



2013 Legislation Amending the New York State Estate Tax

This memorandum summarizes amendments to the New York State Estate Tax Law enacted in 2013. The amendments include:

- interest rate relief for additional estate tax liabilities related to the discovery of abandoned property
- amendments related to dispositions to surviving spouses who are not United States citizens

Interest rate relief for additional estate tax liabilities related to the discovery of abandoned property

Chapter 197 of the Laws of 2013 amended the interest provisions contained in section 991 of the Tax Law. The amendment provides relief in the form of reduced interest rates to estates that have an additional estate tax liability due to the late discovery of assets held by the Office of the State Comptroller (OSC) as abandoned property.

This amendment requires the Tax Department to apply the same interest rate to an additional estate tax liability attributable to the late discovery of an estate asset held by OSC as the rate paid by OSC on that asset while in its possession. This interest rate is set by section 1405 of the Abandoned Property Law and is a lower rate than the rate applied by the Tax Department on other estate tax liabilities. The interest rate relief only applies if, at the time the estate tax return was required to be filed, including any extensions, the asset had not yet been included in the public records of abandoned property required to be maintained by OSC.

The new law was enacted on July 31, 2013, and applies to estates of individuals with a date of death on or after June 1, 1944. However, the law further provides that no refunds or credits will be granted as a result of any of its provisions.

How to request interest rate relief

If the estate did not previously file a New York State estate tax return because the estate did not meet the filing threshold, but the inclusion of the newly discovered asset puts the estate over that threshold, it must now file a New York State estate tax return. If the estate had previously filed a New York State estate tax return prior to the discovery of the asset, it must file an amended return.

To apply for interest rate relief when reporting the additional asset, include a statement with the original or amended return describing the asset and the time period that it was in the custody of OSC.

Amendments related to dispositions to surviving spouses who are not United States citizens

Chapter 538 of the Laws of 2013 amended section 951 of the Tax Law to provide relief from certain expenses and clarify the procedure to claim a marital deduction relating to the disposition of an estate to a surviving spouse who is not a citizen of the United States.

Under Internal Revenue Code (IRC) section 2056(d), to claim a marital deduction for bequests to a surviving spouse who is not a U.S. citizen, the bequest must pass to a qualified domestic trust (QDOT) as defined in IRC section 2056A. When a federal return is filed, and the QDOT election is made on that return, the estate is allowed a marital deduction for property that is transferred or irrevocably assigned to the QDOT before the estate tax return is filed. Unless New York State laws provide otherwise, the amounts and elections reported on a federal return are binding for New York State estate tax purposes.¹ Accordingly, an estate is allowed a marital deduction for New York State purposes when a federal return is filed and a QDOT election is made.

If a New York State estate is below the federal filing threshold, the amounts used to compute the federal gross estate and any applicable elections may be reported independently on a pro forma federal estate tax return attached to the New York State estate tax return. In this situation, prior to the amendments, a New York State estate was required to set up a QDOT in order to take a marital deduction on the pro forma return for bequests to a surviving spouse who is not a U.S. citizen. The amendments clarify that a New York State estate that is not required to file a federal estate tax return may take a marital deduction without setting up a QDOT.

This amendment applies to estates of individuals with a date of death on or after January 1, 2010, and it expires on July 1, 2016.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.

¹ However, see *Implementation of the Marriage Equality Act Related to the New York State Estate Tax*, TSB-M-11(8)M.