



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

For an estate of an individual who died on or after  
April 1, 2014, and on or before December 31, 2018

## 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 have 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 have passed since the date of death, and an executor or administrator has not been appointed, or
  - more than nine, but less than 15 months, have 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 have 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 release of lien. If the executor refuses to obtain the release of lien, the beneficiary may petition the Surrogate's Court to require the executor to carry out his or her duties.

Be sure to use the Form ET-85 that is applicable to the decedent's date of death.

## 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 For dates of death on or after April 1, 2014, and on or before December 31, 2018*, or the estate tax return for information on paying the estate tax and the due date for payment.

**Note:** 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. The surviving spouse, all beneficiaries, and any other person in possession of property included in the New York gross estate may be held personally liable for unpaid estate tax up to the value of property received from the estate (NYS Tax Law section 975).

## Which estates must file Form ET-706 for New York State

The estate of an individual who was a NYS resident at the time of death must file a NYS estate tax return if the total of

the federal gross estate plus any taxable gifts made while the individual was a resident of New York State exceeds the basic exclusion amount applicable for the date of death. Taxable gifts are any gifts taxable under Internal Revenue Code (IRC) section 2503 made on or after April 1, 2014, that are not otherwise included in the federal gross estate of the individual. Gifts of real or tangible personal property having a location outside of NYS should not be included. Also, gifts made during any period the individual was a nonresident of NYS should not be included.

The estate of an individual who was **not** a resident of New York State at the time of death must file a NYS estate tax return if the estate includes real or tangible personal property having an actual location in NYS and the federal gross estate plus any taxable gifts made while the individual was a resident of NYS exceeds the basic exclusion amount applicable for the date of death. Taxable gifts are any gifts taxable under IRC section 2503 made on or after April 1, 2014, that are not otherwise included in the federal gross estate of the individual. Gifts should only be included if the gift is of real or tangible personal property located in NYS or intangible personal property employed in a business, trade, or profession carried on in NYS. Gifts of real or tangible personal property having a location outside NYS should not be included. Also, gifts made during any period the individual was a nonresident of NYS should not be included.

See below for the basic exclusion amount used to determine the estate's filing threshold.

For dates of death on or after	and before	The basic exclusion amount is
April 1, 2014	April 1, 2015	\$ 2,062,500.00
April 1, 2015	April 1, 2016	3,125,000.00
April 1, 2016	April 1, 2017	4,187,500.00
April 1, 2017	January 1, 2019	5,250,000.00

For the estate of an individual dying on or after January 1, 2019, the basic exclusion amount will be equal to the federal basic exclusion amount and will be indexed annually in the same manner as the federal exclusion amount.

## 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 releases of lien will be mailed to the authorized representative listed on the form, unless you direct the department differently.

**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 the form was submitted.

### 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.

### 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.

### Specific instructions for estimating the net estate

**Lines 1 through 7** – On each line, enter the total value of all assets as of the date of death regardless of where the assets are located and whether held by the decedent alone or with someone else.

**Line 8** – Enter the value of all taxable gifts under IRC section 2503 made during a three-year period ending on the individual's date of death that would not otherwise be included in the federal gross estate. Taxable gifts would not include any gifts of real or tangible personal property located outside of New York State, any gifts made when the individual was not a resident of New York, or any gifts made prior to April 1, 2014.

**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.

### Supplemental documents

In addition to the completed release 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**

### Private delivery services

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

### Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

### Need help?



Visit our website at **[www.tax.ny.gov](http://www.tax.ny.gov)**

- get information and manage your taxes online
- check for new online services and features

### 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