible unless the sale is necessary in order to pay the decedent's debts, expenses of administration or taxes, to preserve the estate, or effect distribution. (Refer to Federal Code and Regulations, Section 20.2053-3(d)(2).)

Section 31 - Schedule K - Debts of Decedent, Including Mortgages and Liens

Amounts that may be deducted as claims against the decedent's estate are only those that represent enforceable personal obligations of the decedent at the time of death, and interest which has accrued to the obligations. Only interest accrued to the date of death is deductible even if the executor elects the alternate valuation.

A. **Debts** - Itemize fully all valid debts of the decedent owed at the time of death. If the amount of any debt is disputed or the subject of litigation, only such amount may be deducted as the estate concedes to be a valid claim. If the claim is contested, that fact should be indicated.

   Generally, if the claim against the estate is based on a promise or agreement, the deduction is limited to the extent that the liability was a contract for an adequate and full consideration in money or money's worth. However, any enforceable claim based on a promise or agreement of the decedent to make a contribution or gift (such as a pledge or a subscription) to or for the use of a charitable, public, religious, etc., organization is deductible to the extent that the deduction would be allowed as a bequest under the statute that applies.

   1. Real property taxes are not deductible unless they accrued prior to the decedent's death and are an enforceable obligation of the decedent at the time of death. Since real property taxes are usually payable in advance, they would have to be proportioned between decedent and devisee.

2. Unpaid income taxes are deductible if they are on income properly includable in an income tax return of the decedent for a period before his death. (Taxes on income received after death are not deductible.)

3. Unpaid gift taxes on transfers made by a decedent before his death qualify for deduction.

4. Include in this schedule notes unsecured by mortgage or other lien and give full details, including name of payee, face and unpaid balance, date and terms of note, interest rate, and date to which interest was paid before death. Include the exact nature of the claim as well as the name of the creditor.

5. Claims for services rendered to the decedent over a period of time should be included, giving complete facts.

6. If the decedent died after July 24, 1985, certain claims of a former spouse against the estate based on the relinquishment of marital rights are deductible on *Schedule K*. For these claims to be deductible, **all** of the following conditions must be met.

   a. The decedent and the decedent's spouse must have entered into a written agreement relative to their marital and property rights.

   b. The decedent and the spouse must have been divorced before the decedent's death and the divorce must have occurred within the 3-year period beginning on the date one year before the agreement was entered into. It is not required that the agreement be approved by the divorce decree.

   c. The property or interest transferred under the agreement must be transferred either to the decedent's spouse in settlement of the spouse's marital rights or to provide a reasonable allowance for the support of the children of the marriage during their minority.

7. You may not deduct a claim made against the estate by a remainderman relating to property includable in the estate under section 2044 of the Internal Revenue Code as adopted by New York.

If the amount of any claim represents the unpaid balance due on a contract for the purchase of any property included in the gross estate, indicate the schedule and item number where such property is reported. If such claim represents a joint and several liability, the facts must be fully reported and the financial responsibility of the co-obligator explained.

B. **Mortgages and Liens** - Itemize obligations secured by mortgages or other liens upon property that is included in the gross estate at its full value, or at a value that was undiminished by the amount of the mortgage or lien. If the mortgage is on jointly held property, only that part of the mortgage for which the decedent was liable and for which the estate must pay is deductible. Include in the *Description* column the particular schedule and item number where such property subject to the mortgage or lien is reported in the gross estate. Fully and completely provide all pertinent information relating to the mortgage, note or other agreement under which the indebtedness is established. A mortgage may not be deducted for more than the value of the property.

Notes and other obligations secured by the deposit of collateral, such as stocks, bonds, etc., should be listed in this schedule.

Section 32 - Schedule L - Net Losses During Administration and Expenses Incurred in Administering Property Not Subject to Claims

A. **Net Losses During Administration** - A deduction from the gross estate is allowed for casualty losses or losses from theft incurred during the settlement of the estate to the extent they are not compensated by insurance or otherwise. Losses are not deductible if they occur after distribution of the asset to the beneficiary.

1. The term *casualty losses* means losses arising from fires, storms, shipwreck, and war.

2. Details of the losses sustained and the cause must be given. If insurance or other compensation was received on account of the loss, the amount affected should be stated. Also, the property for which the loss is claimed should be identified by indicating the particular schedule and item number where the property is reported in the gross estate.

3. If alternate valuation is elected, losses occurring during the six-month period after date of death are reflected in the reduced value of the damaged or lost property rather than as a deductible item. The loss or theft cannot be treated both as a deduction from the gross estate and in the (reduced) valuation of the affected asset.

4. Losses are not deductible for estate tax purposes if, at the time the return is filed, they are claimed as an income tax deduction.

B. **Expenses Incurred in Administering Property Not Subject to Claims** - A deduction is allowed for expenses incurred in administering property not subject to claims (generally, non-probate assets). Such expenses are deductible where they would be allowed as deductions if the property being administered were subject to claims, and they are paid within the period of limitations for assessment.

1. The expenses deductible under this schedule are usually expenses incurred in connection with the administration of a trust established during the decedent's lifetime and expenses incurred in the collection of other assets or the transfer or clearance of title to other property included in the gross estate for tax purposes but not included in the decedent's probate estate. (For examples of deductible expenses, see IRC Regulation 20.2053-8.)

2. The names and addresses of the persons to whom each expense was payable and the nature of the expense should be given. The property for which the expense was incurred should be identified by indicating the schedule and item number where the property is included in the gross estate.

Section 33 - Schedule M - Bequests, etc. to Surviving Spouse (Marital Deduction)

The marital deduction is a deduction from the gross estate of the value of certain property included in the gross estate which passes or has passed from the decedent to the surviving spouse. If property passes to

the surviving spouse as the result of a qualified disclaimer, attach a copy of the written disclaimer meeting the requirements of section 2518 of the Internal Revenue Code, as adopted by New York.

A. A marital deduction is allowable only for (1) property passing into absolute ownership of the surviving spouse; or (2) a life estate with a power of appointment in the surviving spouse satisfying the requirements of Section 2056 of the Internal Revenue Code and Section 955 of the Tax Law; or (3) life insurance, endowment, or annuity payments held by the insurer for the benefit of the surviving spouse, under a contract which satisfies the requirements of Section 2056 and Section 955.

The fact that the decedent's Will contains a *common disaster clause* or a provision making the surviving spouse's interest conditional upon the spouse surviving the decedent by a period of not more than six months, will not prevent allowance of a marital deduction if the spouse does not in fact die as the result of a common disaster or within the time specified.

B. **Terminable Interest** - Certain interests in property passing from a decedent to a surviving spouse are referred to as *terminable interests*. Generally, these are interests that will terminate or fail after the passage of time and are not usually allowed as a marital deduction.

Exceptions to the rule on a nondeductible terminable interest apply to estates of decedents dying after 1982. These exceptions are for *qualified terminable interest property* and *qualified charitable remainder trusts* (IRC Section 2056(b)(7) and (8)).

1. *Qualified terminable interest property* (QTIP) is property that passes from the decedent and in which the surviving spouse has a **qualifying income interest for life**. A surviving spouse has a **qualifying income interest for life** if (1) the surviving spouse is entitled to all of the income from the property, (2) the income is payable annually or at more frequent intervals, and (3) during the surviving spouse's lifetime, no person has the power to appoint any part of the property to any person other than the surviving spouse. If the interest meets these requirements, the executor may **elect** to claim a marital deduction for the property interest.

   The effect of the marital deduction is that the **entire** property subject to the interest is treated as passing only to the surviving spouse; no one other than the surviving spouse is treated as having received any part of the property. No charitable deduction can be taken for the value of a remainder interest in the property so transferred even if such remainder interest passes to a qualified charitable organization.

   a. Where the surviving spouse does not dispose of the qualifying income interest during life, his/her gross estate will include the value of the property. (Refer to IRC Section 2044.)

   b. Where the surviving spouse transfers all or part of the qualifying income interest during life, the transfer is subject to gift tax. (Refer to IRC Section 2519.)

2. *Qualified charitable remainder trusts* are either charitable remainder annuity trusts or charitable remainder unitrusts. Where the surviving spouse is the only noncharitable beneficiary of a *qualified charitable remainder trust*, the marital deduction is allowed for any interest in the trust that passes to the surviving spouse.

   a. If this special treatment is elected, the entire property will be considered as passing to the surviving spouse. Therefore, the entire value of the property will be eligible for the marital deduction.

   b. Upon the spouse's death, if the income interest was not disposed of, the entire value of the property will be included in the spouse's gross estate (see IRC Section 2044), but because the spouse's life interest terminates at death, any property passing outright to charity may qualify for a charitable deduction.

C. List separately in *Schedule M* each property interest passing to the surviving spouse for which a marital deduction is claimed.

   1. Enter the value of each property interest before taking into account any estate tax which may be payable out of the property transferred to the surviving spouse. The marital deduction must be reduced by the amount of any estate taxes paid out of the interests involved. The payment of estate taxes under such circumstances creates a situation known as an *interrelated computation* of estate taxes. Specify the schedule and item number under which such property is listed. If the residue, or a part of the residue, passes to the surviving spouse, submit a computation showing how the value of the residue was arrived at. If the interest passing to the surviving spouse is subject to any encumbrance (for example, a mortgage), only the **net** value over and above such encumbrance is deductible.

   2. If the interest of the surviving spouse in any property listed in this schedule is affected by (1) a proceeding to contest the Will or for judicial construction of the Will, instituted or intended by any party, or (2) exercise or nonexercise of the surviving spouse's right to elect other benefits as against the Will, or (3) a claim to any of said property asserted by any party other than the surviving spouse, the facts must be fully stated in this schedule.

   3. No deduction is allowable for an interest disclaimed by the surviving spouse. A deduction may be allowed, however, for an interest passing to the surviving spouse as the result of a disclaimer by any other person.

D. **Unlimited Marital Deduction**

The monetary limitation on the estate tax marital deduction is eliminated for estates of decedents dying after September 30, 1983. For these estates, the marital deduction is unlimited (i.e., the amount of the marital deduction is the value of the property passing to the surviving spouse, if the property qualifies for the deduction). Therefore, no reduction (cut-down) to the marital deduction need be made for gifts the decedent made to the spouse.

The unlimited marital deduction does not apply to a maximum marital deduction formula clause contained in a Will executed or trust created before September 12, 1981, unless the formula clause was amended after September 12, 1981, and before the decedent's death to refer specifically to the unlimited marital deduction. The purpose of this transitional rule is to preserve the interest of the testator who may not have intended to pass to the surviving spouse more than the maximum deduction allowable at the time the Will or trust was executed or created.

Note: The orphan's deduction (formerly *Schedule N*) is not allowed for the estate of a decedent dying after 1982.

Section 34 - Schedule N - Charitable, Public and Similar Gifts and Bequests

A deduction from the gross estate is allowed for the value of property included in the gross estate that a decedent transferred by Will, or in some instances during life, to a qualified charitable or public organization. (Pledges made by the decedent to charitable institutions or organizations during his lifetime are deductible as a **debt** of the decedent on *Schedule K*.)

A. The deduction is limited to the amount actually available for charitable uses. Therefore, if estate taxes are payable out of the property transferred to a qualified charity, the value of the transferred property must be reduced by the amount used to satisfy the taxes. The payment of estate taxes under such circumstances creates a situation referred to as an *interrelated computation* of estate tax.

B. If claim is made for deduction of the value of the residue of the estate, or a portion of the residue, passing to charity under the decedent's Will, a copy of the computation determining the value should be submitted.

   The paragraph of the decedent's Will in which such bequests are directed to be made should be given in the applicable column on *Schedule N*.

C. If, in the Will or trust, a remainder clause contains both charitable and noncharitable interests, a charitable deduction will be allowed for the portion passing to the qualified charity. Such remainder interest must be in the form of a qualified charitable remainder annuity trust, unitrust, or pooled-income fund. (Refer to section 2055 of the Internal Revenue Code, as conformed to by New York State, for specific governing rules.)

D. List the dates of birth and sex of all life tenants or annuitants, the duration of whose lives may affect the value of charitable interests.

E. A deduction will be allowed for amounts that are transferred to a qualified charitable organization as a result of a *qualified disclaimer* which meets the conditions of IRC section 2518.

For estates of decedents dying after 1982, a *work of art* and the copyright on such work of art will be treated as separate properties if there is a *qualified contribution* to a *qualified organization*. (Refer to IRC section 2055(e)(4).)

New York State Department of Taxation and Finance

Application for Deferred Payment of Estate Tax

Tax Law - Section 962(f)

Use this form for estates of decedents dying **after** December 31, 1982.
Refer to instructions on reverse side before completing this form.

Decedent's name	County of residence	Date of death	Social security number

Name of executor / executrix	Address

Name of executor / executrix	Address

Total New York estate tax	Date 4% interest rate begins	Due date of first installment of tax plus interest

Previous payments *(if any)*	Previous payment dates

Computation

Value of decedent's interest in closely held business	1		
Total federal adjusted gross estate	2		
Ratio of line 1 to line 2 *(see instructions)*	3		%
New York net estate tax payable (from Form TT-86.5, page 1, *Tax Computuation Schedule*, line 13)	4		
Amount of tax to be deferred *(line 4 times % shown on line 3)*	5		
Amount of tax not subject to deferral *(line 4 minus line 5)*	6		
Amount of annual deferred installment of tax *(line 5 divided by number of annual installments elected)*	7		
Amount due with application *(amount shown on line 6)*	8		
Amount of annual installment *(amount shown on line 7, plus interest)*	9		

Remarks

Signature of executor / executrix	Date

Instructions

General Information

This form is to be completed and signed by an executor or executrix of the estate when applying for an extension of time for payment of that portion of the New York estate tax applicable to the value of the decedent's interest in a closely held business included in the gross estate. If there is more than one executor / executrix, list each name and address.

This election to defer payment of New York estate tax must be made within nine months from the date of death. However, if the estate is required to file a federal return and obtains an extention of time to file the federal return, the time for making the election for New York will be the extended due date of the federal return, generally 15 months from the date of death (section 962(f) of the Tax Law). For information on making a protective election for deferred payment, contact the department by calling 1 800 641-0004.

The *Date 4% interest rate begins* is the date that is nine months after the date of decedent's death and applies to that portion of the tax which is $54,000 or less.

The *Due date of first installment of tax plus interest* is five years and nine months after the date of death. Each succeeding installment payment is due on or before the date that is one year after such date.

Enter the date and amount of previous payments (if any) in the area indicated.

Prepare this form in triplicate and mail to:

NYS Tax Department
Transaction and Transfer Tax Bureau - Estate Tax
W. A. Harriman Campus
Albany, NY 12227

TP-415.1 (3/90) (back)

Instructions *(continued)*

Specific Instructions

Line 1 - Enter the market value **or** special use value of decedent's interest in the closely held business.

Line 2 - (a) Enter the value of the federal **adjusted** gross estate (computed in accordance with I.R.C. section 6166(b)(6)).

(b) If a federal return is not required to be filed, enter the value of the New York **adjusted** gross estate (computed in accordance with section 955 and 962(f)(1) of the Tax Law).

Line 3 - To compute the percentage ratio, divide the amount shown on line 1 by the amount shown on line 2. The value of the decedent's interest in a closely held business must be more than 35% of the adjusted gross estate (amount shown on line 2).

Note: For the purpose of determining eligibility for deferred payment, the 35% requirement must **also** be met by computing the percentage with the value of any gifts made by the decedent within three years of death included in the gross estate.

Line 4 - Enter the amount of the New York net estate tax from line 13 of the Tax Computation Schedule on page 1 of Form TT-86.5, *Petition to Determine Estate Tax*.

Line 5 - Mulitply the amount on line 4 by the percentage on line 3. This is the amount that may be deferred. It represents the portion of the net estate tax attributable to the value of the closely held business.

Line 6 - Subtract line 5 from line 4. this amount represents the portion of the net estate tax that does not qualify for deferral under section 962(f) of the Tax Law. If this amount has not been paid, payment should be remitted with this application.

Line 7 - Divide the amount on line 5 by the number of annual installments elected, i.e., two or more equal annual installments, not exceeding 10.

Note: The tax may be deferred for a maximum of 14 years, with only interest being paid for the first four years followed by up to 10 annual installments of tax and interest (the due date for the fifth payment of interest coincides with the due date for payment of the first installment of tax). The first payment of interest is due one year and nine months from the date of death, with each installment paid annually thereafter. Interest starts to accrue on the unpaid portion of tax nine months after the date of death. It continues to accrue until the date of payment.

Line 8 - Pay the amount shown on line 6 with the filing of this application. Make check or money order payable to the Commissioner of Taxation and Finance.

Line 9 - The annual installment is the amount of tax shown on line 7, plus interest, which will be billed by the Tax Department.

Use the ***Remarks*** area to indicate if this is an amended application as a result of a federal audit and list the federal changes.

Privacy Notification:

Our authority to require this personal information, including social security numbers, is found in section 171, subdivisions First and Fourteenth, and subsection (a) of section 962 of the Tax Law, as well as Article 20 of the Surrogate's Court Procedure Act.

We will use this information primarily to determine New York State estate tax liabilities under Article 26 of the Tax Law. We will also use it for administrative purposes and for any other purpose authorized by law.

Your failure to provide the required information may subject you to civil and/or criminal penalties under the Tax Law or the Penal Law.

Our authority to maintain this information is found in section 171, subdivision Fourteenth, and subsection (a) of section 962 of the Tax Law. This information will be maintained by the Director, Data Management Services Bureau, NYS Tax Department, Building 8, Room 905, W.A. Harriman Campus, Albany, NY 12227; telephone (from New York State only) 1 800 CALL TAX (1 800 225-5829); from outside New York State, call (518) 438-8581.

New York State Department of Taxation and Finance
Transaction and Transfer Tax Bureau

Application for Extension of Time to Pay Estate Tax

Mail completed form to: NYS Department of Taxation and Finance
Transaction and Transfer Tax Bureau - Estate Tax
W. A. Harriman Campus
Albany, NY 12227

Decedent's last name	First name	Middle initial

Date of death	Decedent's county of residence	Decedent's social security number

Name of executor or administrator	Street address

City	State	ZIP code	Telephone number

Request for Extension of Time to Pay

Reason for request (See Tax Law, Article 26, Section 962(k)(6).)

Extension date requested: ___/___/___

a. ☐ Total tax imposed exceeds 5% of the net estate.

b. ☐ Payment within 9 months of due date of any part of the amount of tax due would impose undue hardship upon the estate. *(Explain below.)*

This Section Must Be Completed

Estimated value of New York gross estate . . . . . _____
Estimated deductions . . . . . _____
Estimated New York taxable estate . . . . . _____
Estimated net estate tax . . . . . _____
Amount of prior payments . . . . . _____
Amount remitted with this application . . . . . _____

Make check payable to *Commissioner of Taxation and Finance* and attach to the application.

Signature of executor or administrator	Date

Our authority to require this personal information, including social security numbers, is found in section 171, subdivisions First and Fourteenth, and subsection (a) of section 962 of the Tax Law, as well as Article 20 of the Surrogate's Court Procedure Act.

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Department of Taxation and Finance

Change in Mailing Address and Assistance Information for Certain Estate Tax Forms

TP-38
(10/15)

On July 1, 2008, we changed processing centers. Any estate tax form that instructs you to mail the form to: NYS Estate Tax, Processing Center, PO Box 5556, New York NY 10087-5556, must be mailed to this address instead (see *Private delivery services* below):

NYS ESTATE TAX
PROCESSING CENTER
PO BOX 15167
ALBANY NY 12212-5167

Any estate tax form that instructs you to mail the form to: TTTB-Estate Tax Audit-855, TTTB-Estate Tax-855, Transaction and Transfer Tax Bureau-Estate Tax, TTTB-Estate Tax Audit, or TTTB-Estate Tax, must be mailed to one of these addresses instead:

If you are sending by U.S. Mail:

NYS TAX DEPARTMENT
TDAB/ESTATE TAX
W A HARRIMAN CAMPUS
ALBANY NY 12227-2994

If you are sending by a private delivery service:

NYS TAX DEPARTMENT
TDAB/ESTATE TAX
90 COHOES AVENUE
GREEN ISLAND NY 12183-1515

Note: Forms mailed to the old address may be delayed in processing.

Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your form and tax payment. However, if, at a later date, you need to establish the date you filed or paid your tax, you cannot use the date recorded by a private delivery service **unless** you used a delivery service that has been designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance. (Currently designated delivery services are listed in Publication 55, *Designated Private Delivery Services.* See *Need help?* below for information on obtaining forms and publications.) If you have used a designated private delivery service and need to establish the date you filed your form, contact that private delivery service for instructions on how to obtain written proof of the date your form was given to the delivery service for delivery.

Need help?

Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features

Telephone assistance

Estate Tax Information Center:	(518) 457-5387
To order forms and publications:	(518) 457-5431

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.