



Instructions for Form ET-85 New York State Estate Tax Certification

ET-85-I
(7/08)

For an estate of an individual whose date of death is after May 25, 1990, and before January 1, 2011

Use Form ET-85 when

- The estate is **not required** to file a New York State estate tax return (see filing requirements below), and either an executor or administrator has not been appointed, or if appointed, nine months has passed since the date of death.
- The estate is **required** to file a New York State estate tax return, and either:
 - less than nine months has passed since the date of death, and an executor or administrator has not been appointed, or
 - more than nine, but less than 15 months, has passed since the date of death, and an extension of time to file the estate tax return has been granted.

Use Form ET-30, *Application for Release(s) of Estate Tax Lien*, if letters of appointment (either Letters Testamentary or Letters of Administration) have been obtained from Surrogate's Court and less than nine months has passed since the decedent's death.

Who may file Form ET-85

Form ET-85 may be filed by an executor, administrator, a joint owner of property, the decedent's next of kin, or any person having an interest in the estate who has a thorough knowledge of the decedent's assets. The term *executor* includes executor, 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.

If an executor or administrator has been appointed, a beneficiary of the estate may not complete this form. The beneficiary should ask the executor or administrator to obtain the waiver or release of lien. If the executor refuses to obtain the waiver, the beneficiary may petition the Surrogate's Court to require the executor to carry out his or her duties.

Liability of applicant

If the estate is subject to tax, an estimated payment may be required when Form ET-85 is filed. The tax is due not later than nine months after the date of death. Refer to the instructions on Form ET-130, *Tentative Payment of Estate Tax*, or the estate tax return for information on paying the estate tax and the due date for payment.

The executor may be held personally liable for unpaid estate tax up to the value of the assets that were distributed before the New York State estate tax was paid in full, and all beneficiaries of the estate may be held personally liable for unpaid estate tax up to the value of property received from the estate (see Tax Law section 975).

Which estates must file a New York State estate tax return

Estates of individuals dying on or after February 1, 2000

Form ET-706, *New York State Estate Tax Return*, must be filed under the following conditions:

- It is either the estate of an individual who was a resident of New York State at the time of death **or** the estate of a nonresident and the estate includes real property or tangible

personal property having an actual situs in New York State; **and**

- the estate is required to file a federal estate tax return, Form 706 or Form 706-NA. **However**, for estates of individuals dying **on or after January 1, 2004**, Form ET-706 **must be filed** if the federal gross estate, plus federal adjusted taxable gifts and specific exemption, exceeds \$1,000,000, **even if a federal return is otherwise not required**.

For additional information refer to Form ET-706-I, *Instructions for Form ET-706*.

Estates of individuals dying after May 25, 1990, and before February 1, 2000

The estate must file Form ET-90, *New York State Estate Tax Return*, if the value of the New York adjusted gross estate and New York adjusted taxable gifts totals \$300,000 or more (\$115,000 for decedents who died before October 1, 1998, and \$108,333 for decedents who died before June 10, 1994), when:

- the individual was a resident of New York State at the time of his or her death, **or**
- in the case of a nonresident, the estate includes real property or tangible personal property having an actual situs in New York State.

Completing Form ET-85

This form may be prepared by an attorney or authorized representative, but **must be** signed by the applicant or executor and notarized.

Decedent information

Complete the information requested about the decedent. Please verify that the decedent's social security number is correctly entered on the application. Attach a photocopy of the death certificate to this application and mark an **X** in the appropriate box.

Representative information

If the executor has authorized an attorney, accountant, etc., to represent him or her regarding the estate, complete that information. If the executor has signed Form ET-14, *Estate Tax Power of Attorney*, and it is being submitted with this application, attach it to the application and mark an **X** in the appropriate box. Validated waivers will be mailed to the authorized representative listed on the form, unless you direct the department differently.

Executor/applicant information

If an executor has not been appointed, the applicant should enter his or her information in the area provided for the executor.

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 NYS) in the area provided, and attach a list of each of the other executors with their mailing address and social security number. Submit *Letters Testamentary* or *Letters of Administration* with the return if not previously submitted.

Estimate of net estate

The total of each category of assets should indicate the date of death value of all assets, wherever located, and whether held by the decedent alone or with someone else.

Waivers

Complete and attach a separate Form ET-99, *Estate Tax Waiver Notice*, for each bank, brokerage house, insurance company, etc., for which a waiver is needed. If there are multiple accounts with the same bank, etc., you may put more than one account on the waiver.

Note: Waivers are not required for the estates of individuals dying on or after February 1, 2000.

Releases of lien

Complete and attach Form ET-117, *Release of Lien of Estate Tax*, if a release of lien is needed for real property or a cooperative apartment. Submit a separate Form ET-117 for each county in which real property is located, and a separate form for each cooperative housing corporation and/or purchaser.

Supplemental documents

In addition to the completed waiver notices (Form ET-99) and/or releases of lien (Form ET-117); submit a copy of the will (if one exists); the death certificate (if not previously submitted); and a power of attorney, if applicable.

If the decedent was not domiciled in New York State, complete Form ET-141, *New York State Estate Tax Domicile Affidavit*, and attach it to Form ET-85.

Where to file Form ET-85

Mail this form to:

**NYS ESTATE TAX
PROCESSING CENTER
PO BOX 15167
ALBANY NY 12212-5167**

Note: If you use a private delivery service, you must mail this form to a different address listed in Publication 55 (see *Private delivery services* below).

Private delivery services

If you choose, you may use a private delivery service, instead of the U.S. Postal Service, to mail in your return and tax payment. However, if, at a later date, you need to establish the date you filed your return 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 return, contact that private delivery service for instructions on how to obtain written proof of the date your return was given to the delivery service for delivery.

Privacy notification

The Commissioner of Taxation and Finance may collect and maintain personal information pursuant to the New York State Tax Law, including but not limited to, sections 5-a, 171, 171-a, 287, 308, 429, 475, 505, 697, 1096, 1142, and 1415 of that Law; and may require disclosure of social security numbers pursuant to 42 USC 405(c)(2)(C)(i).

This information will be used to determine and administer tax liabilities and, when authorized by law, for certain tax offset and exchange of tax information programs as well as for any other lawful purpose.

Information concerning quarterly wages paid to employees is provided to certain state agencies for purposes of fraud prevention, support enforcement, evaluation of the effectiveness of certain employment and training programs and other purposes authorized by law.

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

This information is maintained by the Director of Records Management and Data Entry, NYS Tax Department, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the United States and outside Canada, call (518) 485-6800.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.

To order forms and publications: 1 800 462-8100

Estate Tax Information Center: 1 800 641-0004

From areas outside the U.S. and outside Canada: (518) 485-6800

Text Telephone (TTY) Hotline (for persons with hearing and speech disabilities using a TTY): 1 800 634-2110



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 1 800 641-0004.