



New York State Reporting Requirements for Certain Estates Making a Federal Portability Election

This TSB-M explains that an estate that files a federal estate tax return only to make a portability election must report the actual value of assets and deductions used to compute the gross estate for New York State estate tax purposes.

Generally, when an estate tax return is filed for federal purposes, the amounts used to compute the gross estate and any elections reported on the federal return are binding for New York State estate tax purposes. As explained in [TSB-M-11\(9\)M](#), *Supplemental Information on New York State Estate Tax Filing Requirements Related to the Federal 2010 Tax Relief Act*, dated July 29, 2011, this rule applies when an estate tax return is filed solely to make a portability election for 2011 or 2012 to allow the surviving spouse to claim the unused portion of the applicable exclusion amount for his or her last predeceased spouse.

On June 18, 2012, the Internal Revenue Service issued temporary regulations on the portability of the deceased spousal unused exclusion amount (CFR 20.2010-2T). Under section 20.2010-2T(a)(7)(ii), if the federal return is being filed only for the purpose of electing portability, the estate does not have to report the value of property qualifying for the marital deduction or charitable deduction. Instead, the value of the gross estate must be estimated based on a good faith determination, and the property must be listed on the applicable schedules for the federal estate tax return (Form 706).

The New York State estate tax is generally conformed to the federal Internal Revenue Code of 1986, including all amendments enacted on or before July 22, 1998. Accordingly, the special rule provided by temporary regulation 20.2010-2T(a)(7)(ii) does not apply for New York State estate tax purposes. A New York taxable estate that files a federal estate tax return pursuant to temporary regulation section 20.2010-2T(a)(7)(ii) must submit the following when filing Form ET-706, *New York State Estate Tax Return*:

- A copy of the actual federal estate tax return filed with the IRS¹, and
- a completed (pro forma) *Part 5 - Recapitulation* (Form 706) and all applicable schedules reporting the actual date of death value of all property subject to the special rule.

Except as described above, all other amounts and elections reported on the federal estate tax return that was actually filed should be the same for New York estate tax purposes.

¹ In general, a copy of the federal estate tax return is always required to be filed with Form ET-706, *New York State Estate Tax Return*.

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.