



# Instructions for Form TP-400

## Resident and Nonresident New York State Gift Tax Return

### For Gifts Made After December 31, 1985

# TP-400-I

(12/89)

Note: Residents and nonresidents may now file on the same return, form TP-400.

References are to Article 26-A of the New York Tax Law as amended on July 24, 1985, and the Internal Revenue Code of 1954, with all amendments enacted on or before July 18, 1984.

### 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 in the ordinary course of business to the extent the value of the sale or exchange 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.

The gift tax applies to any gift of real property or personal property, whether tangible or intangible.

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.

For a resident, the net tax is the amount by which:

- the total of a tentative tax computed on the total taxable gifts for the current calendar year and the preceding calendar periods exceeds
- a tentative tax computed on the total taxable gifts for each of the preceding calendar quarters before 1983, reduced by -
  - (1) the amount of the allowable unified credit, and
  - (2) the amount of gift taxes on taxable gifts made in calendar years after 1982.

Note: The term "preceding calendar period" means the first calendar quarter of the calendar year 1972 and all subsequent calendar quarters before the calendar year 1983, and all calendar years after 1982 and before the calendar year for which the tax is being computed.

### Exceptions:

The gift tax does not apply to:

- A transfer made within one calendar year that is not more than the annual exclusion.
- A "qualified transfer" for education or medical expenses, which means any amount paid on behalf of an individual after 1982
  - (a) as tuition for the education or training of the individual, paid directly to an educational institution, or
  - (b) for medical care for an individual, paid directly to a person or institution.
- A gift to a political organization (defined in section 527(e)(1) of the Internal Revenue Code) 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.

With the exception of transfers to charitable organizations and when a deduction is claimed for qualified terminable interest property under section 1004(b) of the Tax Law, a return is not required to be filed for such transfers.

### 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.

### Below Market Loans

The following provisions apply to term loans made after June 6, 1984, and demand loans outstanding after such date, except any demand loan outstanding on June 6, 1984, that was repaid before September 16, 1984.

Loans that are renegotiated, extended, or revised after June 6, 1984, are treated as if made after that date.

1. A below-market loan is
  - (a) a demand loan on which the interest is payable at a rate less than the applicable federal rate, or
  - (b) a term loan in which the amount loaned (amount received by the borrower) exceeds the present value of all payments due under the loan.
2. A demand loan means any loan payable in full at any time on the demand of the lender.
3. A term loan means any loan that is not a demand loan.
4. A gift loan means any below-market loan where the foregone interest is in the nature of a gift. (Loans by both related and unrelated persons may qualify as gift loans.)
5. Foregone interest means, for any period during which the loan is outstanding, the excess of
  - (a) the amount of interest that would have been payable for the period if interest accrued at the applicable federal rate\* and if payable annually on the last day of the calendar year, over
  - (b) any interest payable on the loan properly allowable to that period.

(\* refer to IRC section 1274(d))

In general, uncharged interest on interest-free loans and low-interest loans is treated as a gift from the lender to the borrower when the total of all loans from that lender to that borrower on any day exceeds \$10,000.

1. Any foregone interest attributable to periods during any calendar year is treated as transferred on the last day of such calendar year.
  - (a) Uncharged interest is income to the lender and deductible to

the borrower, except if total loans to that borrower are less than \$100,000 and the net investment income is under \$1,000.

Note: If you made a below-market loan that is a gift loan, consult IRC section 7872 for full information.

The information in the following sections gives the provisions of the state gift tax law for gifts made after 1985. For information regarding gifts made before 1986 refer to TP-405, print date 6/87 or earlier.

### Joint Ownership of Property

- A. 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 such 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. The establishment of a joint bank account is a gift of a one-half interest in the account.
- B. 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.

The provisions relating to creation of a tenancy by the entirety apply only to gifts and transfers made before October 1, 1983. The nontaxability of transfers made after September 30, 1983, between spouses renders the former provisions of law irrelevant (IRC sections 2515 and 2515A have been repealed).

### 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/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 did 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

- A. 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 lifetime, a taxable gift occurs (refer to IRC section 2514 for further information).

**B. 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)

Due to the elimination of the monetary ceiling on the marital deduction for gifts made to a spouse after September 30, 1983, no return is required for any gifts of property passing 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 invade the corpus);
- 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 these 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 block on page 2 of Form TP-400. The election must be made on or before the first April 15 after the calendar year in which the interest was transferred. Once made, this election is irrevocable.

If the donor-spouse transfers a "qualifying income interest" to the donee-spouse with a remainder interest to charity, the entire value of the "Q-TIP" property will be considered as passing to the donee-spouse and will qualify for the marital deduction. If the marital deduction is so 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 such election was made with respect to the federal gift tax.

### Taxable Transfers of Qualifying Terminable Interest Property

1. 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* in these instructions).
2. If the donee-spouse does not dispose of the qualifying income interest during life, his/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 residence 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 a 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.

A married couple may not file a joint return.

A return must be filed for any calendar year in which a qualified charitable New York gift was made. 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* on this page). 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 in a calendar year to any one person 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 such 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.

### Transfer to Benefit a Minor

A transfer for the benefit of a person who has not reached age 18 (for New York State purposes) 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 18; and
- to the extent not so expended, will (1) pass to the donee at age 18 and, (2) in the event the donee dies before age 18, 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).)

Note: Substitute age 21, if so designated by the donor.

### When to File

The return must be filed 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 the donor of New York gifts died during the calendar year in which the gifts were made, the required return must be filed and payment of the tax made within nine months after the date of such person's death.

The executor of the decedent's estate may apply for an extension of time to file.

### Extension of Time to File

If you are submitting a payment of income and gift taxes with Form IT-370, *Application for Automatic Extension of Time to File*, you must make a separate check payable for each tax. An automatic four-month extension of time granted a taxpayer for filing a New York State personal income tax return for any year that is a calendar year shall be deemed to be an extension of time granted the taxpayer for filing the annual gift tax return for the same calendar year. Complete Form IT-372 and indicate that it also applies to gift tax. An additional two-month extension is applicable if you file Form IT-372, *Application for Extension of Time to File*, for income tax and indicate that it is also for gift tax.

If an extension has not been requested for income tax, you may

request a four-month extension to file for gift tax by submitting a letter. An additional two-month extension of time to file may be requested by a letter indicating reasonable cause for the delay.

Note: An extension of time to file a return does not extend the time to pay the tax. A payment of at least 90% of the tax as finally determined, must be made at the time of application to avoid the penalties for failure to timely file a return.

The automatic extension of time allowed to file will not apply if a donor dies during the calendar year.

### 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 shall also file within 90 days thereafter an amended New York State gift tax return and shall furnish such information as the Commissioner of Taxation and Finance may require.

### Where to File

Mail your return to:

NYS Tax Department  
Processing Division  
Gift Tax Section  
W. A. Harriman Campus  
Albany, NY 12227

### 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 and should be submitted with the return or with the request for extension of time to file. A check or money order in payment of the tax shall be made payable to "New York State Gift Tax." 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 you 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 4 of these instructions.

**Late payment penalty** - If you do not pay your tax when due, you will be charged a penalty of 1/2 of 1% of the unpaid amount for each month or part of a month it is not paid. The penalty is in addition to any interest charged.

This penalty will not be charged 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 results in the underpayment of tax imposed there is added to the tax an amount equal to the applicable percentage of the underpayment.

A valuation understatement occurs if the value of any transferred property reported on a gift tax return is 66 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 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:

- |   |  |
|---|--|
| <ol style="list-style-type: none"> <li>1. If the claimed value is 50% or more, but not more than 66 2/3% of the correct value</li> <li>2. If the value claimed is 40% or more, but less than 50% of the correct value</li> <li>3. If the value claimed is less than 40% of the correct value</li> </ol> | <ul style="list-style-type: none"> <li>— an addition to tax equal to 10% of the underpayment attributable to the undervaluation is imposed.</li> <li>— the addition to tax is 20%.</li> <li>— the addition to tax is 30%.</li> </ul> |
|---|--|

The addition to tax may be waived in whole or in part by the Commissioner 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.

A. 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 Internal Revenue Code (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.

B. For an individual who is not a resident 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 Internal Revenue Code (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.

## 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 per year without exceeding the annual exclusion.

If both spouses split a gift for federal purposes, the gift 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 the spouses do not consent to split gifts for federal purposes, it will not be permitted for New York State purposes.

To "split the gift," the spouses (1) must be legally married to each other at the time of the gift, (2) must not become married to a different person before the close of the calendar year, (3) the spouse making the gift must not give to the other spouse a general power of appointment over the property transferred, and (4) consent must also be signified on the federal return.

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 that in which the gifts were made unless no return has been filed for such year before April 15 by either spouse (in such case, the consent must be made on the first return for the year filed by either spouse).
- The consent may not be signified after a notice of deficiency for the tax for the year has been sent to either spouse.

Note: The executor/administrator of the estate of a deceased spouse or a guardian of a legally incompetent spouse may signify the consent.

The consent is effective for the entire year; therefore, all gifts made by either spouse to third parties during the calendar year (while married) must be treated in the same way. The entire tax imposed on the transfer becomes the joint and several liability of each spouse.

## Instructions for Completing Form TP-400

All taxpayers must complete pages 1 and 4 of form TP-400. Residents must also complete page 2 and nonresidents page 3. The calendar year you are filing the return for 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, 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.

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### Schedule A

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 Schedule A 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 schedule or entered on line 18.)

### Computation of Taxable Gifts

**Line 16** - Enter the amount shown on line 1, Schedule A, of federal Form 709.

**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** - Enter the total from Schedule A page 2 of Form TP-400 reduced by any items 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).

**Line 23** - If your spouse did not consent to split the gifts you made to third parties omit this line. If your spouse consented to split such gifts, enter one-half the value of such gifts on this line. 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* on this page.)

**Line 25** - If you consented to split gifts made by your spouse to third parties, enter the amount shown on line 23 of your spouse's return on this line. If you did not consent to split 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, omit this line. (See *Gifts by Husband or Wife to Third Parties* on this page.)

**Line 27** - Enter the total annual exclusions claimed for gifts of a present interest included in the amount shown on line 16 (see *Annual Exclusion* on page 4 of these instructions). If you consent to split a gift to a third party made by your spouse, the annual exclusion may not be more than your half of the gift.



**Line 29** - Enter all terminable interest gifts made by you to your spouse, the value of which is included in the amount shown on line 16, for which you are claiming a marital deduction. Do not enter any gift that was not included in the amount shown on line 16. Indicate in the space provided, the federal item numbers of the gifts to the spouse for which the marital deduction is claimed. (See *Gifts to Spouses* on page 3 of these instructions.)

**Line 30** - If you made an entry on line 29, enter the value of the annual exclusion that was claimed against the gifts listed on line 29. The annual exclusion is entered on this line for the purpose of computing the marital deduction.

**Line 32** - Enter the total amount of New York gifts made to qualified charitable organizations, minus exclusions allowed. Indicate in the space provided, the federal item numbers applicable to the gifts for which a deduction is claimed, the value of which is included in line 16. (See *Charitable, Public and Similar Gifts* on page 3 of these instructions.)

#### **Terminable Interest Marital Deduction**

Check the box if you elect to claim a marital deduction for terminable interest property you gifted to your spouse. Also indicate if you made the election on your federal return.

#### **Nonresidents - Page 3**

##### **Computation of Taxable Gifts Schedule for New York Gifts -**

Enter all gifts 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 employed by the donor in carrying on business in New York State, made during the calendar year. Include gifts made to your spouse that were gifts of terminable interests.

**Line 16** - Enter the total amount of New York gifts.

**Line 17** - If your husband/wife elected to treat one-half of your gifts to third parties as his/her gifts on the federal return, enter one-half of the amount from line 16. Also indicate the item numbers of these gifts from your federal return.

**Line 19** - If you elected to treat one-half of the gifts made by your spouse to third parties as gifts made by you

on the federal return, enter one-half of the total New York gifts to third parties (from line 17, page 3 of your spouse's New York return).

**Line 21** - 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. The annual exclusion applicable to gifts you made to your spouse should not be deducted here unless you make an entry on line 23. See instructions for lines 23 and 24.

**Line 23** - Enter all your New York gifts of terminable interest property made to your spouse during the calendar year that are included in line 16 and for which you are claiming a marital deduction.

**Line 24** - If you made an entry on line 23, enter here the annual exclusion applicable to the gifts of New York terminable interest property you made to your spouse. The annual exclusion may not exceed the lesser of \$10,000 or the amount of the gifts.

**Line 26** - Enter the total amount of New York gifts made to qualified charitable organizations that are included in line 16, minus exclusions allowed (refer to *Charitable, Public and Similar Gifts* on page 3 of these instructions). Indicate in the space provided the federal item numbers of the gifts.

#### **Terminable Interest Marital Deduction**

Check the box if you elect to claim a marital deduction for terminable interest property you gifted to your spouse. Also indicate if you made the election on your federal return.

#### **Residents and nonresidents - Schedule C - Page 4**

New York taxable gifts for prior calendar periods.

The schedule is divided into two parts. Indicate in Section 1, all gift tax returns filed for calendar quarters before 1983. Indicate in Section 2, all gift tax returns filed for calendar years after 1982 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 calendar quarters before 1983 (from Part 1 of Schedule C on page 4 of the return).

**Line 2** - Enter the total amount of taxable gifts made by the decedent for calendar years after 1982 and before the calendar year for which this return is being filed (from Part 2 of Schedule C on page 4 of the return).

**Line 4** - Enter the amount of taxable gifts made by the donor during the calendar year for which this return is being filed.

Residents - enter amount from line 34, page 2 of form TP-400.

Nonresidents - enter amount from line 28, page 3 of form TP-400.

**Lines 6 & 7** - Using tax Table A in these instructions, 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.

#### **Line 9 - Unified Credit**

##### **Residents**

Using Table B on page 8 compute the unified credit allowable on the amount shown on line 8.

##### **Nonresidents**

Beginning at line 29 on page 3, complete the schedule to determine the amount to entered on line 9.

**Lines 29, 30 and 31** - 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. Refer to the information contained in these instructions for determining the taxable gifts of a resident.

**Lines 33 & 34** - Use Tax Table A in these instructions to compute the taxes separately for the amounts on line 30 and line 32 and enter the results on the appropriate lines.

**Line 36** - Use Table B in the instructions to compute the amount to be entered on this line.

**Line 37** - 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 taxable gifts for the calendar year of the return bears to New York taxable gifts for the calendar year of the return determined as if you were a New York resident for the calendar year.

**Residents and nonresidents**

**Line 11** - If you made New York taxable gifts in prior calendar years after 1982, complete the schedule on page 2 (residents) or page 3 (nonresidents) to determine the amount to be entered on this line. Otherwise, enter zero.

**Line 13** - If you requested an extension of time to file your return and made a payment of tax, enter the amount of the payment.

**Line 14** - Make your remittance payable to New York State Gift Tax and attach to the face of the return.

**Line 15** - The department will automatically refund an overpayment of gift tax.

**Table A  
Tax Rate Schedule**

Taxable Amount Over	Taxable Amount Not Over	Tax is
\$ 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**

- If the tentative tax is \$2,750 or less, the credit is the same as the tax.
- If the tentative tax is greater than \$2,750 but less than \$5,000, the credit is the amount by which \$5,500 exceeds the tax.

Example:	NY Tentative Tax	\$4,000	NY Tentative Tax	\$4,000
	Allowance	5,500	Unified Credit	1,500
	Unified Credit	<u>\$1,500</u>	Net Tax	<u>\$2,500</u>

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

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

Remember to sign and date your return. If you paid someone to prepare your return, the paid preparer must sign the return, enter his or her address and date it.  
A person who prepares your return and does not charge you, should not sign the return.

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