

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-92(3)-M  
Estate Tax  
November 9, 1992

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO.M920831A

On August 31, 1992, a Petition for Advisory Opinion was received from Marine Midland Bank, N.A., One Marine Midland Center, Buffalo, New York 14203-2827.

The issue raised by Petitioner, Marine Midland Bank, N.A., is whether Section 360.1 of the Estate Tax Regulations is permissive or mandatory as to the release of up to \$30,000 without a tax waiver.

Petitioner is a bank which holds from time to time accounts in the same branch or at different branches in the name of an individual decedent which exceeds the sum of \$30,000. Petitioner's general policy is not to release any funds without a tax waiver, so as to guard against someone from obtaining \$30,000 without a waiver from more than one branch location.

Section 975 of the Tax Law provides, in part, as follows:

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(e) Liability of persons in possession of property.-- (1) Notice and provision for tax. Unless the commissioner of taxation and finance waives the requirements of this subsection as provided in paragraph three of this subsection, no safe deposit company, trust company, bank, corporation, firm or other person having in possession or under control securities, deposits, or other assets belonging to or standing in the name of a decedent, or belonging to or standing in the joint names of such a decedent and one or more persons, shall deliver or transfer the same to the executor of said decedent, or to the survivor or survivors when held in the joint names of a decedent and one or more persons, or upon their order or request, unless:

(A) notice of the time and place of such intended delivery or transfer is served upon the commissioner at least ten days prior to said delivery or transfer, and

(B) a sufficient portion or amount of such property is retained to pay any tax and interest which may thereafter be assessed with respect to such securities, deposits or other assets. The commissioner or his representative may examine said securities, deposits or assets at the time of such delivery or transfer. For the purpose of this section, the term "other assets" shall include the shares of the capital stock of or other interest in the safe deposit company, trust company, corporation, bank or other institution making the delivery or transfer.

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(3) Waiver by commissioner of taxation and finance. Notwithstanding any other provision of this subsection, the commissioner of taxation and finance may waive the requirements of this section pursuant to such rules and regulations as he may prescribe. (emphasis added)

In addition, Section 677 of the Banking Law provides, in part, as follows:

§677. Decedents' accounts, withdrawals by authorized persons

1. The maximum withdrawal permissible by law for purposes of this section shall be the amount permitted to be paid, without the consent of the state tax commission, under rules or regulations promulgated by such commission pursuant to sections one hundred seventy-one and two hundred forty-nine-cc of the tax law. (emphasis added)

Section 360.1(a)(1) of the Estate Tax Regulations provides as follows:

Section 360.1 Payment, delivery and transfer of cash, deposits and open-market securities whose value is not more than \$30,000.

(a) (1) Any trust company, corporation, bank or other institution, or person having in possession or under control cash or deposits not exceeding \$30,000, which belong to or stand in the name of a decedent dying after June 30, 1978, or which belong to or stand in the names of such decedent and one or more other persons jointly, may pay the same to or upon the order of the decedent's executor or administrator, a surviving joint depositor or any other person to whom payment is authorized by law, without the consent of the State Tax Commission, without notice to the commission, and without retaining any portion of such cash or deposits for the payment of estate tax. In the case of a decedent dying before July 1, 1978, payment may be made under the preceding sentence, but only if the cash deposits do not exceed \$2,000. Payment of cash or deposits in an amount not exceeding \$30,000 (\$2,000 in the case of decedents dying before July 1, 1978) should not be withheld on account of absence of waivers issued by the State Tax Commission. (emphasis added)

Accordingly, pursuant to Section 975 of the Tax law, Section 677.1 of the Banking Law, and Section 360.1(a)(1) of the Estate Tax Regulations, payment of cash or deposits in an amount not exceeding \$30,000 should not be withheld on account of absence of waivers. Therefore, any trust company, corporation, bank or other institution, or person having in its possession or under its control cash or deposits of a decedent may not refuse to pay up to \$30,000 of such amount to the decedent's executor or administrator, surviving joint depositor or other authorized person solely on the grounds that they did not obtain a tax waiver.

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It is noted that when the waiver is secured, the waiver must be for the original total amount of the deposits, securities or other assets including any and all withdrawals made.

DATED: November 9, 1992

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions are limited to the facts set forth therein.