



Instructions for Form ET-133

Application for Extension of Time to File and/or Pay Estate Tax

ET-133-I

(7/20)

Recent changes

The addback of taxable gifts has been extended for estates of decedents dying on or after January 16, 2019, and before January 1, 2026. An *ineludible gift* is any taxable gift under Internal Revenue Code (IRC) § 2503 that was made during the preceding three-year period ending on the decedent's date of death and that is not already included in the decedent's federal gross estate. However, taxable gifts do not include any gift made:

- when the decedent was not a resident of New York State; or
- before April 1, 2014; or
- between January 1, 2019, and January 15, 2019; or
- that is real or tangible personal property having an actual situs outside New York State at the time the gift was made.

For estates of decedents dying on or after January 1, 2019, and before January 16, 2019, there is no addback of taxable gifts.

The Tax Law requires a New York qualified terminable interest property (QTIP) election to be made directly on a New York estate tax return for decedents dying on or after April 1, 2019. Any election made under this subsection is irrevocable.

Any QTIP from a previously allowed New York marital deduction must be included in the surviving spouse's New York gross estate, whether the QTIP election was made on the transferring spouse's New York estate tax return or via a federal proforma return if an actual federal return was not otherwise required.

Who may file Form ET-133

The executor who is required to file the estate tax return for the decedent's estate may file Form ET-133 to request an automatic extension of time to file or to apply for an extension of time to pay the estate tax, or both, under Tax Law § 976. Enter the name (last name first) and other information for the executor of the estate. The term *executor* includes executrix, administrator, administratrix, or personal representative of the decedent's estate; if no executor is appointed, qualified, and acting within the United States, *executor* means any person in actual or constructive possession of any property of the decedent with sufficient knowledge to file an accurate return.

Also, an authorized attorney, certified public accountant, or other person holding power of attorney (POA) may use this form to apply for an extension of time on behalf of the executor. If you are giving a person power of attorney to represent you, attach a completed Form ET-14 (refer to the instructions on Form ET-14 for additional information).

Note: Unless a change in representation or authority is being made, Form ET-14 should only be submitted to the department once. You **do not** have to send Form ET-14 in with each estate tax form you file. If Form ET-14 was submitted previously, indicate the form it was sent in with, and the date that form was submitted.

If you have not previously submitted a copy of the death certificate, mark an **X** in the box and attach a copy to this form.

If *Letters Testamentary* or *Letters of Administration* have been obtained from surrogate's court but not submitted, attach a copy of them to this form and indicate in the space provided the type of letters you are submitting.

If the estate has **more than one executor**, mark an **X** in the box, enter the name and other information for the primary executor (preferably a person residing in New York State) in the area provided, and attach a list of each of the other executors with their mailing address and Social Security number.

If this application is signed by the authorized representative of the executor, enter the information for that person (attorney, CPA, or person with POA) in the area indicated for attorney or authorized representative.

Note: If an executor has not been appointed, this application may be signed by a person acting as executor who has sufficient knowledge of the estate to file an accurate return. The information (name, address, etc.) for the person acting as executor should be entered in the area provided for the executor. If the application is signed by the authorized representative of a person acting as executor, refer to the information above.

When to file

• Extension of time to file (Tax Law § 976(a)(1))

You **must** file Form ET-133 within 9 months of the date of death. If there is no numerically corresponding day in the ninth month, the last day of the ninth month is the due date. When the due date falls on a Saturday, Sunday, or a legal holiday, the due date is the next weekday that is not a legal holiday.

Note: The extension of time to file an estate tax return may not exceed six months unless the executor is out of the country.

An extension of time to file does not extend the time to pay. Therefore, if the application is for an extension of time to file only, you must show the amount of the estate tax estimated to be due and include a check or money order payable in U.S. funds to the **Commissioner of Taxation and Finance** with the application (if not previously paid). Write the decedent's Social Security number and **Estate tax** on the check or money order.

• Extension of time to pay (Tax Law § 976(a))

Note: An extension of time to pay does not extend the time to file. You must file the return within nine months after the date of death, unless an extension of time to file has been granted.

You must provide details regarding why an extension of time to pay is needed. Except as provided below, an extension of time to pay cannot exceed 12 months from the due date of the estate tax return.

You may extend the payment of the estate tax attributable to a reversionary or remainder interest in property until six months after the termination of the precedent interest(s) in the property.

To avoid penalties if the Tax Department denies your application for an **extension of time to pay**, you should file your application early enough so that the Tax Department can review the application and reply before the estate tax and return are due. We will notify you in writing of the Tax Department's decision. If we approve your application for an extension of time to pay, you must pay the tax by the extended due date.

A discretionary extension of time to pay for undue hardship under § 976(a)(3) may not exceed four years. For information on an extension of time granted to a closely held business under § 997, see Form ET-415, *Application for Deferred Payment of Estate Tax*.

The application must establish that it is an undue hardship for the executor to pay the full amount of the estate tax by the estate tax return due date (nine months after the date of death). You must document any effort the estate has made to convert assets to pay the tax. Include information on the listing of real estate, loans, marketability of securities, and so forth.

In general, an extension of time to pay will be granted only for the amount of the cash shortage. You must show the amount of the estate tax (attach a copy of the return if it has already been filed; otherwise estimate the tax), the amount of the cash shortage

(including a statement of the current assets in the estate and the assets already distributed), a plan for partial payments during the extension period, and the balance due. You must attach a check or money order payable in U.S. funds to the **Commissioner of Taxation and Finance** for the balance due. Write the decedent's Social Security number and **Estate tax** on the check or money order.

You must pay the part of the estate tax, including the accrued interest, for which the extension of time is granted by the extended due date. If you pay within this period, interest is computed from the date that is nine months after the date of death to the date of payment.

Specific instructions

Line 1 – Refer to federal Form 706, page 3, part 5, line 11; or Form 706-NA, page 2, Schedule B, line 1. If the decedent was a surviving spouse who received QTIP from their spouse, the amount of the QTIP **must be included** as part of the estimated value of federal gross estate regardless of whether the transferring spouse was required to file a federal estate tax return.

Line 4 – For estates of decedents dying on or after January 16, 2019, and before January 1, 2026, enter the estimated value of all includible gifts that would be taxable gifts under IRC § 2503 made during the three-year period ending on the individual's date of death that were not otherwise included in the federal gross estate.

See *Recent Changes* section of these instructions for information on *includible gifts*.

Note for New York State nonresidents: Only include gifts if they were real or tangible personal property having an actual location in New York State, or were intangible personal property employed in a business, trade, or profession carried on in New York State.

Line 5 – List the amount of any New York QTIP previously allowed on the predeceased spouse's New York State estate tax return, regardless of whether a federal estate tax return was required to be filed by the transferring spouse.

Line 6 – If the decedent was a plaintiff in any litigation at the time of his or her death, or the estate has undertaken or is considering any litigation related to the decedent's death, and any recovery from the cause of action (litigation) will bring into the estate an asset not otherwise in the estate, such as a recovery for the decedent's pain and suffering in a wrongful death action, list the fair market value of the decedent's interest in the cause of action as of the date of death.

Line 7 – Estimated value of any property received under a Power of Appointment issued prior to 1930. For a definition of the term, *power of appointment*, refer to Form ET-706-I, *Instructions for Form ET-706*, for dates of death on or after January 1, 2019.

Line 10 – Refer to federal Form 706, page 3, part 5, line 24; or Form 706-NA, page 2, Schedule B, line 8. Do not include deductions relating to property located outside of New York State. Also, for the estate of a nonresident, do not include deductions related to intangible property.

Line 12 – Compute the tax using the tax table on page 6 of Form ET-706. Subtract from the tax amount computed any applicable credit (see Form ET-706-I, page 4, line 3 instructions).

Where to file

Mail this form and your payment (if required) to: **NYS Estate Tax, Processing Center, PO Box 15167, Albany NY 12212-5167.**

Private delivery services – If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

Penalties

Penalties may be imposed for failure to file the estate tax return within the extension period granted, or failure to pay the balance of the estate tax due within the extension period granted.

Bond

If an extension of time to pay is granted, the executor may be required to furnish a bond.

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Telephone assistance

Estate Tax Information Center:	518-457-5387
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service

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