

**New York State Department of Taxation and Finance  
Office of Counsel  
Advisory Opinion Unit**

TSB-A-11(1)M  
Estate Tax  
October 12, 2011

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M110629A

The Department of Taxation and Finance received a Petition for Advisory Opinion from [REDACTED]. Petitioner asks whether the interest of the decedent, a nonresident, in a revocable trust, which holds an interest in a partnership holding New York real property constitutes an intangible and is thus not to be included in the decedent's New York gross estate for purposes of New York's estate tax. We conclude that the estate's interest in the revocable trust is an intangible and thus not includible in the estate's New York gross estate.

**Facts**

Petitioner maintains that, at the time of her death, Decedent was a resident and domiciliary of Virginia. Her residency in Virginia commenced in December, 2006. Since moving to Virginia, Decedent did not maintain any residence in the State of New York. Decedent had established The [REDACTED] (the Trust) dated July 3, 1997, which was a revocable trust. The Trust was the owner of a 1/2 partnership interest in [REDACTED] (the Partnership). Decedent had previously owned the partnership interest. Decedent transferred her interest in the Partnership to the Trust in 2002.

The Partnership owns eight cooperative apartments located in Brooklyn, New York. The eight apartments are rented to persons unrelated to Decedent or any other partners. The Partnership is a general partnership. A Business Certificate is filed in the office of the Kings County Clerk. The Partnership is a business carried on for profit.

The Partnership files a federal and New York State partnership tax return and issues form K-1 to its partners. Decedent owned no real property or tangible personal property in the State of New York.

**Analysis**

The Tax Law imposes an estate tax, the measure of which is the maximum allowable Federal state death tax credit under the Internal Revenue Code (IRC) as amended through July 22, 1998 (Tax Law sections 951, 952, 960[a]). In the case of a non-resident, the tax is calculated by multiplying the amount of the maximum state death tax credit by a fraction, the numerator of which is the decedent's New York gross estate and the denominator of which is the decedent's federal gross estate. A non-resident decedent's New York gross estate is equal to the personal and real property in the Federal gross estate that have an actual situs in New York (Tax Law section 960[a]). A nonresident decedent's intangible property is considered to have a situs

