

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

TSB-A-93 (3)M  
Estate Tax  
November 12, 1993

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M930707B

On July 7, 1993, a Petition for Advisory Opinion was received from Jamaica Savings Bank FSB, 303 Merrick Road, Lynbrook, New York 11563.

The issue raised by Petitioner, Jamaica Savings Bank FSB, is whether a savings institution is required, under New York law, to obtain a tax waiver for estate tax purposes upon the death of an owner of an Individual Retirement Account (hereinafter "IRA") where the balance of said IRA, on the date of death of the owner, was less than \$50,000.

Petitioner, a federally chartered savings bank doing business in New York State, maintained various accounts with the decedent, Rosalyn Rachlin. The decedent's accounts included a NOW account with a balance on January 28, 1991, the date death, of \$12,408.17 and an IRA account with a balance of \$35,309.12 on the date of death.

The IRA account, a non-contributory account and a Rollover account were transferred by the decedent from her qualified plan with her employer, Fred Frankel & Sons, Inc.

On July 11, 1991, Petitioner, in reliance with Section 360.7 of the Estate Tax Regulations, paid the balance in the IRA account totaling \$36,008.24 (which includes interest subsequent to the date of death) to the IRA account beneficiary. Further, on September 3, 1991, Petitioner paid the balance in the NOW account totaling \$12,817.55 (which includes interest subsequent to the date of death) to the New York City Public Administrator upon production of a New York State tax waiver and other pertinent documents.

On November 6, 1992, Petitioner received a citation from the New York County Surrogates Court. The citation, on petition by the Public Administrator, requested Petitioner, for failure to obtain a tax waiver on said IRA account, to pay \$1,256.09 in estate tax and \$700.00 in legal fees, pursuant to Estates Powers and Trust Law 13-3.6.

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, 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.

Section 2039 of the Internal Revenue Code, as amended, provides as follows:

Sec. 2039. Annuities.- - [Internal Revenue Code.]

(a) General.-- The gross estate shall include the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement entered into after March 3, 1931 (other than as insurance under policies on the life of the decedent), if, under such contract or agreement, as annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death.

(b) Amount includible.- - Subsection (a) shall apply to only such part of the value of the annuity or other payment receivable under such contract or agreement as is proportionate to that part of the purchase price therefor contributed by the decedent. For purposes of this section, any contribution by the decedent's employer or former employer to the purchase price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit-sharing plan) shall be considered to be contributed by the decedent if made by reason of his employment.

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 of the Estate Tax Regulations provide, in part, 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.

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Section 360.7 Annuity and other payments under certain trusts, plans and accounts

(a)(1) Payments received by any beneficiary (other than the executor) under an employees' trust or a retirement annuity contract purchased by an employer, or an individual retirement account or annuity or a retirement bond, which qualify for exclusion from the Federal gross estate of a decedent under section 2039(c) and (e) of the Internal Revenue Code of 1954, as contained in section 2 of chapter 1013 of the Laws of 1962, as last amended by chapter 916 of the Laws of 1982, are similarly excludible from a decedent's New York gross estate under section 954 of the Tax Law. Accordingly, payments pursuant to such a plan, where no contributions were made by the decedent, may be made without notice to the State Tax Commission and without obtaining a waiver if such payments do not exceed \$100,000. However, payments pursuant to such a plan, where no contributions were made by the decedent, which exceed \$100,000 in the aggregate may not be made unless written notice of such payment is mailed to the State Tax Commission at least 10 days prior

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to such payment and a sufficient portion of such payment is retained for payment of the estate tax unless a waiver is first obtained from the State Tax Commission. (emphasis added)

Technical Service Bureau Memorandum, TSB-M-86(1), issued January 23, 1986, relating to the amendments to the Article 26 of the Tax Law, enacted July 24, 1985 provides, in part, as follows:

<u>Chpt. 543 Bill Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provisions</u>
7	2039(c), (d),(e),(f) and (q) N.Y. eff.: applicable to estates of decedents dying after July 24, 1985.	Repealed

Pursuant to Section 360.7 of the Estate Tax Regulations, payments received by any beneficiary (other than the executor) from an IRA which qualifies for exclusion from the Federal gross estate of a decedent under Section 2039(c) and (e) of the Internal Revenue Code are similarly excludible from the New York gross estate, and, therefore, a waiver was only necessary to be obtained for payments that exceeded \$100,000. However, Section 2039(c) and (e) of the Internal Revenue Code were repealed July 24, 1985. As a result of the amendments to Section 2039 of the Internal Revenue Code any payments received by a beneficiary from an IRA are includible in the Federal gross estate of the decedent and the rules set forth in Section 360.7 of the Estate Tax Regulations no longer apply.

Accordingly, pursuant to Section 975 of the Tax Law, Section 677 of the Banking Law and Section 360.1(a)(1) of the Estate Tax Regulations a waiver must be obtained where the payment of cash or deposits (which would include payments from an IRA) which belong to or stand in the name of a decedent to a beneficiary exceeds \$30,000.

DATED: November 12, 1993

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

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