



# Instructions for Form TP-400

## New York State Gift Tax Return

**Note:** Unless noted otherwise, these instructions apply to gifts made after May 25, 1990. For gifts made on or before May 25, 1990, refer to Form TP-400-I, print date 12/89, or contact the Tax Department.

References are to Article 26-A of the New York Tax Law as amended on June 9, 1994, and the Internal Revenue Code (IRC) of 1986, with all amendments enacted on or before November 5, 1990.

Chapters 389, Laws of 1997, increased the gift tax maximum unified credit from \$2,950 to \$10,000, applicable to gifts made in calendar year 1999. The gift tax is repealed for gifts made after December 31, 1999.

### General Description of Tax

The New York gift tax is imposed on all transfers of property by gift made after January 5, 1972, by any individual, resident or nonresident, during his or her lifetime, for which adequate and full consideration in money or money's worth was not received. Gifts include transfers made without adequate and full consideration, sales and exchanges made for less than an adequate and full consideration in money or money's worth not made, in the ordinary course of business, to the extent the value of the sale or exchanges exceeds the value of the consideration received, forgiveness of a debt, assignment of the benefits of an insurance policy, the exercise or release of a power of appointment, and certain survivorship annuities. Consideration not reducible to a money value (e.g., love and affection) is to be wholly disregarded.

**Note:** Sections 2701 and 2702 of the IRC as incorporated into the New York Tax Law, provide new rules for determining whether certain transfers to a family member (of interests in corporations, partnerships and trusts) are gifts and for valuing such gifts (applicable to gifts and transfers made after August 7, 1992). The rules of section 2704 of the IRC, also incorporated into the Tax Law, determine whether the lapse of any voting or liquidation right is a gift (applicable to restrictions on rights or limitations on rights created after August 7, 1992).

When real property is transferred to a family member, and either a life estate or an interest for a term of years is retained by the donor, the transaction is treated as a transfer in trust. Federal Regulations Section 25.2702-1, provides that the interest retained by the donor be valued at zero, unless the property is transferred to a personal residence trust. Section 25.2702-5, of such regulations, sets forth the requirements of a personal residence trust.

If a donor makes an election under section 2701(c)(3)(C) of the federal IRC, the donor must make the same election for New York. The election for New York is made by attaching a copy of the federal election to Form TP-400.

The gift tax applies to any gift of real property or personal property, whether tangible or intangible. The gift tax is the liability of the donor. However, if the tax is not paid when due the donee of any gift is personally liable for the tax to the extent of the value of the gift.

Although the gift tax is applicable only to transfers made by individuals, if gifts are made by trusts, estates, partnerships, or corporations, the individual beneficiaries, partners, or stockholders are considered donors and may incur liability under the gift tax law.

If the donor dies before filing the return, the executor named in the will or the administrator of the estate must file the return.

The gift tax is cumulative in nature, i.e., the value of gifts made during the preceding calendar periods determines the tax rate brackets applicable to the gifts most recently made.

A unified schedule of tax rates for gift and estate taxes, and a unified credit against these taxes, has been adopted by New York State for gifts made after 1982. The gift tax is computed on a calendar year basis for gifts made after 1982.

### The gift tax does not apply to the following transfers:

- A transfer made within one calendar year that is not more than the annual exclusion.
- A gift to a political organization (defined in section 527(e)(1) of the IRC) for use by the organization.
- A transfer to a *qualified charitable organization*.
- A New York gift to a spouse made after September 30, 1983, for which a marital deduction is allowed.
- A *qualified transfer* for education or medical expenses, which means any amount paid on behalf of an individual:
  - 1) as tuition for the education or training of the individual, paid directly to an educational organization, **or**
  - 2) for medical care (as defined in section 213(d) of the IRC) of the individual, paid directly to a person or organization.

The exclusion for a qualified transfer is in addition to the annual exclusion. Therefore, if only part of a payment was a qualified transfer, the other part could qualify for the annual exclusion. A qualified transfer is allowed without regard to the relationship between the donor and the donee.

An educational organization is an organization with a regular faculty and curriculum and a regularly enrolled body of students in attendance at the place where the educational activities are carried on. The educational organization may be domestic or foreign. The individual may be a full- or part-time student. The payment must be made directly to the organization. **The qualified transfer is limited to direct tuition costs. It does not apply to books, supplies, dormitory fees, etc..**

The payment for medical care must be made directly to the person or organization providing the medical services. Medical care also includes amounts paid for medical insurance on behalf of any individual. Reimbursement to the individual for expenses he or she paid and amounts reimbursed by insurance do not qualify.

**Exceptions** - You must file a gift tax return if one of the following applies:

- a transfer to a charitable organization that exceeds the annual exclusion
- a transfer of a present interest that exceeds \$10,000 to your noncitizen spouse, **or**
- a transfer to your spouse for which a marital deduction is claimed under section 1004(b) of the Tax Law, for qualified terminable interest property.

Also see *Who Must File* on page 4.

### General Information

#### Description and Valuation of Property

The following information applies to your federal return. The descriptions of each gift must be complete enough to readily identify the property. Thus, for each parcel of real estate, you must give a legal description, the street number and name (if available),

the area of the property, and a short statement of the character of any improvements.

Description of bonds must include the number transferred, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, and the exchange upon which the bond is listed, or the principal business office of the corporation if the bond is unlisted. Description of stocks must include number of shares, whether common or preferred, and, if preferred stock, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office and state in which incorporated and the date of incorporation. For a listed security, state principal exchange upon which it is sold. In describing an interest in property based on the duration of a person's life, the date of birth and sex of that person must be stated. Description of life insurance policies must give the name of the insurer and the number of the policy.

The fair market value of the property as of the date of the gift is the value of the gift. If a gift is not made in money (e.g., gifts resulting from the sale or exchange of property made for less than full and adequate consideration in money or money's worth), both the fair market value of the property (sold or exchanged) and the fair market value of the consideration received by the donor should be given. In such instances, the difference between the fair market value of the property and the fair market value of the consideration received is the value of the gift.

If a gift is made on the express or implied condition that the donee pay the gift tax, the amount of this tax may be deducted from the value of the gift made as partial consideration for the gift. This kind of agreement does not release the donor from the principal liability of paying the gift tax, if in fact the tax is not paid. The donor's available unified credit must be used to reduce the tax liability of the donee. The value of the gift is reduced only by the amount of tax liability assumed by the donee.

The payment of gift taxes by a donee causes an **interrelated computation** known as a net gift computation. This computation is explained in federal Publication 904.

When a gift is made jointly (split) by a husband and wife who are in different gift tax brackets with the condition that the gift tax is to be paid by the donee or out of the property itself, a special formula is used to compute the gift tax that is deducted in order to value the gift. This formula is also found in federal Publication 904.

### **Below-Market Loans**

A *below-market loan* is (1) a demand loan on which the interest is payable at a rate less than the applicable federal rate, or (2) a term loan in which the amount loaned (amount received by the borrower) exceeds the present value of all payments due under the loan.

A *demand loan* is any loan payable in full at any time on the demand of the lender.

A *term loan* is any loan that is not a demand loan.

The following provisions apply to term loans made after June 6, 1984, and demand loans outstanding after June 6, 1984, except any demand loan outstanding on June 6, 1984, that was repaid before September 16, 1984. Any loan renegotiated, extended, or revised after June 6, 1984, is treated as a loan made after that date.

If you have made a below-market loan that is a *gift loan*, you may be subject to the gift tax. In addition, see IRC section 7872 and its regulations for the income tax consequences of below-market loans.

A *gift loan* means any below-market loan where the foregone interest is in the nature of a gift. A loan between unrelated persons can qualify as a gift loan.

*Foregone interest* means, for any period during which the loan is outstanding, the excess of (1) the amount of interest that would have been payable for the period if interest accrued at the applicable federal rate and was payable annually on the last day of the calendar year, over (2) any interest payable on the loan properly allocable to that period.

If the gift loan is a below-market demand loan, the foregone interest is treated as transferred (as a gift) by the lender to the borrower. Any foregone interest attributable to periods during any calendar year is treated as transferred on the last day of such calendar year.

If the gift loan is a below-market term loan, the lender is treated as having transferred (as a gift) on the date the loan was made an amount equal to the excess of the amount loaned, over the present value of all payments that are required to be made under the terms of the loan. Present value is determined on the date of the loan by using a discount rate equal to the applicable federal rate.

**Applicable federal rate** - For demand loans, the applicable federal rate is the federal short-term rate in effect for the period for which the amount of foregone interest is being determined. For term loans, the applicable federal rate is the federal short-term, mid-term or long-term rate, based on the term of the loan in effect on the day the loan was made, compounded semiannually. These federal rates are set for 6-month periods beginning January 1 and July 1 of each year. For periods before January 1, 1985, the applicable federal rate for both types of loans is 10% (compounded semi-annually, in the case of term loans).

**Exception** - These provisions do not apply to gift loans directly between individuals for any day on which the total outstanding amount of loans between such individual is not more than \$10,000. This exception does not apply to any gift loan directly attributable to the purchase or carrying of income-producing assets.

### **Joint Ownership of Property**

**Joint tenancy with right of survivorship** - If property is owned individually or is purchased by an individual totally with his/her own funds and title is either changed to or taken as joint tenants with right of survivorship between the individual (donor) and another person (donee), a gift has been made to the donee in the amount of one-half the value of the property. Except for convenience accounts, the establishment of a joint bank account in a New York State bank is a gift of a one-half interest in the account.

**Tenancies by the entirety** (between husband and wife) - A *tenancy by the entirety* is essentially a joint interest in real or personal property except that it is only available to a husband and wife.

For tenancies by the entirety (including a joint tenancy between husband and wife, with right of survivorship) created after May 25, 1990, **where the donee spouse is not a citizen of the United States** and the spouses do not make the election permitted under section 1004(c) of the Tax Law (see page 4, *Gift by a Spouse to a Noncitizen Spouse*), the following shall apply (See *Note* below):

- 1) The creation of a tenancy by the entirety in real property or additions to the value thereof in the form of improvements, reductions in the indebtedness thereon, or otherwise, is not treated as a transfer by gift either at the time of creation or

addition thereto. A transfer by gift will be recognized at the time of termination of the tenancy by the entirety in real property in proportion to the amount of consideration furnished.

- 2) The creation of a tenancy by the entirety in personal property (joint tenancy with right of survivorship), or additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise, is treated as a transfer by gift of one half of the value of the property or additions thereto at the time the interest is created or added to.

**Note:** As provided in sections 2515 and 2515A of the federal IRC (as such sections were in effect before repeal by the Economic Recovery Tax Act of 1981) **Exception** - the election provided in section 2515 does not apply.

### Certain Property Settlements — Transfer Incident to Divorce

If a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the three-year period beginning on the date one year before the agreement is entered into, any transfers of property made pursuant to the agreement: (1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of minor issue of the marriage, are considered to be made for full and adequate consideration in money or money's worth.

If a final decree of divorce is not granted by the due date for filing a gift tax return for the calendar year in which the agreement becomes effective, the transferor must show the transfer on a gift tax return for that calendar year. Attach a copy of the settlement agreement to the return.

Send a certified copy of the final divorce decree to the Commissioner of Taxation and Finance not later than 60 days after the divorce is granted. Until the Commissioner of Taxation and Finance receives evidence that the final decree of divorce has been granted (but no more than two years from the effective date of the agreement) the transfer will tentatively be treated as made for an adequate consideration in money or money's worth.

### Transfers of Certain Life Estates - Disposition of a Qualifying Income Interest by the Transferee-Spouse

A qualifying terminable interest received from a spouse **for which a marital deduction was elected** on the transferor-spouse's New York State gift tax return or estate tax return is subject to gift tax if the transferee-spouse during his or her lifetime (either by gift, sale or otherwise) disposes of all or any part of the qualifying income interest. The amount of the gift is the entire value of the qualifying property involved, less any amount received by the transferee-spouse upon disposition of the qualifying income interest (refer to IRC section 2519). Such transfers made before 1983 do not qualify for the New York State marital deduction.

The annual exclusion is allowed to the extent of the transfer of the spouse's life income interest. The portion of the value attributable to the remainder interest is a gift of a future interest for which no annual exclusion is allowed, unless the transfer of the income interest is to a remainderman who holds full title to the property immediately after the transfer.

The transferee-spouse is entitled to recover from the recipient(s) of the property the amount of the gift tax (refer to Estates, Powers and Trusts Law 2-1.12).

### Powers of Appointment and Disclaimers

**Powers of appointment** - A power of appointment is a power to determine who will own or enjoy the property subject to the power. It must be created by someone other than the holder of the power. A general power of appointment is one in which the holder of the power can appoint the property subject to the power.

If the holder of a power of appointment exercises or releases the power during his or her lifetime, a taxable gift occurs (refer to IRC section 2514 for further information).

**Qualified disclaimers** - If a person makes a *qualified disclaimer* (as defined in IRC section 2518) with respect to any interest in property, the property will be treated as if it had never been transferred to that person. Accordingly, no gift is considered to have been made.

### Gifts to Spouses - Marital Deduction

Except for gifts in excess of \$10,000 that you made to your noncitizen spouse, you are not required to file a gift tax return or report any gifts of property made during the calendar year that pass into absolute ownership of a spouse. However, if the transfer is a gift of a terminable interest, a return must be filed.

*Terminable interests* are interests in property that will terminate or fail after the passage of time and are not usually allowed as a marital deduction. However, a terminable interest qualifies for the marital deduction if it is a life estate meeting **all** of the following requirements:

- the donee-spouse must be entitled for life to all of the income from the entire interest;
- the donee-spouse must receive the income annually or at more frequent intervals;
- the donee-spouse must have the power, while living or by will, to appoint the entire interest (which includes a power to withdraw the principal);
- the donee-spouse must be able to exercise the power alone and (whether exercisable during life or by will) in all events; **and**
- the donee-spouse must have the only power to appoint any part of the interest in the property to another person.

If all of these requirements are **not** met, a taxable gift occurs. All terminable interests must be reported, whether or not they are taxable.

In addition, a marital deduction is allowed for gifts of qualified terminable interest property. Qualified terminable interest property, QTIP, is property transferred by the donor-spouse in which the donee-spouse has a *qualifying income interest for life* (refer to IRC section 2523(f)). The donee-spouse has a qualifying income interest for life if:

- the donee-spouse is entitled for life to all the income from the property; **and**
- the income is payable annually or at more frequent intervals; **and**
- no person has the power to appoint any part of the property to any person other than the donee-spouse.

If the interest meets all of the requirements, the donor-spouse may elect to claim a marital deduction for the property interest transferred. The effect of electing the marital deduction is that the entire property subject to the interest is treated as being transferred only to the donee-spouse; no one other than the donee-spouse is treated as receiving any part of the property subject to the interest.

This election may be made by checking the box on page 4 of Form TP-400. The election must be made on or before the due date for filing the gift tax return (with extensions) after the calendar year in which the interest was transferred. Once made, the election is irrevocable.

If the donor-spouse transfers a qualifying income interest for life to the donee-spouse with a remainder interest to charity, the entire value of the QTIP property will be considered as passing to the donee-spouse and will qualify for the marital deduction. If the marital deduction is elected, a charitable deduction for the value of the remainder interest will not be allowed.

This election will not be allowed for New York State purposes unless the election was made with respect to the federal gift tax.

### Gift by a Spouse to a Noncitizen Spouse

When you transfer property to your spouse who is not a citizen of the U.S. at the time of the transfer, a New York marital deduction will not be allowed unless you and your spouse make an election consenting to treat your spouse as if he or she is a citizen for the purpose of determining if a marital deduction is allowable and for the purpose of determining if he or she is a resident of New York state at the time he or she transferred property that was the subject of the marital deduction (section 1004(c) of the Tax Law, applicable to transfers made after May 25, 1990). This election may be made by checking the box on page 4 of Form TP-400 and (both spouses) signing in the area provided. The election, once made, is irrevocable.

For returns due on or after August 7, 1992 (including extensions), the election must be made within one year of the due date of the return (including extensions).

### Taxable Transfers of Qualifying Terminable Interest Property

If the donee-spouse transfers all or part of the qualifying income interest during life, the transfer is subject to gift tax (see *Transfers of Certain Life Estates* on page 3).

If the donee-spouse does not dispose of the qualifying income interest during life, his or her gross estate will include the value of the property (refer to IRC section 2044).

### Charitable, Public and Similar Gifts

The value of charitable, public, and similar gifts may be deducted from the total amount of gifts made during a calendar year if they are made to a qualified organization, as specified in IRC section 2522.

If a donor transfers an interest in property for both charitable and noncharitable purposes, a charitable deduction is allowed for the portion of the interest passing to the charity if the interest is one of the following:

- an undivided portion of the entire interest;
- a remainder interest in a personal resident or in a farm;
- a qualified conservation contribution;
- a remainder interest, a charitable remainder trust (annuity trust or unitrust), and pooled-income funds;
- income interests, guaranteed annuity interests and unitrust interests;
- a work of art to which there is a copyright under federal law (a work of art and its copyright are treated as separate properties if the transfer was a *qualified contribution to a qualified organization* - refer to IRC section 2055(e)(4)).

Charitable gifts must be reported on a gift tax return filed for the calendar year in which the gift was made.

### Who Must File

Any individual who, within any calendar year, makes a New York gift of a **present interest** in excess of the annual exclusion or a gift of a future interest of any amount, unless excepted, is required to file a New York State gift tax return.

**If the donor dies before filing the gift tax return**, the executor or administrator of the estate is responsible for filing the return on behalf of the decedent. The executor or administrator should sign the return in the area provided for the donor, and indicate that he or she is acting as executor or administrator of an estate.

A married couple may not file a joint gift tax return (see *Gifts by Husband or Wife to Third Parties - Split Gifts* on page 6).

A return must be filed for any calendar year in which a qualified charitable New York gift was made (in excess of the annual exclusion). A *qualified charitable New York gift* is a New York gift for which a deduction is allowable under IRC section 2522 for the amount of the gift.

### Annual Exclusion

The donor is allowed an annual exclusion of the first \$10,000 of gifts of a present interest made to any one donee during a calendar year. The allowable exclusion is subtracted from the fair market value of the gifted property to compute the amount of the taxable gift. No part of a gift of a future interest can be excluded under the annual exclusion (see exception for *Transfer to Benefit a Minor* below). For gifts made before 1983, the annual exclusion was \$3,000.

A gift is considered a *present interest* if the donee has all immediate rights to use, possession, and enjoyment of the property and income from the property. *Future interests* include reversions, remainders, and other similar interests or estates, whether vested or contingent, that are to commence in use, possession or enjoyment at some future date or time. A gift of income that is to be accumulated and paid over at a later date is a gift of a future interest.

When spouses consent to *split* their gifts to third parties (donees) in accordance with the provisions of IRC section 2513, a gift of \$20,000 to each donee may be made during any calendar year without gift tax liability, if the gift is of a present interest. If the total gifts of husband and wife to one donee exceed \$20,000, each spouse must file a return and report the gift to the same donee.

A donor, in claiming the annual exclusion, has the burden of proving the value of the amount of the gift that is claimed to be a present interest.

A gift to a corporation is a gift of a future interest to all its stockholders and, therefore, does not qualify for the annual exclusion.

### Transitional Rule

The increase in the annual exclusion from \$3,000 to \$10,000 does not apply to any transfer made after July 19, 1984, if the transfer is subject to a power of appointment granted under a trust created before September 12, 1981, when the following apply:

- the power may be exercised during any period after 1982;
- the power is defined in terms of, or by reference to, the amount of the annual exclusion; **and**
- the trust instrument has not been amended on or after September 12, 1981.

### Transfers for the Benefit of a Minor

A transfer for the benefit of a person who has not reached age 21 on the date of the gift is considered a gift of a present interest even though the minor is not given the unrestricted right to the immediate use, possession, or enjoyment of the property or of the income. In most instances, gifts to minors are made through trusts and will qualify for the annual exclusion if the following conditions are met:

- if both the property and income therefrom may be expended by or for the benefit of the donee before attaining age 21; **and**
- to the extent not so expended, will (1) pass to the donee at age 21 and, (2) in the event the donee dies before age 21, the property and income will pass to the donee's estate or to persons appointed by him or her under the exercise of a general power of appointment (see IRC section 2503(c)).

**When to File** (also see *Estimated Payment of Gift Tax* below)

You must file the gift tax return on or before April 15 following the close of the calendar year, unless an extension of time for filing the return has been granted. If any due date falls on a Saturday, Sunday or legal holiday the return is due on the next business day.

If the donor of New York gifts died during the calendar year in which the gifts were made, you must file the gift tax return by the due date of the New York State estate tax return (including extensions), but not later than April 15 of the year following the calendar year in which the gifts were made, **unless** you obtain an extension of time to file the gift tax return (see below).

**Extension of Time to File**

If you are unable to submit the gift tax return by April 15, you may request an automatic four-month extension of time by filing Form TP-402, *Estimated Payment of Gift Tax and/or Application for Extension of Time to File*, by April 15. An additional two-month extension may be requested by submitting an additional Form TP-402 by August 15.

**Note:** An extension of time to file a return does not extend the time to pay the tax. Payment of the properly estimated tax must be made by April 15, to avoid the penalties for failure to timely pay the tax due.

If the donor dies during the year in which the gifts are made, the executor must file the donor's gift tax return the earlier of: (1) the due date (with extensions) for filing the donor's estate tax return; **or** (2) April 15 of the year following the calendar year when the gifts are made. Under this rule, the gift tax return may be due before April 15 if the donor died before July 15 of the year in which the gifts were made. If the donor died after July 14, the due date for the gift tax return (without extensions) will always be April 15 of the following year. If no estate tax return is required to be filed, the due date for the gift tax return (without extensions) is April 15. (See section 1007(a)(2) of the Tax Law which conforms with IRC section 6075(b)(3). Also, see federal regulation section 25.6075-1.)

**Federal Changes**

If the taxable amount of gifts reported on federal Form 709 has been changed or corrected by the Internal Revenue Service, the taxpayer must report such change to the Commissioner of Taxation and Finance within 90 days after the final determination of such change and either concede the accuracy of the determination or state wherein it is erroneous.

**Amended Returns**

Any taxpayer filing an amended federal gift tax return must also file within 90 days thereafter an amended New York State gift tax return and furnish such information as the Commissioner of Taxation and Finance may require.

**Sign Your Return**

Remember to sign and date your return. If you paid someone to prepare your return, the paid preparer must also sign the return, enter his or her address and date it.

**If the donor dies before filing the gift tax return**, the executor or administrator of the estate is responsible for filing the return on behalf of the decedent. The executor or administrator should sign the return in the area provided for the donor, and indicate that he or she is acting as executor or administrator of an estate.

A person who prepares your return and does not charge you should not sign the return.

**Information**

If you have any questions concerning this return, call toll free 1 800 225-5829. From areas outside the U.S. and Canada, call

(518) 485-6800.

To make sure that Tax Department employees give courteous responses and correct information to taxpayers, a Tax Department supervisor sometimes monitors telephone calls. No record is kept of any taxpayer's name, address or social security number.

**Where to File**

Mail your return to: **NYS Tax Department, Gift Tax Processing, PO Box 397, Albany NY 12201-0397.**

**Private Delivery Services**

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to file your return. However, if, at a later date, you need to establish the date you filed your return, 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?* on page 12 of these instructions for information on ordering forms and publications.) If you use **any** private delivery service, whether it is a designated service or not, address your return to: **NYS Tax Department, Miscellaneous Tax I/S Unit, W A Harriman Campus, Building 8, Albany NY 12227.**

**Estimated Payment of Gift Tax**

For calendar years beginning on or after January 1, 1991, any individual required to file a New York State gift tax return and pay New York State gift tax must make a payment of estimated gift tax on or before January 15 following the close of the calendar year during which gifts subject to tax were made, unless a gift tax return for the calendar year, accompanied by full payment of the tax, is filed on or before January 15 (section 1007(a)(3) of the Tax Law).

Failure to prepay at least 90% of the final tax due may result in a penalty being imposed on the amount of the underpayment computed from January 15 to either the date of payment or April 15, whichever is earlier (computed at the prevailing rate of interest determined under section 697(j) of the Tax Law).

The amount of the underpayment is the difference between 90% of the tax finally determined to be due for the calendar year and the amount received by the due date of the estimated payment. Penalty on the underpaid estimated gift tax will not be imposed if the amount of tax shown on the gift tax return for the calendar year is less than \$100 or if the donor dies before the due date of the estimated payment.

Payments received after the due date of the return are subject to additional penalties and interest.

**Payment of Tax**

The tax is the primary and personal liability of the donor. Payment is due on or before the due date of the return without regard to any extension of time to file (also see *Estimated Payment of Gift Tax* above). If the donor died during the calendar year of the gift, you must pay the gift tax within nine months of the date of death, but not later than April 15 following the calendar year of the gift (whichever is earlier).

Submit the payment with the return or with Form TP-402, *Estimated Payment of Gift Tax and/or Application of Time to File*. Make your check or money order payable to **Commissioner of Taxation and Finance**. The donor's social security number and **Gift Tax** should be written on the check or money order.

**Penalties and Interest**

**Late filing penalty** – If you file late, you will be charged a penalty of 5% of the tax due for each month or part of a month the return is late (maximum 25%), unless you extend the time to file or attach to your return an explanation showing reasonable cause for

delay. If your return is more than 60 days late, the penalty will not be less than \$100 or 100% of the balance of tax due on your return, whichever is less. For information on filing an extension of time to file your return, see *Extension of Time to File* on page 5.

**Late payment penalty** – If you do not pay your tax when due, you will be charged a penalty of  $\frac{1}{2}$  of 1% of the unpaid amount for each month or part of a month it is not paid (maximum 25%). The penalty is in addition to any interest charged.

This penalty may be waived if you attach an explanation to your return showing reasonable cause for paying late.

**Substantial understatement of liability** - If you understate your tax by more than 10% of the tax required to be shown on your return or \$2,000 (whichever is greater), 10% of any underpayment resulting from the substantial understatement may be added to your tax.

**Negligence penalty** – If your return does not show all of the tax imposed under the Tax Law, its rules or regulations, due to negligence or intentional disregard but not with intent to defraud, you will be charged a penalty of 5% of any deficient amount. In addition, 50% of the interest due on any underpayment resulting from negligence will be added to your tax.

**Fraudulent returns** – Penalties are imposed on any person who willfully fails to file a return, who files a fraudulent return, or who attempts to evade the tax in any manner. In addition, 50% of the interest due on any underpayment resulting from a fraudulent act will be added to your tax.

**Interest** – If the tax is not paid by the due date for filing the return, even if an extension of time for filing is granted, interest, compounded daily, will be charged on any balance due at the rate or rates in effect from the original due date of the return (determined without regard to any extension of time to file) to the date of payment.

### Additions to Tax for Valuation Understatement

If a valuation understatement occurs in the underpayment of tax imposed, an amount equal to the applicable percentage of the underpayment is added to the tax.

A valuation understatement occurs if the value of any transferred property reported on a gift tax return is  $66\frac{2}{3}\%$  or less of the amount determined to be the correct valuation.

No additional amount is added:

- if the claimed valuation is more than  $66\frac{2}{3}\%$  of the correct value of the asset; **or**
- if the resulting underpayment is less than \$1,000 in New York State gift tax in any taxable period.

The amount added ranges from 10% to 30% of the amount of the underpayment, depending on the amount of valuation understatement as follows:

- 1) If the claimed value is 50% or more, but not more than  $66\frac{2}{3}\%$  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, but less than 50% of the correct value — the addition to tax is 20%.
- 3) If the value claimed is less than 40% of the correct value — the addition to tax is 30%.

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

### New York Gifts of Residents and Nonresidents

The term *resident* means a person who, at the time of making the gift, was domiciled in New York State.

The term *nonresident* means a person who at the time of making the gift was not domiciled in New York State.

For an individual who is a *resident* of New York State, the New York gifts are the total amount of gifts made in any calendar year within the meaning of section 2503 of the IRC (whether or not a federal gift tax return is required to be filed), modified as follows:

- reduced by the value of transfers of real property or tangible personal property having an actual situs outside New York State;
- reduced by the value of the remainder interest in qualified terminable interest property included in the federal gross gifts under the provisions of IRC section 2519;
- increased by the value of the remainder interest in qualified terminable interest property includable in New York gross gifts under section 1003(a)(3) of the New York Tax Law.

For an individual who is a *nonresident* of New York State, New York gifts are that portion of the total amount of gifts made in any calendar year within the meaning of section 2503 of the IRC (whether or not a federal gift tax return is required to be filed), that is attributable to gifts of real property or tangible personal property having an actual situs in New York State and gifts of money, securities, credits, and other intangible personal property employed in carrying on any business in New York State by the donor, modified as follows:

- reduced by the value of the remainder interest in qualified terminable interest property (included in the federal gross gifts under the provisions of IRC section 2519) included in the above mentioned gifts;
- increased by the value of the remainder interest in qualified terminable interest property (includable in the New York gross gifts under section 1003(a)(3) of the New York Tax Law) included in the above mentioned gifts (refer to section 1003(a)(2) of the New York Tax Law).

### New York Taxable Gifts of Residents and Nonresidents

The New York taxable gifts of an individual are the total amount of the donor's New York gifts as determined under section 1003 of the Tax Law made during the calendar year, less:

- the New York gift tax marital deduction, if applicable;
- the New York charitable deduction, if applicable.

Increased by the federal generation-skipping transfer tax attributable to the New York gifts.

### Gifts by Husband or Wife to Third Parties - Split Gifts

Gifts made by a husband or a wife to a third party may be considered as made one-half by each if both spouses consent. This is known as gift splitting. Because of this gift splitting provision, the annual exclusion and the unified credit allowable to each spouse applies to the gift. Therefore, a husband and wife may transfer, as a gift, up to \$20,000 of a present interest to each donee during a calendar year without exceeding the annual exclusion. However, you must file a gift tax return to make the election to split gifts with your spouse (regardless of the amount of the gift).

If you and your spouse elect to split gifts for federal purposes, the gifts must be split for New York State purposes and the consent indicated in the space provided on the face of the New York gift tax return.

Conversely, if you or your spouse do not consent to split gifts for federal purposes, it will not be permitted for New York State purposes.

**If you and your spouse agree to split your gifts**, all gifts (including gifts of property held with your spouse as joint tenants or tenants by the entirety) made by either of you to third parties during the calendar year will be considered as made one-half by each of you if the following qualifications are met: (1) You and your spouse were married to one another at the time of the gift; (2) If divorced or widowed after the gift, you did not remarry during the rest of the calendar year; (3) Neither of you was a nonresident alien at the time of the gift; and (4) You did not give your spouse a general power of appointment over the property interest transferred.

The executor for a deceased spouse or the guardian for a legally incompetent spouse may sign the consent. If the consenting spouse dies during the calendar year in which the gifts are made, the consent to split the gifts applies only to those gifts made before the death of the consenting spouse.

Consent may be signified by both spouses at any time after the close of the calendar year with the following exceptions:

- The consent may not be signified after April 15 of the year following the calendar year of the gifts, unless the return is the first gift tax return filed by either spouse for that calendar year.
- The consent may not be signified after a notice of deficiency has been mailed to either spouse for the tax on the gifts for that calendar year.

If you and your spouse consent to split gifts, either or both of you will be liable for any gift tax determined to be due.

**When the consenting spouse must also file a gift tax return** - If the spouses elect gift splitting, both the donor spouse and the consenting spouse must each file separate gift tax returns unless all the requirements of either *Exception 1* or *Exception 2* below are met.

**Exception 1** – During the calendar year:

- only one spouse made any gifts;
- the total value of these gifts to each third-party donee did not exceed \$20,000; **and**
- all of these gifts constituted present interests.

**Exception 2** – During the calendar year:

- only one spouse (the donor spouse) made gifts of more than \$10,000 but not more than \$20,000 to any third-party donee;
- the only gifts made by the other spouse (the consenting spouse) were gifts of not more than \$10,000 to third-party donees other than those to whom the donor spouse made gifts; **and**
- all of the gifts by both you and your spouse constituted present interests.

If either *Exception 1* or *Exception 2* is met, only the donor spouse needs to file a return: the consenting spouse signifies consent on that return.

### **When to Use Form TP-400-A, New York State Short Form Gift Tax Return**

You may use Form TP-400-A to elect gift splitting if you or your spouse are not otherwise required to file Form TP-400.

You and your spouse may file Form TP-400-A, *New York State Short Form Gift Tax Return*, in place of Form TP-400 if:

- all the gifts made by you or your spouse constituted present interests, **and**

- the total value of these gifts to each third-party donee did not exceed \$20,000.

Refer to the instructions on Form TP-400-A for specific information on completing this return.

### **Instructions for Completing Form TP-400**

All taxpayers must complete pages 1 and 4 of Form TP-400. New York State residents must also complete page 2 and nonresidents must complete page 3 and lines 16 through 28 on page 2. The calendar year for which you are filing the return should be indicated in the space provided on page 1 of Form TP-400.

All questions should be answered. If a particular schedule does not apply, the word **none** should be written in that schedule. If there is not enough space for entries under any of the schedules, use additional sheets of the same size and attach to the return.

### **Supplemental Documents**

A copy of your federal gift tax return, Form 709 (or Form 709-A), and supporting schedules, statements (including a copy of federal Form 712, for each life insurance policy, with Part II completed) and documents must be attached.

If a gift was made by means of a trust, a certified or verified copy of the trust instrument must be attached.

For stock of a closed corporation or inactive stock, attach balance sheets, particularly the one nearest the date of the gift, and statements of the net earnings or operating results and dividends paid for each of the five preceding years.

Attach a copy of any appraisal used to determine the value of real estate; otherwise, include full information to explain how the value was determined.

Any other documents required for an adequate explanation should be attached to the return.

### **Residents and Nonresidents - Page 2**

#### **Computation of New York Gifts of a Resident Lines 16 - 28 Table for Gifts of Real Property or Tangible Personal Property Located Outside New York State**

If Schedule A of federal Form 709 includes gifts of real property or tangible personal property having an actual situs outside New York State, they should be listed in the table on page 2 of Form TP-400, giving all information and entering the value in the last column. The total of the value column should be entered on line 18 of *Computation of Taxable Gifts* according to the specific instructions for that line. (Intangible personal property, e.g., deposits in banks, shares of stock, bonds, notes, etc., should not be listed in the table or entered on line 18.)

**Line 16** — Enter the amount shown on federal Form 709, Schedule A, line 1. If you are filing the federal short form gift tax return, Form 709-A, enter the total of the amounts entered in column (d) of the *List of Gifts*, from Form 709-A (also see *When to Use Form TP-400-A*, above).

**Line 17** — Enter the value of the remainder interest in all qualified terminable interest property included in the total of Schedule A of federal Form 709 under the provisions of IRC section 2519.

**Line 18** — If you made entries in the table at the top of page 2, Form TP-400, enter the total amount on line 18, reduced by such items of real and tangible personal property having an actual situs outside New York State that are also included on line 17.

**Line 21** — Enter the value of remainder interests in qualified terminable interest property includable for New York tax purposes under the provisions of section 1003(a)(3) of the Tax Law (property for which a New York marital deduction was previously allowed).

Also enter all New York gifts you made to your spouse during the calendar year if your spouse was not a U.S. citizen at the time the gifts were made and the gifts are not already included in the amount on line 16 (applicable to gifts made on or after May 26, 1990).

Attach a worksheet describing these gifts if they were not reported on your federal return.

**Note: Lines 23, 24 and 25** — If you do not elect gift splitting, skip lines 23, 24 and 25, and enter on line 26 the amount from line 22.

**Line 23** — If your spouse consented to split the gifts you made to third parties, enter on line 23 one-half the total amount of the gifts you made to third parties.

Indicate, in the space provided, the federal item numbers of the gifts treated in this manner (see *Gifts by Husband or Wife to Third Parties - Split Gifts* beginning on page 6). If your spouse did not consent to split the gifts you made to third parties skip this line.

**Line 25** — If you consented to split gifts made by your spouse to third parties, enter on line 25, the amount shown on **line 23 of your spouse's New York return, Form TP-400.**

If you did not consent to split the gifts made by your spouse or if you were the donor of all the gifts and your spouse is only filing a return to show consent to split those gifts, skip line 25. (See *Gifts by Husband or Wife to Third Parties - Split Gifts* on page 6).

**Line 27** — Enter the total annual exclusions claimed for gifts of a present interest. The gifts must be included in the amount shown on line 26 (see *Annual Exclusion* on page 4).

Although the maximum annual exclusion per donee is \$10,000, the exclusion may not exceed the actual value of the New York gifts to the donee. No exclusion is allowed for a gift of a future interest.

If you elect to split gifts of a present interest made by you or your spouse to a third party, the annual exclusion allowed on your return is limited to one-half the amount of the gifts to the individual or \$10,000, whichever is less.

### Residents - New York Taxable Gifts - Lines 29 - 36

**Line 29** — Enter on line 29 the total of all your New York gifts of terminable interests made to your spouse during the calendar year for which you are claiming a marital deduction. In addition, if your spouse is not a U.S. citizen and you are claiming the New York marital deduction under section 1004(c) of the Tax Law, include on line 29 the value of all gifts you made to your spouse during the calendar year (applicable to gifts made after May 25, 1990). The value of these gifts to your spouse must be included in the amount entered on line 22 (see *Gifts to Spouses - Marital Deduction* on page 3).

**Line 30** — If you made an entry on line 29, and you deducted the annual exclusion for these gifts on line 27, enter on line 30 the amount of the annual exclusion you claimed against these gifts that is included in the amount on line 27.

The annual exclusion for a gift of a terminable present interest to a spouse is the lesser of \$10,000 or the amount of the gift and is deducted on this line for the purpose of computing the marital deduction.

**Line 32** — Enter the net amount of all New York gifts made to qualified charitable organizations after deducting the annual exclusions allowed for such gifts that you deducted on line 27.

In the space provided, indicate the federal item numbers applicable to the gifts for which a deduction is claimed, the value of which is included on line 26 (see *Charitable, Public and Similar Gifts* on page 4).

**Line 35** — The New York taxable gifts of a resident individual include the portion of federal generation-skipping transfer tax required to be included in federal taxable gifts under section 2515 of the federal IRC that is attributable to New York gifts (applicable to gifts and transfers made after August 7, 1992). Use the following worksheet to compute the amount to be entered on line 35.

1	Federal generation-skipping transfer taxes from your federal gift tax return, Form 709, page 2, Schedule A, line 14 .....	1	_____
2	Federal generation-skipping transfer taxes attributable to gifts of real property and tangible personal property located outside New York State, if any. ....	2	_____
3	Amount to be entered on line 35 (subtract line 2 from line 1). ....	3	_____

**Line 36** — If the amount on line 36 is zero, no tax is due. Skip lines 37 through 42. Enter "0" on line 4. Complete page 4 of the return, including lines 80 and 81, if applicable, and transfer those amounts to the applicable lines on page 1. Enter "0" on line 12. If you made a prepayment of gift tax, enter that amount on line 13 and the amount to be refunded on line 15.

**Line 41** — If you are filing this return for calendar year 1999, use Table B, Part I, to calculate the unified credit for the amount on line 40. For a calendar year before 1999, use Part II of Table B, unless the return is for a calendar year before 1994, or for 1994 when the donor died before June 10, 1994, then use Part III of Table B, to calculate the unified credit for the amount on line 40.

If you are filing the return for 1999 and you paid gift tax in prior years, you may be eligible to have your gift tax determined in an alternative manner, as provided in section 1002(a)(5) of the Tax Law. You may also qualify if the return is for a calendar year after 1993 and before 1999, and you paid gift tax on gifts made after 1982 and before 1994. This may result in a lower tax liability for the current year. Refer to the instructions on page 11 for additional information.

Complete the worksheet on page 12 of these instructions to determine if you qualify. If this results in a lower tax, enter the amount from the worksheet on line 41. Otherwise, use the same schedule of Table B, as you used to compute line 9.

### Nonresidents - Page 3

#### Computation of New York Gifts and New York Taxable Gifts of a Nonresident

##### Table for New York Gifts

Enter all gifts made during the calendar year of real or tangible personal property actually located in New York State, and all gifts of money, credits, securities or other intangible personal property within the state which were used by the donor in carrying on business in New York State. Include gifts made to your spouse that were gifts of terminable interests.

Also include all New York gifts you made to your spouse during the calendar year if your spouse was not a U.S. citizen at the time the gifts were made, even when the gifts were not included on your federal return (applicable to gifts made after May 25, 1990).

**Line 43** — Enter the total amount of New York gifts.

**Note: Lines 44, 45 and 46** — If you do not elect gift splitting, skip lines 44, 45 and 46, and enter on line 47 the amount from line 43.



**Line 44** — If your spouse consented to split the gifts you made to third parties, enter on line 44 one-half of the total amount of the gifts you made to third parties.

Indicate in the space provided, the federal item numbers of the gifts treated in this manner (see *Gifts by Husband or Wife to Third Parties - Split Gifts* on page 6). If your spouse did not consent to split the gifts you made to third parties, skip this line.

**Line 46** — If you consented to split the gifts made by your spouse to third parties, enter on line 46 the amount shown on **line 44 of your spouse's New York return**, Form TP-400.

If you did not consent to split the gifts made by your spouse or if you were the donor of all the gifts and your spouse is only filing a return to show consent to split those gifts, skip line 46, (see *Gifts by Husband or Wife to Third Parties - Split Gifts* on page 6).

**Line 48** — Enter the total amount of annual exclusions applicable to your New York gifts. Although the maximum annual exclusion per donee is \$10,000, the exclusion may not exceed the actual value of the New York gifts to the donee. No exclusion is allowed for a gift of a future interest.

**Line 50** — Enter on line 50 the total of all your New York gifts of terminable interests made to your spouse during the calendar year for which you are claiming a marital deduction. In addition, if your spouse is not a U.S. citizen and you are claiming the New York marital deduction under section 1004(c) of the Tax Law, include on line 50 the value of all gifts you made to your spouse during the calendar year (applicable to gifts made after May 25, 1990). The value of these gifts to your spouse must be included in the amount entered on line 43 (see *Gifts to Spouses - Marital Deduction* on page 3).

**Line 51** — If you made an entry on line 50, enter the annual exclusion applicable to the gifts of New York property interests included on line 50.

The annual exclusion for a gift of a terminable present interest to a spouse is the lesser of \$10,000 or the amount of the gift, and is deducted on this line for the purpose of computing the marital deduction.

**Line 53** — Enter the total amount of New York gifts made to qualified charitable organizations that are included on line 43, minus exclusions allowed (refer to *Charitable, Public and Similar Gifts* on page 3). Indicate in the space provided the federal item numbers of the gifts.

**Line 56** — Enter that portion of the generation-skipping transfer tax entered on federal Form 709, page 4, Schedule C, Part 3, Column H that's attributable to gifts of real property and tangible personal property located within New York State, and gifts of intangible personal property within the state which were used by the donor in carrying on any business in New York State.

**Line 57** — If the amount on line 57 is zero, no tax is due. Skip lines 58 through 79. Enter "0" on line 4. Complete page 4 of the return, including lines 80 and 81, if applicable, and transfer those amounts to the applicable lines on page 1. Enter "0" on line 12. If you made a prepayment of gift tax, enter that amount on line 13 and the amount to be refunded on line 15.

**Lines 58, 59 and 60** — Compute your taxable gifts for each of the lines as if you were a New York resident during the calendar periods you were required to file a nonresident return. Do not include gifts made in any period for which you were not required to file a New York gift tax return. Refer to the information contained in these instructions for determining the taxable gifts of a resident.

**Lines 62 and 63** — Use *Table A* on page 10 to compute the taxes separately for the amounts on lines 59 and 61 and enter the results on the appropriate lines.

**Line 65** — Refer to *Table B* on page 11 to compute the amount to be entered on this line. If you are filing the return for calendar years after 1993 (unless the donor died on or before June 9, 1994), use Part I of *Table B*.

**Line 66** — New York State Tax Law requires the unified credit of a nonresident to be a fraction of the unified credit of a resident determined on a ratio that the New York gifts for the calendar year of the return (the amount on line 49) bears to New York gifts for the calendar year of the return determined as if you were a New York resident for the calendar year (the amount reportable on line 28).

**Lines 77 and 78** — If you are filing this return for a calendar year after 1993, and you made taxable gifts in one or more calendar years after 1982 and before 1994, you may be eligible to have your tax determined in an alternative manner as provided in section 1002(a)(5) of the Tax Law. This may result in a lower tax liability for the current year. Complete the worksheet on page 12 of these instructions, and enter that amount on line 78 of your return.

Otherwise, use *Table B*, Part I of these instructions to determine the amount to enter on line 77. Calculate the line 78 amount by multiplying the amount on line 77 by a fraction, the numerator of which is the amount of your New York gifts for the most recent calendar year after 1982 that is prior to the year for which you are filing the return, and the denominator of which is the amount of your New York gifts for the same calendar year, computed as if you were a resident of New York State at the time. Refer to the section in these instructions that describes the New York gifts of a resident.

## Residents and Nonresidents - Page 4

### Marital Deduction Elections

#### Terminable Interest Marital Deduction (section 1004(b) of the Tax Law)

If you elect to claim the marital deduction for terminable interest property you gifted to your spouse, check the box. Also indicate if you made the same election on your federal return by checking the *Yes* or *No* box. You must make the same election on your New York return as you made on your federal return. List the federal item numbers. The value of the property transferred is included in the amount entered on page 2, line 22, for residents, or on page 3, line 43, for nonresidents. It is deducted on page 2, line 29, for residents, or on page 3, line 50, for nonresidents.

Section 2523(f)(6) of the IRC, as incorporated into the New York Tax Law, creates an automatic qualified terminable interest property election for the gift of a joint and survivor annuity where the spouses are the only possible recipients of the annuity prior to the death of the last surviving spouse.

If the donor spouse elects not to treat such gifts as qualified terminable interest property, thereby foregoing the marital deduction for such transfers, check the box on page 4 of the return. If there is more than one such joint and survivor annuity, you are not required to make the election for all of them. Once made, the election is irrevocable.

If a federal gift tax return is required to be filed, the same election must be made on the federal return.

**Noncitizen Spouse Marital Deduction (section 1004(c) of the Tax Law)**

If you elect to claim the New York marital deduction for transfers you made during the calendar year to your spouse who was not a citizen of the U.S. at the time of the transfers, and the transfers were made after May 25, 1990, check the box and sign in the area provided for consent of both spouses (see *Gifts by a Spouse to a Noncitizen Spouse* on page 4). List the federal item numbers. The value of the property transferred is included in the amount on page 2, line 22, for residents, or on page 3, line 43, for nonresidents. It is deducted on page 2, line 29, for residents, or on page 3, line 50, for nonresidents.

**New York Taxable Gifts for Prior Reporting Periods**

The schedule is divided into two parts. In the first part, list all gift tax returns filed for reporting periods prior to 1983. In the second part, list all gift tax returns filed for reporting periods 1983 and after and before the calendar year for which the present return is being filed. The correct amount of taxable gifts for each prior period (the amount as finally determined and not necessarily the amount previously reported) must be entered in the last column.

**Computation of Tax - Page 1**

**Line 1** — Enter the total amount of taxable gifts made by the donor for all reporting periods prior to 1983 (from page 4, line 80).

**Line 2** — Enter the total amount of taxable gifts made by the donor for reporting periods 1983 and after and before the calendar year for which this return is being filed (from page 4, line 81).

**Line 4** — Enter the amount of taxable gifts made by the donor during the calendar year for which this return is being filed. If line 4 is zero, no tax is due. Enter "0" on line 12 and complete lines 13 and 15, if applicable.

**Residents** - enter amount from page 2, line 36.

**Nonresidents** - enter amount from page 3, line 57.

**Lines 6 and 7** — Using *Table A* below, compute the tax separately for the amounts entered on lines 1 and 5, and enter the results on the appropriate line.

**Line 8** — This amount represents the tentative tax on gifts made after 1982, before allowance of the unified credit.

If you are filing the return for a calendar year after 1993 and before 1999 (unless the donor died on or before June 9, 1994), and the amount on this line is \$2,950 or less, enter the same amount on line 9 and "0" on lines 10 and 12. Skip line 11, and complete lines 13 and 15, if applicable.

If you are filing the return for **calendar year 1999**, and the amount on this line is \$10,000 or less, enter the same amount on line 9 and "0" on lines 10 and 12. Skip line 11, and complete lines 13 and 15, if applicable.

**Line 9 — Unified Credit**

**Residents** — Refer to *Table B* below to compute the unified credit allowable for the amount shown on line 8.

**Nonresidents** — Enter amount from page 3, line 66.

**Line 11** — If you made New York taxable gifts in reporting periods 1983 and after, complete the schedule on page 2 (residents) or page 3 (nonresidents) to determine the amount to be entered on this line. Otherwise, enter "0".

**Note:** If you were a **resident** at the time of making the gift(s) reported on this return, use the schedule on page 2 of Form TP-400 to calculate the line 11 amount, regardless of your status at the time of making the previous gifts and regardless of the amount of any gift tax previously paid. If you were a nonresident at the time of making the gift(s), use the schedule on page 3 of Form TP-400 to calculate the line 11 amount.

**Line 13** — If you made an estimated payment of tax, enter the amount of the payment.

**Line 14** — Make your check or money order payable to **Commissioner of Taxation and Finance** and attach it to the front of the return.

**Line 15** — The Tax Department will automatically refund any overpayment of gift tax.

**Table A - Tax Rate Schedule**

Taxable Amount		Tax is	
Over	Not Over		
\$ 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

## Table B - Unified Credit

(The unified credit does not apply to gifts made before 1983)

If you made gifts in prior years, you may qualify to have your tax determined under an alternative method. See instructions below.

**Part I** - If you are filing a return for **calendar year 1999**, refer to this part to calculate the unified credit to be entered on line 9, **and** lines 41, 65, and 77 of Form TP-400.

1. If the tentative tax is \$10,000 or less, the unified credit is the amount of the tentative tax.
2. If the tentative tax is greater than \$10,000 but less than \$19,500, the unified credit is \$20,000 less the tentative tax.

Example: If the tentative tax is \$15,000

Factor for calculation	\$20,000
Less, tentative tax	<u>15,000</u>
Unified Credit	<u>5,000</u>
Net Tax	\$10,000

3. If the tentative tax is \$19,500 or more, the unified credit is \$500.

**Part II** - If you are filing a return for a calendar year after 1993 (**except when the donor died on or before June 9, 1994**), refer to this part to calculate the unified credit to be entered on line 9, **and** lines 41, 65, and 77 of Form TP-400.

1. If the tentative tax is \$2,950 or less, the unified credit is the amount of the tentative tax.
2. If the tentative tax is greater than \$2,950 but less than \$5,400, the unified credit is \$5,900 less the tentative tax.

Example: If the tentative tax is \$4,000

Factor for calculation	\$5,900
Less, tentative tax	<u>4,000</u>
Unified Credit	<u>1,900</u>
Net Tax	\$2,100

3. If the tentative tax is \$5,400 or more, the unified credit is \$500.

**Part III** - If you are filing a return for a calendar year before 1994 (**or to report gifts made in 1994, by a donor who died on or before June 9, 1994**), refer to this part to calculate the unified credit to be entered on line 9, **and** lines 41, 65, and 77 of Form TP-400.

1. If the tentative tax is \$2,750 or less, the unified credit is the amount of the tentative tax.
2. If the tentative tax is greater than \$2,750 but less than \$5,000, the unified credit is \$5,500 less the tentative tax.

Example: If the tentative tax is \$4,000

Factor for calculation	\$5,500
Less, tentative tax	<u>4,000</u>
Unified Credit	<u>1,500</u>
Net Tax	\$2,500

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

### Instructions for Alternative Gift Tax Calculation Eligibility

If you made New York taxable gifts in a calendar year after 1982 but before 1999, and gift tax was paid or payable on such gifts, you qualify to have the tax on your current taxable gifts determined under the provisions of section 1002(a)(5) of the Gift Tax Law. Under these provisions, the total gift tax payable cannot be greater than the amount of tax that would be due if the tax was calculated using the unified credit applicable to the earliest calendar year for which gift tax was payable.

You may use the worksheet to determine if your tax would be lower. In any event, the Tax Department will calculate your tax using the most beneficial method. It will adjust your return accordingly and refund any overpayment

In general, you would benefit from the alternate calculation if you are filing your current gift tax return as a resident of New York State, and one of the following conditions applies:

1. You are filing a gift tax return for a calendar year after **1993** and before **1999**, the amount on line 8, page 1, of your current return is more than \$5,000, **and** your tentative tax (before the unified credit) on taxable gifts made after 1982 and before 1994 was more than \$2,750 and less than \$5,400.
2. You are filing a gift tax return for calendar year **1999**, the amount on line 8, page 1, of your 1999 return is more than \$10,000, **and** either:
  - a. your tentative tax (before the unified credit) on taxable gifts made after 1982 and before 1994 was more than \$2,750 and less than \$19,500, or
  - b. your tentative tax (before the unified credit) on taxable gifts made after 1982 and before 1999 was more than \$2,950 and less than \$19,500.

If you are a nonresident and paid New York gift tax on gifts made after 1982 and before 1994, the above rules may not hold true since the unified credit may have been apportioned. You may use the worksheet to determine if you would benefit from the alternate calculation.

### Instructions for Worksheet

**Note:** References to line numbers are for the versions of Form TP-400, printed 7/93 and later. The line numbers on earlier printings may differ. Use the line that corresponds to the line on the current version. Also, the nonresident return was a separate form, Form TP-401, prior to 1989.

**Line 3 — Nonresidents** - If you were a resident of New York State at the time you made your last New York taxable gift, after 1982, compute the unified credit for the tax on line 8, or the equivalent line of that Form TP-400.

Use Table B, Part II if you are filing for years before 1999. Use Table B, Part I, if you are filing for 1999.

**Line 7 — Residents** - For calendar years **after 1993 and before 1999** - Use Part III of Table B to calculate the amount for line 7.

**For calendar year 1999** - Use Part III of Table B to calculate the amount for line 7 if your tentative tax (before the unified credit) on taxable gifts made after 1982 and before 1994 was more than \$2,750, otherwise, use Part II.

**Nonresidents** - For calendar years **after 1993 and before 1999** - Use Part III of Table B to recompute the unified credit for the amount on line 64 of your current return. The line 64 amount represents the tax on taxable gifts made after 1982, computed as if a resident of New York State.

**For calendar year 1999** - Use Part III of Table B to calculate the amount for line 7 if you paid gift tax on taxable gifts made after 1982 and before 1994, otherwise use Part II.

**Line 9** — If gift tax was paid or payable for taxable gifts made after 1982 and before 1994, enter the amount of tentative tax from line 10 of the Form TP-400 that you filed for the last year you made taxable gifts before **1994**, otherwise enter zero.

If you filed an amended gift tax return, or the department adjusted your return, include those adjustments if they affect the amount shown on line 10 of your TP-400.

**Line 10** — If you filed a gift tax return for a calendar year **after 1993** and before the calendar year of the return you are preparing, enter the amount reportable on line 12 of that return. Include any adjustments made by you or the department, but

exclude charges for interest or penalty. It may be necessary to recompute the amount reportable on line 12 of that return, using this worksheet.

If you filed returns for more than one year after 1993, enter the total of the amounts reportable on line 12.

**Line 13** — This amount represents the adjustment, if any, needed to be made to the present unified credit on your current return to properly reflect the gift taxes previously paid, or payable, before 1994, the year the maximum unified credit was increased. If the amount on line 12 of the worksheet is greater than or equal to the amount on line 5, no adjustment is required for your current return. Your gift tax liability for the current return is not reduced by using the alternate calculation.

**Line 14** — This amount represents the adjusted unified credit applicable to your gift tax on taxable gifts made after 1982 and before the current year for which you are computing tax.

**Alternative Gift Tax Calculation Worksheet**

<b>1</b> Enter the amount from your <b>current</b> Form TP-400, line 10 .....	<b>1</b> _____
<b>2</b> <b>Residents</b> - enter the amount from line 40; <b>nonresidents</b> - enter the amount from line 70, of your <b>current return</b> ...	<b>2</b> _____
<b>3</b> Using your current return <b>residents</b> - calculate line 41 amount and enter here; <b>nonresidents</b> - calculate line 78 amount and enter here .....	<b>3</b> _____
<b>4</b> Subtract line 3 from line 2 .....	<b>4</b> _____
<b>5</b> Subtract line 4 from line 1 .....	<b>5</b> _____
<b>6</b> Enter the amount from your current Form TP-400, line 8 .....	<b>6</b> _____
<b>7</b> Compute the unified credit for the amount on line 6, above (see instructions on page 11) .....	<b>7</b> _____
<b>8</b> Subtract line 7 from line 6 .....	<b>8</b> _____
<b>9</b> Tentative tax on taxable gifts <b>before 1994</b> (see instructions) .....	<b>9</b> _____
<b>10</b> Adjusted gift tax payable for years after 1993 and before the current year, if any (see instructions) .....	<b>10</b> _____
<b>11</b> Add lines 9 and 10 .....	<b>11</b> _____
<b>12</b> Subtract line 11 from line 8 .....	<b>12</b> _____
<b>13</b> If amount on line 5 is more than line 12, subtract line 12 from line 5, otherwise enter "0" .....	<b>13</b> _____
<b>14</b> Subtract line 13 from line 3; enter here and <b>residents</b> - enter on line 41; <b>nonresidents</b> - enter on line 78, of your <b>current TP-400</b> .....	<b>14</b> _____

**Need Help?**

**Telephone Assistance** is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For tax information**, call toll free 1 800 641-0004. If busy, call 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and outside Canada**, call (518) 485-6800.

**Fax-on-Demand Forms Ordering System** - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

**Internet Access** - <http://www.tax.state.ny.us>  
Access our website for forms, publications, and information.

**Hotline for the Hearing and Speech Impaired** - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m. (eastern time), Monday through Friday. If you do not own a TDD, 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, please call the information numbers listed above.

**Mailing Address** - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

**Privacy notification**

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 22, 26, 26-A, 26-B, 30, 30-A, and 30-B of the Tax Law; Article 2-E of the General City Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department will use this information primarily to determine and administer tax liabilities due the state and city of New York and the city of Yonkers. We will also use this information for certain tax offset and exchange of tax information programs authorized by law, and for any other purpose authorized by law.

Information concerning quarterly wages paid to employees and identified by unique random identifying code numbers to preserve the privacy of the employees' names and social security numbers will be provided to certain state agencies for research purposes to evaluate the effectiveness of certain employment and training programs.

Failure to provide the required information may result in civil or criminal penalties, or both, under the Tax Law.

This information will be maintained by the Director of the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.



# Change in Mailing Address and Assistance Information for Prior Year Gift Tax Forms

Beginning on August 1, 2017, the mailing address changed for Forms TP-400, *New York State Gift Tax Return*, TP-400-A, *New York State Short Form Gift Tax Return*, and TP-402, *Estimated Payment of Gift Tax and/or Request for Extension of Time to File Gift Tax Return*.

If a form instructs you to mail it to: NYS Tax Department – Gift Tax Processing, PO Box 397, Albany NY 12201-0397, you must mail it to this address instead (see *Private delivery services* below):

**NYS TAX DEPARTMENT  
PO BOX 15167  
ALBANY NY 12212-5167**

**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.

For all the forms referenced above, if you are using a private delivery service, send to:

**NYS TAX DEPARTMENT  
MISC TAX PROCESSING  
90 COHOES AVE  
GREEN ISLAND NY 12183**

### Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**  
(for information, forms, and online services)



**Miscellaneous Tax Information Center:** (518) 457-5735  
To order forms and publications: (518) 457-5431



**Text Telephone (TTY) Hotline**  
(for persons with hearing and speech disabilities using a TTY): (518) 485-5082