

**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

outside New York State and is not includible in the decedent's New York gross estate even though it is part of the decedent's federal gross estate.

For the reasons discussed in TSB-A-10(1)M, under the facts here, the estate's interest in the revocable trust constitutes an intangible and is thus not part of the estate's New York gross estate.

DATED: October 12, 2011

/S/

DEBORAH R. LIEBMAN
Deputy Counsel

NOTE: An Advisory Opinion is issued at the request of a person or entity. It is limited to the facts set forth therein and is binding on the Department only with respect to the person or entity to whom it is issued and only if the person or entity fully and accurately describes all relevant facts. An Advisory Opinion is based on the law, regulations, and Department policies in effect as of the date the Opinion is issued or for the specific time period at issue in the Opinion.