

**New York State Department of Taxation and Finance  
Office of Counsel**

TSB-A-16(2)M  
Estate Tax  
June 8, 2016

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M160201A

The Department of Taxation and Finance (“Department”) received a Petition for Advisory Opinion from [REDACTED] (“Petitioner”), as Executor on behalf of the Estate of [REDACTED] (“Estate”). Petitioner asks whether the Estate is required to file an amended ET-706 to include the value of a previously unreported asset, discovered five years after the original ET-706 was filed as having been legally owned by the decedent at her death after a search by the estate’s beneficiaries of the NYS Comptroller’s Unclaimed Property records. The Petitioner, having since received these unclaimed funds from the Comptroller, asks whether the estate is required to pay any additional taxes, penalties and interest retroactive to the date of death of the decedent.

We conclude that, because the omitted asset was discovered more than three years after the timely filing of the original estate tax return, and the date of death value was less than twenty-five percent of the federal gross estate, the federal taxable estate and the New York State gross estate, the Petitioner is not required to file an amended ET-706 or pay any additional taxes, penalties, or interest related to the newly discovered asset.

**Facts**

Petitioner is the Executor of the Estate. Decedent died on November 9, 2009. Petitioner timely filed a New York State Estate Tax Return (ET-706) on August 9, 2010, claiming a New York gross estate of \$3,186,590, with an estate tax due of \$177,314. The federal gross estate was \$3,186,590, and the federal taxable estate was \$2,946,751. The estate paid the tax in full and, after an audit screening was completed by the Department in 2012, the Department issued a certification of “No Tax Due, a Final Receipt for Agreed Tax” on March 21, 2012.

Sometime in 2015, the Executor became aware that the NYS Comptroller’s Office of Unclaimed Property was in possession of funds that had been held in a joint account belonging to the decedent and her pre-deceased sister, which had not been surrendered by the depository to the Comptroller’s Office until sometime in 2012. Subsequent to this discovery, the Executor filed a claim with the Comptroller’s Office on behalf of the estate for release of these funds. The Comptroller thereupon verified the validity of the claim and released \$61,886.77 to the estate. There is no indication on the facts as presented in the petition that the original ET-706 return was filed falsely or fraudulently with an intent to evade tax, nor is there any indication that there were any federal changes that were not reported on the state return.

**Analysis**

Under Article 26 of the Tax Law, New York State imposes an estate tax on the transfer of property from any deceased individual who, at his or her death, was either a resident of New York State (Tax Law §952) or who was not a resident but owned real or tangible personal

property having an actual situs in New York State (Tax Law §960). Tax Law §990 expressly incorporates into Article 26 certain provisions applicable to the administration of the income tax under Article 22 of the Tax Law, including the statute of limitations provisions found in Tax Law §683. Section 683(a) requires that a tax generally must be assessed within three years after the return is filed. Under Tax Law §683(c)(1), the tax may be assessed at any time if no return is filed, a false or fraudulent return is filed with intent to evade tax, or the taxpayer or employer fails to report changes to the taxpayer's federal tax return. In addition, Tax Law §990(b)(6) expressly reads Tax Law §683(d) as modified to extend the assessment limitation period to six years after the return is filed "if an estate omits from its federal gross estate, federal taxable estate or New York gross estate an amount properly includible therein which is in excess of twenty-five percent of the amount stated in the return of the federal gross estate, federal taxable estate or New York gross estate."

Based on the facts provided, the additional asset was not discovered until more than three years after the estate tax return was filed and the three year statutory period to assess had passed. There is no indication in the facts presented that any of the Tax Law §683(c)(1) exceptions apply. Even though the omitted asset was discovered within Tax Law §990(b)(6)'s extended six year assessment limitation period, its value, otherwise includable in the decedent's New York gross estate, is less than twenty-five percent of the total of either the federal gross estate, federal taxable estate or New York gross estate. Therefore, the taxpayer is under no obligation to amend the original ET-706 estate tax return, or pay any additional taxes, penalties, or interest related to the asset discovered after the three year limitation period.

DATED: June 8, 2016

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DEBORAH R. LIEBMAN  
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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. The information provided in this document does not cover every situation and is not intended to replace the law or change its meaning.