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New York State Department of Taxation and Finance

New York State Estate Tax Return

For estates of decedents dying after May 25, 1990, and before February 1, 2000.

ET-90-P
(1/00)
Packet

This packet contains:

- **Form ET-90** ***New York State Estate Tax Return***
- Form ET-90.1 *New York State Estate Tax Return Schedules A - D*
- Form ET-90.2 *New York State Estate Tax Return Schedules E - G*
- Form ET-90.3 *New York State Estate Tax Return Schedules H - L*
- Form ET-90.4 *New York State Estate Tax Return Schedules M - N*
- Form ET-14 *Estate Tax Power of Attorney*
- Form ET-130 *Tentative Payment of Estate Tax*
- Form ET-133 *Application for Extension of Time To File and/or Pay Estate Tax*
- Form ET-417-D *Computation of the Family-Owned Business Interests Deduction*
- Form ET-418 *Computation of Qualified Conservation Easement Exclusion*
- Instructions for the forms listed above

Note: **Use Form ET-706 and its instructions (Form ET-706-I) instead of Form ET-90 for the estate of a decedent whose date of death is on or after February 1, 2000**

1999 estate tax changes

Chapter 407, Laws of 1999, enacted August 9, 1999, brought about the following changes:

- **Federal conformity updated**

  New York State estate tax conformed to the 1986 Internal Revenue Code (IRC) as amended through July 22, 1998.

- **Deduction for family-owned business**

  The estate of an individual whose date of death is after December 31, 1997, and before February 1, 2000, may elect to deduct the value of property attributable to the decedent's interest in a family-owned business. The maximum deduction is $675,000. The estate of an individual who died after December 31, 1997, and before September 9, 1999, may elect either the deduction or the exclusion for a family-owned business.

- **Qualified conservation easement exclusion**

  The time allowed to elect the qualified conservation easement exclusion has changed. The exclusion must be elected on or before the due date, or extended due date, for filing the estate tax return.

- **Estates of individuals electing installment payments under IRC section 6166**

  If an estate includes partnership interests, non-readily tradeable stock, or holding company stock, and any of these assets are used to meet the 35% rule, the special 2% interest rate does not apply.

1998 estate tax changes

Chapter 56, Laws of 1998, enacted April 28, 1998, brought about the following changes:

- **Federal conformity updated**

  New York State estate tax conformed to the 1986 Internal Revenue Code (IRC), as amended through August 5, 1997, and is generally applicable to the estate of an individual whose date of death is on or after January 1, 1998.

- **Exclusion for family-owned business**

  The estate of an individual whose date of death is on or after January 1, 1998, and before February 1, 2000, may elect to exclude the value of property attributable to the decedent's interest in a family-owned business, that is includable in the New York gross estate. The maximum amount that may be excluded is $675,000 for 1998, $650,000 for 1999, and $625,000 for 2000.

- **Exclusion for qualified conservation easement**

  The estate of an individual whose date of death is on or after January 1, 1998, and before February 1, 2000, may elect to exclude the value of a qualified conservation easement on land that is includable in the New York gross estate. The maximum amount that may be excluded is $100,000 for 1998, $200,000 for 1999, and $300,000 for 2000.

- **Exclusion for certain payments made to a victim of Nazi persecution**

  An exclusion from the New York gross estate is provided for certain payments made to a victim of Nazi persecution, or his or her family.

1997 estate and gift tax changes

Chapter 577, Laws of 1997, enacted September 10, 1997, eliminated the $25 fee to process a release of the estate tax lien. The fee is eliminated for applications received on or after September 11, 1997.

Chapter 389, Laws of 1997, enacted August 7, 1997, brought about the following changes:

- **Increase in the maximum unified credit**

  The maximum unified credit for estate tax is increased from $2,950 to $10,000 for the estate of an individual whose date of death is on or after October 1, 1998, and before February 1, 2000. A similar increase in the maximum unified credit for gift tax is applicable to gifts made in 1999. The gift tax is repealed after 1999.

- **Increase in the estate tax filing threshold**

  The estate tax filing threshold is increased from $115,000 to $300,000 for the estate of an individual whose date of death is on or after October 1, 1998, and before February 1, 2000.

  For the estate of an individual whose date of death is on or after February 1, 2000, the filing threshold is essentially the same as the federal threshold, or $675,000 in 2000, increasing periodically to $1,000,000 in 2006.

- **Estate tax tied to the federal credit for state death taxes**

  For the estate of an individual whose date of death is on or after February 1, 2000, the amount of the New York State estate tax will be determined by computing the federal credit for state death taxes on the federal adjusted taxable estate.

- **Change of date for payment of estate tax**

  For the estate of an individual whose date of death is on or after October 1, 1998, and before February 1, 2000, the time for payment of the tax without interest is changed from six months to seven months after the date of death.

  For the estate of an individual whose date of death is on or after February 1, 2000, the due date for payment of the tax is nine months after the date of death, and interest on underpayments is computed from that date.

- **Elimination of estate tax waivers**

  The estate of an individual whose date of death is on or after February 1, 2000, will not have to obtain estate tax waivers before transferring assets of the decedent held by banks, brokers, insurance companies, and other institutions.

Note: For 1994 and 1995 estate and gift tax changes, see the inside back cover.

General information

For the latest New York State tax information, including facts that may affect your New York State estate tax return, visit our Web site at http://www.tax.state.ny.us.

Introduction

Article 26 of the New York State Tax Law imposes an estate tax on the transfer of the New York **taxable assets** of a deceased individual. It is a tax levied, at graduated rates, on the entire taxable estate rather than on the distributive shares received by each recipient of property.

The New York estate tax law as amended on August 9, 1999, conforms, with modifications, to the estate tax provisions of the federal Internal Revenue Code (IRC) of 1986 and all amendments enacted on or before July 22, 1998.

The New York adjusted gross estate and total New York deductions are the same as the total federal gross estate and the total federal deductions, with certain modifications (see instructions for lines 63 through 74).

The New York adjusted gross estate is valued either as of the date of death or the alternate valuation date (see *Alternate valuation* on page 6 of these instructions).

If the estate is required to file a federal estate tax return, a copy of the federal return, Form 706, must be submitted with Form ET-90, *New York State Estate Tax Return* (see *Completing Form ET-90* on page 5 of these instructions.)

The New York adjusted taxable estate is determined by subtracting the amount of deductions authorized by the statute from the value of the adjusted gross estate. Different provisions of the statute control the determination of the net tax liability for estates of New York residents and estates of nonresidents. The decedent's **domicile** is the controlling factor in determining residency.

Need help?

Telephone assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. **For estate tax information**, call toll free 1 800 641-0004. If busy, call 1 800 225-5829. **To order forms and publications**, call toll free 1 800 462-8100. **From areas outside the U.S. and outside Canada**, call (518) 485-6800.

Fax-on-demand forms ordering system: Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch-Tone phone to order by fax. A fax code is used to identify each form.

Internet access: http://www.tax.state.ny.us

Access our Web site for forms, publications, and information.

Hotline for the hearing and speech impaired: If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:25 p.m. (eastern time), Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

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 the information numbers listed above.

Mailing address: If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.

Which estates must file Form ET-90

Reminder: For a date of death on **February 1, 2000** or later, there are major changes in the New York State estate tax, including:

- filing threshold indexed to the federal filing requirement
- lower tax rates equal to the federal credit for state death taxes
- a new Form ET-706, *New York State Estate Tax Return*, to replace Form ET-90

Refer to the instructions, Form ET-706-I, for more information.

New York State residents

The estate of every individual who was a resident of New York State at the time of death must file a New York State estate tax return if the aggregate of the New York adjusted gross estate and New York adjusted taxable gifts is equal to or greater than the following amounts:

Filing required if date of death is on or after:	and aggregate amount is at least:
May 26, 1990	$108,333
June 10, 1994	$115,000
October 1, 1998	$300,000
February 1, 2000	Not applicable; see above

New York State nonresidents

When the estate of an individual who was not a resident of New York State at the time of death (including a nonresident who is not a citizen of the United States) includes real or tangible personal property having an actual situs in New York State, the estate must file a New York State estate tax return with the Tax Department if the aggregate of the New York adjusted gross estate, computed as if a resident (all property, wherever located), and the New York adjusted taxable gifts, is equal to or greater than the amounts listed above for a resident.

Ancillary probate

The estate of a person who was not domiciled in New York State at the time of his or her death should obtain a waiver of citation from the Tax Department before petitioning a surrogate's court in New York State for ancillary probate or ancillary letters. To obtain a waiver of citation, mail the following items to the Tax Department at the address shown below the list:

1. a copy of decedent's will (if one exists);
2. a copy of death certificate;
3. an original or verified copy of the petition for probate or administration in intestacy, filed with the surrogate's court (or similar court of jurisdiction) in the state of domicile, setting forth the assets of the estate;
4. a copy of the proposed ancillary probate petition;
5. a Form ET-20, *Stipulation Reserving Domicile* (in triplicate); **and**
6. a completed Form ET-141, *Estate Tax Domicile Affidavit.*

Mail to: NYS TAX DEPARTMENT
ESTATE TAX - 855
W A HARRIMAN CAMPUS
ALBANY NY 12227

The estate may then file the waiver of citation with the surrogate's court when the petition for ancillary probate or ancillary letters is filed, without citing the Tax Department as an interested party and serving the Department.

Filing with surrogate's court

When an estate files a New York State estate tax return and has filed a petition to commence either a proceeding for probate of the will or a proceeding for administration in intestacy in surrogate's court, the estate must file a copy of the New York State estate tax return with the surrogate's court in the county where the petition was filed. Listed below are the fees for filing a copy of the return with the court. The fee is paid directly to the court at the time of filing. If the sum of the New York adjusted gross estate and adjusted taxable gifts is less than $300,000 and no estate tax is payable, the fee for filing a copy of the return with the court is waived (Tax Law section 972(c) and subdivisions 3 and 8 of section 2402 of SCPA).

Value of the NY gross estate	**Fee**
Less than $10,000	$35
At least $10,000 but under $20,000	60
At least 20,000 but under 50,000	170
At least 50,000 but under 100,000	225
At least 100,000 but under 250,000	335
At least 250,000 but under 500,000	500
500,000 and over	1,000

Executor's and administrator's commissions — Refer to section 2307 of the Surrogate's Court Procedure Act for the applicable rates and provisions.

When to file

Form ET-90, *New York State Estate Tax Return,* must be filed within **nine months** after the decedent's death unless you receive an extension of time for filing. Use Form ET-133, *Application for Extension of Time to File and/or Pay Estate Tax,* included in this packet, to apply for an extension of time. If you receive an extension, attach a copy of your Form ET-133 to your return, when you file.

Where to file

Mail Form ET-90 and all required attachments to:

NYS ESTATE TAX
PROCESSING CENTER
PO BOX 5556
NEW YORK NY 10087-5556

Private delivery services

The date recorded or marked by certain private delivery services, as designated by the U.S. Secretary of the Treasury or the Commissioner of Taxation and Finance, will be treated as a postmark, and that date will be considered to be the date of delivery in determining whether your return was filed on time. (Designated delivery services are listed in Publication 55, *Designated Private Delivery Services.* See *Need help?* on page 3 for information on ordering forms and publications.) If you use **any** private delivery service, address your return to: **The Chase Manhattan Bank, NYS Government Tax Processing, 12 Corporate Woods Blvd – 4th Floor, Albany NY 12211-2524.**

Payment of tax

For the estate of an individual whose date of death is on or after October 1, 1998, 90% of the tax must be paid within **seven months** of the date of death.

New York estate tax becomes due at the time of the decedent's death; for estates of decedents whose date of death is before October 1, 1998, 90% is payable within **six months,** with the balance payable within nine months of the date of death (80% for decedents whose date of death is before June 13, 1991). You may pay by check or money order, made payable to ***Commissioner of Taxation and Finance.*** Please write the decedent's name, social security number, and ***Estate Tax*** on the check or money order to help us process the payment. When making a prepayment or estimated payment of estate tax, use Form ET-130, *Tentative Payment of Estate Tax.*

Extensions of time to pay

If it is established that payment of any part of the tax within nine months from the date of death would result in undue hardship to the estate, an extension may be granted for up to four years from the date of death. Annual installments may be required (Tax Law section 976(a)).

> **Note:** If the estate is unable to pay 90% of the tax within six months from the date of death, but is able to pay the tax within nine months, no extension of time to pay the tax is allowed and applicable interest charges, as described below, will be imposed.

For the estate of an individual whose date of death is on or after October 1, 1998, 90% of the tax must be paid within **seven months** of the date of death.

Use Form ET-133, *Application for Extension of Time to File and/or Pay Estate Tax,* to apply for an extension of time.

Closely Held business — When a large part of an estate consists of an interest in a closely held business, the estate representative may elect, under section 997 of the Tax Law, to apply for deferred payment of estate tax. This extension is based upon section 6166 of the IRC, as incorporated in New York Tax Law.

An estate will not be allowed to defer payment of the New York estate tax under section 997 of the Tax Law if the estate is required to file a federal estate tax return and either does not elect or is not allowed to pay the federal estate tax in installments under section 6166 of the IRC.

The time limit for making this election for New York estate tax is nine months from the date of death (15 months if an extension of time to file is granted). However, if the estate is required to file a federal return and obtains an extension of time to file the federal return, the time for making the election for New York will be the extended due date of the federal return, generally 15 months from the date of death (Tax Law, section 997(e)). Form ET-415, *Application for Deferred Payment of Estate Tax,* must be completed and attached to Form ET-90. **Please note:** If you are electing to pay the New York State estate tax in installments, you must file ET-415 within the time allowed or it will be denied, even when the federal election is made timely.

Penalties and interest

Interest

Underpayment of tax — To avoid the assessment of interest, at least 90% of the tax as finally determined (including any minimum tax) must be paid within six months (seven months for the estate of an individual whose date of death is on or after October 1, 1998) of the date of death, and the balance paid within nine months of death (80% for decedents whose date of death is before June 13, 1991).

Interest is not charged on payments of tax, including partial payments, made within six months of death.

Simple interest of ½% per month is charged on payments of tax made after six months but not later than nine months after death (maximum 1½%). Interest is not charged on these payments if 90% of the tax was paid within six months (80% for decedents whose date of death is before June 13, 1991) (Tax Law section 991(a)). For dates of death on or after October 1, 1998, and before February 1, 2000, simple interest of ½% is charged on payments made in the eighth month and 1% for payments made in the ninth month, unless 90% of the tax is paid within seven months.

Interest, compounded daily, is charged from the date of death to the date of payment on tax remaining unpaid after nine months. Rates may be adjusted periodically and can vary during the period of time the tax remains unpaid (Tax Law section 991(b)).

If an extension of time for payment of the tax is granted and payment made within the period of extension, interest is charged from the beginning of the tenth month to the date of payment on the amount of tax the extension applies to. Interest is computed at the rate or rates applicable during the time the tax remains unpaid and is compounded daily (Tax Law section 976(b)).

When the tax is not paid during the period of extension and in accordance with the terms of extension, interest is charged from the date of death to the date of payment. Interest is computed at the rate or rates applicable during the time the tax remains unpaid and is compounded daily (Tax Law section 976(b)).

Overpayment of tax — If we have to pay interest to you because we fail to issue your refund check within the interest-free period specified in the Tax Law, interest will be compounded daily at the various applicable rates from the due date of the return, or the date the return is filed, whichever is later. For the estate of a decedent dying on or after January 1, 1999, we will pay interest on the amount of the overpayment, calculated from the date of the overpayment (or, if the return was filed late, from the date of filing, whichever is later), to the date the amended return requesting the refund is filed, regardless of when we issue the refund. We will pay additional interest if we fail to get the refund out within 45 days of the date the amended return is filed (Tax Law sections 990 and 688).

Penalties

Late filing penalty — If you file late, you will be charged a penalty of 5% on the amount of tax required to be shown on the return (reduced by any tax paid by the prescribed due date of the return and by any allowable credits) for each month or part of a month the return is late, up to a maximum of 25%, unless you extend the time to file and file within the extended period, or attach to your return an explanation showing reasonable cause for the delay. If your return is more than 60 days late, this penalty will not be less than the lesser of $100 or 100% of the tax required to be shown (reduced by any tax paid timely and by any allowable credit) (Tax Law sections 990 and 685(a)(1)). For information on requesting an extension of time to file your return, see *When to file* on page 3 of these instructions.

Late payment penalty — If you do not pay your tax when due, you will be charged a penalty of ½% of the unpaid portion of the total tax shown on the return for each month or part of a month the tax remains unpaid. If will be computed from the due date to the date of payment, up to a maximum of 25%. This penalty is in addition to the interest charged for late payments (Tax Law sections 990 and 685 (a)(2)).

This penalty may not be charged if you attach to your return an explanation showing reasonable cause for paying late.

> **Note:** When late filing and late payment penalties are imposed at the same time, the **amount** of the late filing penalty **computed for each month** is reduced by the **amount** of the late payment penalty **computed for the same monthly periods**.

If you figure your tax incorrectly — You may have to pay a penalty if the tax you report on your return is **less** than your correct tax. If you are off by more than 10% of the tax required to be shown on the return or $2,000, whichever is more, you may have to pay this penalty. The penalty is 10% of the difference between the tax you reported and the tax you actually owe (Tax Law sections 990 and 685(p)).

Negligence penalty — If your return does not show all of the tax imposed under the Tax Law, its rules or regulations, due to negligence or intentional disregard (but not with intent to defraud), you will be charged a penalty of 5% of any deficient amount.

In addition, 50% of the interest due on any underpayment resulting from negligence will be added to your tax (Tax Law sections 990 and 685(b)).

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Fraudulent returns — If any part of a deficiency is due to fraud, you will be charged a penalty of 50% of the deficiency. In general, a deficiency is the difference between the correct tax and the tax shown on your return. If your return is filed late, the deficiency is the entire tax. In addition, 50% of the interest due on any deficiency resulting from a fraudulent act will be added to your tax (Tax Law sections 990 and 685(e)).

Frivolous returns — A penalty of up to $500 will be imposed on any person who files a frivolous tax return. A return is considered frivolous when it does not contain information needed to judge the correctness of the tax return, or reports information that is obviously and substantially incorrect and intended to delay or impede the administration of Article 26 of the Tax Law or the processing of the return (Tax Law sections 990 and 685(q)).

Additions to tax for valuation understatements

If a valuation understatement results in the underpayment of tax imposed, an amount equal to the applicable percentage of the underpayment is added to the tax (Tax Law section 992(a)).

A valuation understatement occurs if the value of any property reported on an estate tax return is 66²/₃% or less of the amount determined to be the correct valuation.

The *amount added* ranges from 10% to 30% of the amount of the underpayment, depending on the amount of valuation understatement, and is determined as follows:

1. If the value reported is 50% or more but not more than 66²/₃% of the correct value, an addition to tax equal to 10% of the underpayment attributable to the undervaluation is imposed.
2. If the value claimed is 40% or more of the correct value, but less than 50% of the correct value, the addition to tax is 20% of the amount of tax underpayment.
3. If the value claimed is less than 40% of the correct value, the addition to tax is 30% of the amount of tax underpayment.

No additional amount is added if:

1. the claimed valuation is more than 66²/₃% of the correct value of the asset, **or**
2. the resulting underpayment of New York State estate tax is less than $1,000.

The addition to tax may be waived in whole or in part if it is shown that there is a reasonable basis for the valuation claimed on the return and that the claim was made in good faith.

Privacy notification

The right of the Commissioner of Taxation and Finance and the Department of Taxation and Finance to collect and maintain personal information, including mandatory disclosure of social security numbers in the manner required by tax regulations, instructions, and forms, is found in Articles 22, 26, 26-A, 26-B, 30, 30-A, and 30-B of the Tax Law; Article 2-E of the General City Law; and 42 USC 405(c)(2)(C)(i).

The Tax Department uses this information primarily to determine and administer tax liabilities due the state and city of New York and the city of Yonkers. We also use this information for certain tax offset and exchange of tax information programs authorized by law, and for any other purpose authorized by law.

Information concerning quarterly wages paid to employees and identified by unique random identifying code numbers to preserve the privacy of the employees' names and social security numbers is provided to certain state agencies, for research purposes to evaluate the effectiveness of certain employment and training programs.

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 the Registration and Data Services Bureau, NYS Tax Department, Building 8 Room 924, W A Harriman Campus, Albany NY 12227; telephone 1 800 225-5829. From areas outside the U.S. and outside Canada, call (518) 485-6800.

Supplemental documents

When applicable, you must submit the following documents with the estate tax return (if they were not previously submitted): a photocopy of the death certificate; a photocopy of the decedent's last will (if one exists); letters of appointment (if obtained from the surrogate court) and a power of attorney (see: *Attorney/representative information* on this page).

For the estate of an individual who was not a resident of New York State at the time of his or her death, complete Form ET-141, *Estate Tax Domicile Affidavit,* and attach it to the return.

Amended returns

If you have to amend your New York State estate tax return, mark ***AMENDED*** on the top of a blank Form ET-90. Complete the entire return using the corrected information, and attach only those schedules and supporting information that are changed by the corrections. Mail the amended return to the Processing Center address with your remittance for additional tax, if applicable. If you filed an amended federal estate tax return, Form 706, attach a copy.

To report federal changes based on an Internal Revenue Service (IRS) audit adjustment, you must use Form ET-115, *New York State Estate Tax Report of Federal Audit Changes,* and attach a copy of the federal audit changes and line adjustments.

Completing Form ET-90

If the estate is not required to file a federal estate tax return, Form 706, the assets making up the New York adjusted gross estate must be entered on the appropriate Schedules A through I and the deductions entered on the appropriate Schedules J through N, on Forms ET-90.1 through ET-90.4 (include all supporting documents). The word ***None*** should be written across any schedule that does not apply. If there is insufficient space for all entries under a printed schedule, you may attach supplements to the schedule.

If the estate is required to file federal Form 706, attach a copy of Form 706 and all schedules and supporting documents. Complete Form ET-90 through page 4, **omit New York Schedules A through N** on supplementary Forms ET-90.1 through ET-90.4, and make New York adjustments using Schedules 1, 3, and 4 on Form ET-90 (see instructions for federal Form 706 for federal filing requirements).

If the estate is required to file federal Form 706-NA (for the estate of a nonresident who is not a citizen of the United States), complete Form ET-90 and **also** complete the applicable New York Schedules A through N on supplementary Forms ET-90.1 through ET-90.4 as there are no corresponding schedules on the federal return. Also attach a copy of federal Form 706-NA.

Waivers or releases of lien

Waivers are requested — You must check the box and submit a completed Form ET-99, *Estate Tax Waiver Notice,* for each institution having assets in the name of the decedent, either alone or jointly with another, in excess of $30,000 ($50,000 for life insurance policies or employee death benefits). Waivers are not required for assets held jointly by the decedent and the surviving spouse as the only joint tenants, or for life insurance policies or employee death benefits if the surviving spouse is the sole, named beneficiary (applicable to estates of decedents whose date of death is after September 30, 1983).

Releases of lien are requested — You must enter the number of counties for which you are requesting releases of lien and submit a completed Form ET-117, *Release of Estate Tax Lien,* in duplicate, for each county in which real property is located. A release of lien is not required if the real property was held jointly by the decedent and the surviving spouse as the only joint tenants with right of survivorship (tenants by the entirety). This applies to the estate of a decedent whose date of death is after May 25, 1990.

Name and address area

Decedent information

Enter the name of the decedent (last name first), home address at the time of death, social security number, date of death (month, day, and year), and county of residence.

Death certificate — If you have not submitted a copy of the death certificate, check the box and attach a copy to Form ET-90.

Indicate if the decedent was a resident or nonresident of New York State at the time of death by checking the appropriate box.

Attorney/representative information

If you, as the executor of the estate, have authorized a person to represent you regarding the estate, and you prefer the department contact him or her regarding the estate, enter the name (last name first) of the attorney, accountant, or enrolled agent who is representing you. Also enter the firm's name, address, and

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telephone number in the areas provided, and have the representative sign the return in the area provided on the back of the return.

If you are giving such a person power of attorney to represent you, attach a completed Form ET-14 to the return (if it was not submitted before) and check the box on the front of the return. Refer to Form ET-14, *Estate Tax Power of Attorney,* in this packet for additional information.

Executor information

Enter the name (last name first) and other information requested for the executor of the estate. The term *executor* includes executrix, administrator, administratrix, or personal representative of the decedent's estate; if no executor, executrix, administrator, administratrix, or personal representative 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 has not been appointed, this form may be signed and filed by a person having knowledge of all the assets in the decedent's estate. This person must also enter his or her name, address, and social security number in the area provided for the executor.

If the estate has more than one executor, check the box, enter the name and other information for the primary executor (preferably a person residing in New York State) in the area provided and attach a list of the other executors with their addresses and social security numbers. Submit letters testamentary or letters of administration with the return if not previously submitted. It is sufficient to have one of the coexecutors sign the return.

Line instructions for Form ET-90 when the date of death is after May 25, 1990

Complete either Schedules A through N (Forms ET-90.1 through ET-90.4) when a federal return is not required, or the comparable schedules and recapitulation of federal Form 706. Next, *complete the applicable lines* of the *recapitulation* section on Form ET-90, page 2, and the applicable Schedules 1 through 5 on pages 3 and 4. Then complete the *Tax Computation* section on page 1.

Recapitulation

Check the *Yes* box to elect the use of the alternate valuation date for valuing the estate.

Alternate valuation

The value of property included in the decedent's New York adjusted gross estate may be calculated as of either the date of death or an alternate date, which is generally six months after the date of death (Tax Law section 954(b)).

The same election must be made for New York State purposes as is made for federal estate tax purposes (when a federal estate tax return is required to be filed). However, the election may be made for New York State purposes when no federal estate tax return is required.

If the alternate valuation method is elected, all property included in the New York adjusted gross estate must be valued on this basis. However, any property sold, distributed, exchanged, or otherwise disposed of within six months after the decedent's date of death must be valued as of the date of disposal. (Refer to section 2032 of the IRC.)

If the alternate valuation method is elected, any accrued income with respect to any item of principal includable in the New York adjusted gross estate (e.g., accrued interest to the date of death, outstanding dividends that were declared to stockholders of record on or before the date of the decedent's death, accrued rent to the date of death on leased realty or personal property) is property of the New York adjusted gross estate on the date of death and is includable in the alternate valuation of the asset.

If no federal estate tax return is required to be filed, the following rules apply:

1. Alternate valuation is elected on the estate tax return by checking the box on page 2 of Form ET-90 and entering the alternate values and valuation date(s) on the applicable schedules. The time limit for making the election is one year from the due date of the return, or one year from the extended due date if an extension of time to file is granted (maximum time is two years and three months from the decedent's date of death). **Once the election to use alternate valuation is made, it is irrevocable.**
2. The alternate valuation method may be elected only if the election will **decrease both:**
   a. the value of the New York gross estate at the valuation date, **and**
   b. the amount of estate tax liability (reduced by the credits allowable).

   (Refer to Tax Law section 954(b) and section 2032(c) of the IRC.)

Gross assets

Lines 23 through 31

If the executor elects to value the estate as of the alternate valuation date (see *Alternate valuation* above), enter the total from the *Alternate value* column of the applicable schedule found on Forms ET-90.1, ET-90.2 or ET-90.3; or, if the estate is required to file a federal estate tax return, from the corresponding line of the alternate value column of the federal recapitulation on page 3 of federal 706. For any line that does not apply, enter "0."

If alternate valuation is not elected, check the *No* box and enter the total from the *Value at date of death* column of each schedule or corresponding line of the federal recapitulation schedule.

Line 33a

The estate of an individual who died after December 31, 1997, and before September 9, 1999, may choose either the exclusion for family-owned business, or the deduction for family-owned business interests. For dates of death after September 8, 1999, only the deduction is allowable (refer to the instructions for line 42, for information on the deduction for family-owned business interests).

The qualifications for the exclusion for family-owned businesses are the same as those in section 2033A of the federal IRC, before repeal, with the exception that the qualified interests must be included in the New York gross estate (New York property). Refer to Form ET-417 for information on the qualifications for the exclusion.

If the estate elects the exclusion, check the box for line 54c, complete and attach Form ET-417, end enter the amount of the exclusion on this line of the return. The estate may also elect the exclusion if it is required to file a federal estate tax return. If the estate elects the exclusion for a family-owned business, the estate may not elect the credit for a closely held business. Once the election of the exclusion for a family-owned business is made, it is irrevocable.

Line 33b

An exclusion is allowed for up to 40% of the value of land subject to a qualified conservation easement. The qualifications are the same as those in section 2031(c) of the federal IRC. Refer to the instructions for Form ET-418 and federal Schedule U for information on the qualifications for the exclusion. If the estate is not required to file a federal estate tax return, it may elect the exclusion on the New York State return by using Form ET-418. The exclusion in this instance is limited to property included in the New York gross estate (New York property). When a federal return is required, the estate must elect the exclusion on both the federal and the New York State estate tax returns and use the amount calculated on federal Schedule U. However, it is not limited to New York property.

If the estate elects the exclusion for the value of land subject to a qualified conservation easement, check box 54b, attach a completed Form ET-418, or federal Schedule U, and enter the amount of the exclusion on this line of the return. The election must be made no later than the due date of the return, including extensions, and once the election is made, it is irrevocable.

Line 33c

New York allows for the value of certain assets of a person who was a victim of Nazi persecution to be excluded from the New York gross estate of the individual, or the spouse or decedent of such individual. Refer to Form ET-419 for additional information. If the estate qualifies, enter the amount of the exclusion on this line.

Line 33e

If the estate is required to file a federal estate tax return, and adjustments increasing or decreasing the federal gross estate are required to determine the New York adjusted gross estate, complete Schedule 1 and enter the net amount from line 69, page 3. For an explanation of the adjustments to the federal gross estate, see the instructions for lines 63 to 69 (Schedule 1).

Line 34

If the net difference of the adjustments from Schedule 1 (line 69) is a negative amount, subtract line 33f from line 32; otherwise, add lines 32 and 33f.

Computations

Line 35

Resident decedent - If the estate does not consist of any real property or tangible personal property having an actual situs outside New York State, enter "0" on line 35 and "1.0" on line 37, as no tax is allocable to property outside the state. Otherwise, enter the amount from line 70, page 3.

Line 36b

Nonresident decedent - Enter the amount from line 71c, page 3. This amount is the total of all real property and tangible personal property having an actual situs within New York State.

Line 37

Divide the New York gross estate by the New York adjusted gross estate. Round the result to 4 decimal places (e.g., if the fifth decimal is 5 or greater, add 1 to the fourth decimal). The result cannot be greater than 1.0000.

Deductions

Lines 38 through 40

On each line enter the total from the applicable schedule (J, K, or L) found on Form ET-90.3. Enter "0" for any line that does not apply.

If the estate is required to file a federal estate tax return, enter the total of the corresponding federal schedule J, K, or L from federal Form 706.

Note: When the estate of an individual who died before January 1, 1997, is subject to the federal **increased estate tax on excess retirement accumulations** (section 4980A(d) of the IRC) reportable on Schedule S of federal Form 706, and the estate elects to deduct the excess tax on the federal estate tax return, Form 706, as permitted by section 2053(c)(1)(B) of the IRC, instead of the fiduciary return, the estate must reduce the amount reportable on line 39 (from federal Schedule K) by that amount. The deduction is not allowable for the New York State estate tax. This adjustment is not required for the estate of an individual who died on or after January 1, 1997, because the federal tax on excess accumulations was repealed.

Line 42

The estate of an individual who died after December 31, 1997, and before September 9, 1999, may choose either the exclusion for family-owned businesses (see instructions for line 33a) or the deduction for family-owned business interests. For dates of death after September 8, 1999, only the deduction is allowable. The qualifications for the family-owned business interests deduction are the same as those in section 2057 of the federal IRC. Refer to New York Form ET-417-D for information on these qualifications, and to the federal *Instructions for Form 706* (Schedule T) for additional information.

To elect the deduction when a federal return is not required, complete and attach Form ET-417-D. When a federal return is required the estate must elect the deduction on both the federal and New York State estate tax returns and use the amount calculated on federal Schedule T, unless the date of death was before September 9, 1999, and the estate elects the exclusion for family-owned businesses instead. Also check the box for line 54d, if the deduction is elected.

If the estate elects the deduction for family-owned business interests, the estate may not elect the credit for a closely held business or the agricultural credit.

Line 45

Refer to the instructions for line 72 for adjustments to the marital deduction if the estate is required to file a federal estate tax return and one or more of the following is true:

1. The surviving spouse is not a citizen of the United States, and a New York marital deduction is elected.
2. Property passed to the surviving spouse under a limited power of appointment created prior to September 1, 1930.
3. Some or all of the property reported on Form ET-419 passed to the surviving spouse.

Line 46

If the estate is required to file a federal estate tax return and adjustments are included on line 45, either subtract line 45 from line 44, or add lines 44 and 45 to show the increase or decrease in the marital deduction allowable for New York.

Line 47

Enter the total charitable deduction from Form ET-90.4, line 16. If a federal estate tax return is required to be filed, enter the total charitable deduction claimed on the federal return from the corresponding line of the federal recapitulation on Form 706.

Line 48

If the estate is required to file a federal estate tax return and property passed to a qualified charitable organization under a limited power of appointment created prior to September 1, 1930, complete *Schedule 4,* on page 4.

Questions

Line 52

Indicate the decedent's marital status at the time of death by checking the appropriate box and provide additional information where required.

To elect a marital deduction for a surviving spouse who is not a citizen of the United States, both the executor and the surviving spouse must sign in the area provided. By making such election, the surviving spouse consents to be considered a citizen of the United States for purposes of determining if he or she is a resident or nonresident of New York State when the property, for which a marital deduction was allowed, is later transferred.

If the estate is not required to file a federal estate tax return and the marital deduction is elected, complete and attach Form ET-90.4, Schedule M.

Line 53

For information on qualified terminable interest property (QTIP) and the marital deduction, see the instructions for Form ET-90.4, Schedule M.

Line 54a

Special use valuation of certain real property devoted to farming or closely held businesses

The estate representative may elect to value qualified **real property** that is devoted to farming or used in a closely held business on the basis of its actual use rather than its fair market value. You may elect both special use valuation and alternate valuation.

A written agreement must be signed by each person having an interest in the qualified real property for which the election is made. The agreement must contain an express consent to personal liability by the qualified heir in the event of recapture of additional estate tax due either to premature cessation of qualified use or disposition of the property.

This method of valuation is authorized by section 954-a of the Tax Law, which conforms, with certain modifications, to section 2032A of the federal IRC.

If the estate is required to file a federal estate tax return and either does not or may not elect special use valuation for federal estate tax purposes, the estate will not be allowed to elect special use valuation for New York estate tax purposes. However, if the estate does elect the special use valuation for federal estate tax purposes, it is **not** required to make the same election for New York estate tax purposes.

> **Note:** For information on requesting an extension of time to pay the estate tax, refer to page 4 of these instructions.

If a federal estate tax return is not required, the election for New York State estate tax purposes may be made on a late filed or amended return.

If the special use valuation election is made and the requirements substantially complied with, the executor will be allowed a reasonable period, not exceeding 90 days, to correct simple technical errors that prevent the election from being valid. Information that may be supplied within the time allowed includes social security numbers and addresses of qualified heirs, and signatures of all persons having an interest in the property, which are required on the written agreement to value the property based upon its current use. The 90-day period will begin following the mailing of written notification to the estate that a defect exists.

Real property may qualify for this election when **all** of the following conditions are met:

1. the decedent was a United States citizen or resident at the time of death;
2. the real property is located in New York State;
3. the real property was, on the date of the decedent's death, being used as a farm for farming purposes or in a trade or business other than farming;
4. the real property was acquired from or passed from the decedent to a qualified heir of the decedent;
   a. A *qualified heir* is a member of the decedent's family who acquired the real property from the decedent or to whom the property has passed.
   b. A decedent's family members are: (1) ancestors; (2) spouse; (3) lineal descendants of the decedent, of the decedent's spouse, or of the decedent's parents; and (4) the spouse of any descendant mentioned in item (3).

      Note: A legally adopted child of a decedent is treated as a decedent's child by blood.
5. the real property was owned and used in a qualified use by the decedent or a member of the decedent's family during five of the eight years preceding the decedent's death;
6. there was material participation by the decedent or a member of the decedent's family in the operation of the farm or other business for periods totaling at least five years out of the eight-year period ending on the date of the decedent's death;
   a. If, on the date of the decedent's death, the material participation requirement for the decedent is not met and the decedent was either retired and collecting social security benefits, or disabled for a continuous period ending with death, then the time period for material participation for the decedent is a period totaling at least five

(continued)

years out of the eight-year period ending on the earlier of (1) the date the decedent began receiving social security benefits, or (2) the date the decedent became disabled.

b. *Material participation* is determined in a manner similar to income tax provisions relating to whether income is subject to self-employment taxes.

Additional factors to be considered in making this determination include (1) employment and management, (2) financial risk, (3) residence and (4) other miscellaneous considerations. Consult IRC Regulations 20.2032-A for further information.

c. Active management of a farm or other business by a surviving spouse shall be treated as material participation by the surviving spouse.

(1) *Active management* means the making of the management decisions of a business other than the daily operating decisions.

(2) Active management by a surviving spouse may be *tacked* on to the material participation of a disabled or retired spouse (the first decedent) in order to qualify the property for special use valuation in the surviving spouse's estate (the second decedent) where the spouse survives the first decedent by fewer than eight years (i.e., to satisfy the five-of-eight-years' test). See IRC section 2032A(b)(5)(C).

7. at least 50% of the adjusted value of the gross estate consists of the adjusted value of the real and personal property used in farming or in a closely held business on the date of decedent's death;

a. *Adjusted value* is the value of property determined without regard to its special use value. The value is reduced for unpaid mortgages on the property or any indebtedness against the property if the full value of the property is included in the gross estate.

b. Tangible personal property, such as farm equipment and livestock, used in conjunction with the qualifying property, must be valued at its fair market value.

8. at least 25% of the adjusted value of the gross estate must consist of the adjusted value of such qualified real property.

Note 1: For purposes of the 50% and 25% tests, the value of the property is considered at its fair market (highest and best use) value.

Note 2: *Adjusted value of the gross estate,* referred to in numbers 7 and 8 above, is the adjusted value of the **federal** gross estate determined without reference to paragraphs (1) through (4), subsection (a) of section 954 of the Tax Law.

In no case may this special valuation process reduce the gross estate (i.e., reduce the fair market value of the qualified property) by more than $750,000.

Property passing in trust qualifies for this special valuation.

Since qualifying real property may be valued on the basis of its *actual use* value rather than on the basis of its *highest and best use* value, **two** real estate appraisals will be necessary, **one** for each specific valuation method.

Example 1

Qualifying farm property at highest and best use value $2,000,000

Qualifying farm property at actual use value ..... -1,000,000

difference between highest and best use and actual use value $1,000,000

*maximum reduction in gross estate **limited** to $750,000*

Example 2

Gross estate at highest and best use value $600,000

Qualified real property at highest and best use value ..... $300,000 (having $50,000 mortgage)

*Adjusted value of gross estate 50% test - adjusted value of qualified real property ($300,000 - 50,000) = $250,000 = (45.45%) **

Property would **not qualify for special use valuation.*

Example 3

Gross estate at highest and best use value ..... $750,000 (includes $300,000 real property value and $300,000 value of machinery)

Qualified real property at highest and best use value ..... $300,000 ($200,000 mortgage on farm)

Adjusted value of gross estate ..... $550,000 ($750,000 - $200,000)

50% test

$600,000 real and personal
- 200,000 mortgage
$400,000 = 72.72%

25% test

$300,000 real
- 200,000 mortgage
*$100,000 = 18.18%**

Fails to qualify for special farm valuation (must meet **both percentage tests).*

When the estate otherwise qualifies for the portion satisfying the percentage tests, other remaining real property used in a qualified use cannot be valued under the special use valuation rules when it passes to persons who are not qualified heirs. Real property is eligible for special use valuation only to the extent that it passes to qualified heirs.

Special use valuation may be elected for standing timber, providing the trees are part of qualified woodlands, as an interest in real property rather than valuing it as other growing crops.

Line 54b

Exclusion for land subject to a qualified conservation easement

An exclusion from the New York gross estate is allowed for up to 40% of the value of land subject to a qualified conservation easement. The qualifications are the same as those in section 2031(c) of the federal IRC. Refer to Form ET-418 and federal Schedule U, for information on the qualifications for the exclusion of land subject to a qualified conservation easement. Also refer to line 33b.

If the estate elects the exclusion for the value of land subject to a qualified conservation easement, complete Form ET-418, if a federal return is not required; otherwise, use federal Schedule U. Enter the amount of the exclusion on line 33b of Form ET-90. The election must be made no later than the due date of the return, including extensions, and once the election is made, it is irrevocable.

Line 54c

Exclusion for a family-owned business

An exclusion from the New York gross estate is allowed for family-owned businesses. The qualifications are the same as those in section 2033A of the federal IRC, before repeal. Refer to Form ET-417 for information on the qualifications for the exclusion of a family-owned business.

If the estate elects the exclusion for a family-owned business, complete Form ET-417 and enter the amount of the exclusion on line 33a of Form ET-90. The estate may also elect the exclusion if it is required to file a federal estate tax return. If the estate elects the exclusion for a family-owned business, the estate may not elect the credit for a closely held business or the agricultural credit. Once the election of the exclusion for a family-owned business is made, it is irrevocable, unless the estate is amending the return to elect the deduction for family-owned business interests.

The estate of an individual who died after December 31, 1997, and before September 9, 1999, may choose either the exclusion for family-owned businesses or the deduction for family-owned business interests. For dates of death after September 8, 1999, only the deduction is allowable.

Line 54d

Deduction for family-owned business interests

The estate of an individual who died after December 31, 1997, and before September 9, 1999, may choose either the exclusion for family-owned businesses (see instructions for line 33a) or the deduction for family-owned business interests. For dates of death after September 8, 1999, only the deduction is allowable. The qualifications for the family-owned business interests deduction are the same as those in section 2057 of the federal IRC. Refer to New York Form ET-417-D for information on these qualifications, and to the federal *Instructions for Form 706* (Schedule T) for additional information. If the deduction or exclusion is taken, the estate may not elect the credit for a closely held business or the agricultural credit.

Line 57

See the instructions for line 66 for information on section 2044 property.

Line 58

For information on life insurance, refer to the instructions for Form ET-90.1, Schedule D.

For information on annuities and lump-sum distributions, and the qualifications for exclusion from the gross estate, refer to the instructions for Form ET-90.3, Schedule I.

If a lump-sum distribution received by a beneficiary is excluded from the decedent's gross estate under IRC section 2039(f)(2), a **written** election by **each** beneficiary must be attached to the return. For any property excluded, give a full description and the reason for exclusion.

Line 59

If the decedent was a plaintiff in any litigation at the time of his or her death, or the estate has undertaken or is considering any litigation on behalf of the decedent, check the box, attach a complete description of the litigation, and enter the actual or estimated value of any settlement on Schedule F.

For the estate of an individual who died on or after July 13, 1999, the department will waive the penalty and interest that applies to the estate tax attributable to the value of a cause of action (litigation) that is includable in the taxable estate of the decedent. Penalty and interest on such amount will be waived from the date an estate tax return is filed that discloses the cause of action, to the date of payment, but not more than one year after the date of settlement or final judgment.

When the estate receives a payment of the final judgment or settlement, it must pay the estate tax within a reasonable period. Paying the estate tax within 90 days from the date the proceeds of the judgment or settlement are received is considered a reasonable period. However, in no event will penalty and interest be waived for a period beyond one year after the date of the final judgment or settlement.

Recoveries for wrongful death are not included in the gross estate, but damages for pain and suffering are.

Line 62

The written appraisal of an expert should be filed with the return when any one article included among the household and personal effects has a marked artistic or intrinsic value in excess of $3,000, or any collection of similar articles is valued at more than $10,000.

Schedule 1

Do not complete this schedule unless:

1. a federal estate tax return is required; **and**
2. it is necessary to adjust the federal gross estate as indicated.

Line 63

For information on limited powers of appointment created before September 1, 1930, see the instructions for Form ET-90.3, *Schedule H.*

Line 65

For an explanation of the New York State gift taxes to be included on this line, refer to instructions for Form ET-90.2, *Schedule G.*

Line 66

These assets are included in federal Schedule F of the federal estate tax return, Form 706. Section 2044 property is qualified terminal interest property (QTIP) for which a **federal** marital deduction was allowed, either on the estate tax return of the predeceased spouse, under section 2056(b)(7) of the IRC, or on a gift tax return of such spouse, under section 2523 of the IRC. Since this property may not have been the subject of a New York marital deduction, this adjustment to the federal gross estate is required (Tax Law section 954(a)(4)).

Line 67

If a New York marital deduction was allowed for qualified terminable interest property (QTIP) either for the New York estate tax of the predeceased spouse under section 955(c) of the Tax Law, or on a gift tax return of such spouse under section 1004(b) of the Tax Law, the full value of the property is required to be included in the estate of the surviving spouse upon his or her death (Tax Law section 954(a)(4)).

Also includable in the New York adjusted gross estate is the full value of all property included in a qualified domestic trust (QDoT) for which a New York marital deduction was elected on the estate tax return of the predeceased spouse (Tax Law section 954(a)(5)).

Schedule 2

Adjustments to determine the New York gross estate

Line 70

This line is used in computing the New York gross estate of a **resident** decedent when the estate includes real property and/or tangible personal property having an actual situs outside New York State.

Lines 71a, 71b, and 71c

These lines are used in computing the New York gross estate of a **nonresident** decedent.

Schedule 3

Adjustment to federal marital deduction

Note: Do not deduct the value of real property or tangible personal property located outside New York State unless it is included as one of the items below.

Line 72

If the estate is required to file a federal estate tax return and an adjustment to the federal marital deduction is required, complete this schedule, identifying the property and its value.

Increase the federal marital deduction by the value of:

1. property passing under a limited power of appointment created before September 1, 1930, if such property passes or has passed to the surviving spouse and the property was included on line 63;
2. property passing to or for the benefit of the surviving spouse, who is not a citizen of the United States, for whom a New York marital deduction is elected where a federal marital deduction is not allowed because the surviving spouse is not a citizen (also see the instructions for line 52).

Decrease the federal marital deduction by the value of:

1. property included in a qualified domestic trust (QdoT) if a New York marital deduction is not elected;
2. property that is also included on line 33c of Form ET-90.

Enter the net difference of the adjustments on line 72 and on line 45.

Schedule 4

Adjustment to federal deduction for charitable, public, and similar gifts and bequests

Line 73

Increase the federal charitable deduction by the value of property passing under a limited power of appointment created before September 1, 1930, that passes or has passed to a qualified charitable organization, and is included in the amount on line 63 of Form ET-90.

Decrease the federal charitable deduction by the value of property that passes, or has passed, to a qualified charitable organization, and is included in the amount on line 33c.

Enter the net difference on line 73 and on line 48.

Schedule 5

Deduction for principal residence

Line 74

The estate of an individual who died on or after June 8, 1995, is eligible to deduct the net value of the individual's principal residence, **up to $250,000,** in determining the New York State estate tax. The estate of an individual is allowed the deduction regardless of the individual's domicile at the time of death or the location of the principal residence (in or outside New York State).

To qualify, **the value of the principal residence must be included** in the decedent's New York adjusted gross estate. This includes property transferred before death that is required to be included in the estate because of a retained interest in the property. In determining the amount allowable, the value of the principal residence must be reduced by any deductions taken on the estate tax return, for marital or charitable bequests, mortgages or other indebtedness and expenses or casualty losses, that are specifically attributable to the principal residence.

The deduction for a principal residence is not allowed for that part of the decedent's principal residence that passes to the surviving spouse and for which a marital deduction is claimed. In addition, the deduction is not allowed for that part of the principal residence that passes to a qualifying organization and for which a charitable deduction is claimed. However, any remaining part of the principal residence passing to another person would qualify for the deduction for a principal residence.

For purposes of this deduction, *principal residence* has the same meaning as when used in section 121 of the federal IRC (relating to the rollover of any gain on the sale of a principal residence). Generally, to qualify as a residence, the property must contain facilities for cooking, sleeping and sanitation. A residence may be a house trailer (mobile home), a houseboat, a condominium unit or a single-family house. Stock owned by a tenant-stockholder in a cooperative housing corporation also qualifies if the dwelling that the individual was entitled to occupy was used as his or her principal residence on the date of death.

Note: 1. The time limitations set forth in IRC section 121 to determine if the gain on the sale of a principal residence must be rolled over are not applicable in determining whether the property qualifies as the decedent's principal residence.

Note: 2. The provisions of IRC section 121(d)(3)(A), relating to the treatment as the principal residence of an owner of property

(continued)

during the period it is used by the spouse or a former spouse under a divorce or separation instrument, are applicable to decedents dying on or after May 7, 1997.

Line a – Enter the value of the principal residence as it is reported on *Schedule A – Real estate, Schedule B – Stocks and bonds* (stock in a cooperative housing corporation), *Schedule E – Jointly owned property, Schedule F – Other miscellaneous property* (a mobile home in a mobile home park or a houseboat), or *Schedule G – Transfers during decedent's life* (for a retained life estate in a principal residence) of the estate tax return. Circle the appropriate letter of the schedule on which the property is reported.

If you elect *alternate valuation* (see page 6) or *special use valuation* (see page 7) to value the property, use that value.

If only part of the property was used as a principal residence, include only that part of the value of the property attributable to the principal residence. For example, if any part of the actual residence was used for income producing purposes, such as rental of a room or as a home office, the value attributable to that part of the property would not qualify for the deduction. Attach a worksheet showing how you determined the value.

Line b – If deductions are taken on the estate tax return for marital or charitable bequests of the property, or for mortgages or other indebtedness and expenses or casualty losses that are specifically attributable to the principal residence, enter the amount of each deduction on the line corresponding to the schedule on which that deduction is taken. Also indicate the item number of the deduction.

When a federal estate tax return is required, include any applicable adjustments to arrive at the New York deductions.

Line d – The maximum allowable deduction is $250,000.

Tax computations

Line 4

If the decedent made New York taxable gifts after 1982, complete Worksheet I below. Otherwise enter "0."

Worksheet I *(for line 4)*

1.	Total **lifetime** taxable gifts made after December 31, 1982	1. _____
2.	Taxable gifts made by decedent after December 31, 1982, that are included in decedent's gross estate	2. _____
3.	Taxable gifts made by decedent's previously deceased spouse after December 31, 1982, for which the decedent was the consenting spouse *(see instructions below)*	3. _____
4.	Add lines 2 and 3.	4. _____
5.	Adjusted taxable gifts *(subtract line 4 from line 1; enter on line 4 of* Tax computations *section on page 1 of the return)*	5. _____

Instructions for Worksheet I

Line 1 – Enter the total amount of lifetime New York taxable gifts made by the decedent after 1982 for which a gift tax return was required to be filed, whether or not includable in the decedent's New York gross estate. This includes split gifts for which the decedent was the consenting spouse. Taxable gifts are the amounts used to compute the tax, after deducting the annual exclusion.

Line 2 – Enter the amount, if any, of New York taxable gifts made by the decedent after 1982 and includable on a New York gift tax return that are also required to be included in the New York gross estate (under Schedule G). These gifts include transfers with a retained interest or transfers within three years of death. The amount to be included is the value of the gift(s) as reported on the return(s), reduced by any applicable annual exclusion.

Line 3 – Enter the amount of New York taxable gifts made after 1982 by the decedent's **previously deceased spouse** that meet the 3 conditions stated below:

1. the previously deceased spouse was the donor of the gifts that were split with the present decedent under the rules of IRC section 2513 (i.e., one-half of the gift was considered as made by the decedent);
2. the present decedent was the consenting spouse for those split gifts (in accordance with the provisions of IRC section 2513); and
3. the split gifts were included in the previously deceased spouse's New York gross estate (under Schedule G) in accordance with the provisions of IRC section 2035.

Line 5 – This figure represents the amount of all New York taxable gifts made by the decedent (or considered to have been made due to *split* gifts) after 1982 that are not includable in the New York gross estate. Enter this amount on line 4 of the *Tax computations* section on page 1 of the return.

Line 9

When dividing line 4 by line 5, carry the result to 4 decimal places before multiplying the result by line 9. If the amount on line 4 is zero, enter "0" on line 9.

Line 13

If the decedent made New York taxable gifts after 1982 and New York gift tax was paid or payable, complete Worksheet II below. Otherwise enter "0."

For the estate of an individual whose date of death is after June 9, 1994 — If gift tax was paid or payable for gifts made after 1982 and before 1994, recompute lines 7 and 13 of Form ET-90 using Table B, Part III, on page 13 of these instructions. If this results in a lower amount for line 14, use that amount.

Worksheet II *(for line 13)*

1.	Tax paid or payable for gifts made after December 31, 1982 *(see instructions)*	1. _____
2.	Gift taxes paid by decedent on gifts made by decedent's previously deceased spouse *(see instructions below)*	2. _____
3.	Subtract line 2 from line 1	3. _____
4.	Gift taxes payable by decedent's surviving spouse on split gifts *(see instructions)*	4. _____
5.	Total gift taxes paid or payable with respect to gifts made after December 31, 1982 *(add line 3 and line 4; enter on line 13 of the* Tax computations *section on page 1 of the return)*	5. _____

For the estate of an individual whose date of death is after September 30, 1998, and before January 1, 1999 — If gift tax was paid or payable for gifts made after 1993, and gift tax was not payable on gifts made before 1994, compute the amount for line 13 of Form ET-90 using Table B, Part II, on page 13 of these instructions.

For the estate of an individual whose date of death is after December 31, 1998 — If gift tax was paid or payable for gifts made after 1993, and gift tax was not payable on gifts made before 1994, recompute lines 7 and 13 of Form ET-90 using Table B, Part II, on page 13 of these instructions. If this results in a lower amount for line 14, use that amount.

Instructions for Worksheet II

Line 1 – Enter the total amount of New York State gift tax paid or payable by the decedent on taxable gifts made by the decedent after December 31, 1982. This amount can be obtained from the decedent's New York State gift tax returns.

Line 2 – Enter the amount, if any, of New York gift tax paid by the decedent as the consenting spouse for only those New York gifts made after 1982 that were required to be included in the New York gross estate (under Schedule G) of the previously deceased spouse as the donor of the split-gifts. The value of these taxable gifts must be included on Worksheet I, line 3.

Line 4 – Enter the amount, if any, of New York gift taxes paid by the decedent's surviving spouse, as the consenting spouse, for only those New York gifts, made after 1982, that are required to be included in the New York gross estate (under Schedule G) of the decedent as the donor of the split-gifts.

Line 5 – For estate tax purposes, this figure represents the amount of New York gift taxes paid or payable on New York gifts made after 1982 that exceeds the appropriate unified credit. Enter this amount on line 13 of the *Tax computations* section on page 1 of the return.

Line 15a

Agricultural exemption credit - Credit is allowed against the New York estate tax imposed on the estate of any person whose date of death is after

August 10, 1977, for interests in real property devoted to farming qualifying under section 954-a of the Tax Law.

The interests in property eligible for exemption are limited to qualified property that: (1) was owned by the decedent, and (2) has vested in a qualified heir, and that continues to be employed in a *qualified* use. Qualified property means the same as qualified real property except it includes fixtures attached to the qualified real property, but not included in the valuation thereof, and tangible personal property used for farming purposes in conjunction with the qualified real property on a farm. *Qualified use,* as used in this section of the Tax Law, means qualified property used in the trade or business of farming. The exemption is allowed to the extent of the first $200,000 in value of such qualified property and to the extent of one-half the value of such qualified property in excess of $400,000.

A credit is allowed against the exempt amount, as stated above, in accordance with subsection (a) of section 958-a of the Tax Law.

When the agricultural credit is claimed, attach a copy of Form ET-411, *Computation of Estate Tax Credit for Agricultural Exemption,* to the return, showing how the amount of credit was determined. Enter the amount on line 15a.

Line 15b

Credit for closely held business - Credit is allowed against the New York estate tax imposed on the estate of any person whose date of death is after June 9, 1994, for interests in a qualifying closely held business that vests in a qualified heir (section 958-b of the Tax Law).

The credit is equal to 5% of the first $15 million in value of qualified property that was owned by the decedent and that has vested in one or more qualified heirs.

Qualified property means an interest in a closely held business as defined in subsections (b) and (c) of section 6166 of the IRC, to the extent included in the New York gross estate. An interest in a closely held business included in determining the New York gross estate of a decedent is not qualified property unless the estate qualifies for installment payments of the tax under section 6166 of the IRC, as applied to New York Law by section 997 of the Tax Law. Qualified property does not include property that has been taken into account in computing the marital deduction.

When the credit is claimed, attach a copy of Form ET-416, *Computation of Estate Tax Credit for Closely Held Businesses,* to the return, showing how the amount of credit was determined. Enter the amount on line 15b.

Line 16

Credit for tax on prior transfers - A credit is allowed against the estate tax for all or part of the New York estate tax paid with respect to the transfer of property to the present decedent (transferee) by or from a person (transferor) whose estate was taxed under Article 26 and who died within 10 years before, or within 2 years after, the date of the present decedent's death (Tax Law section 959).

There is no requirement that the property be identified in the estate of the transferee or that it be in existence on the date of the transferee's death. It is sufficient that the transfer of the property was subject to New York estate tax in the estate of the transferor and that the specified period of time has not elapsed.

If the transferee was the transferor's surviving spouse, no credit is allowed for property received from the transferor to the extent that a marital deduction was allowed the transferor's estate in connection therewith.

Credit for prior taxes cannot reduce the New York net estate tax below the amount of the federal credit for state death taxes. (If the federal credit for prior taxes is determined by Part II of the federal computation, this limitation does not apply.)

If a claim for prior tax credit is made, attach a copy of Form ET-190, *Computation of Credit for Tax on Prior Transfers,* to this return, showing how the amount of credit was determined, and enter the amount on line 16.

Line 17

When a New York gift tax has been paid under Article 26-A for gifts made before 1983, and upon the donor's death any part of the gift is required to be included in the value of the donor's New York gross estate, a credit is allowed for the New York gift tax attributable to the portion of the gifts included in the gross estate.

The credit is reduced by that portion of any credits allowed under subsection (b) of section 952 and section 958-a of the Tax Law in proportion to the value that the included gift bears to the New York gross estate minus total deductions for any marital deduction or charitable bequests.

When the credit for gift taxes is claimed, attach a copy of Form ET-412, *Computation of Estate Tax Credit for Gift Tax,* to this return showing how the amount of credit was determined. Enter the amount on line 17.

Credit is not allowed for New York gift tax paid on gifts made after 1982. The tax paid on gifts made after 1982 is used in computing the amount for line 13.

Lines 19a, 19b, and 19c

If the estate is required to file federal Form 706, and the amount computed through line 19a of Form ET-90 is less than the amount allowable as a credit for state death taxes on the federal return, the estate may be subject to a minimum tax. Use Worksheet III on page 12 to determine the amount of the minimum tax, if any, and enter the amount on line 19b.

Line 21

Do not include on this line any interest or penalty the estate may owe.

Line 22

Overpayments will be refunded automatically.

Worksheet III — Calculation of New York minimum tax *(for line 19b)*

If the estate is required to file a federal estate tax return, Form 706, use this worksheet to determine the amount of minimum tax that is payable to New York, if any.

Maximum federal credit applicable to New York State

Resident

1. Maximum allowable federal credit for state death taxes, from line 15 of federal Form 706, or from Table C on page 13 of these instructions (may not exceed the amount on line 14 of the federal Form 706) **1.** _____

2. If estate tax was paid to another state, enter on line 2 the lesser of:

A. The estate tax actually paid to the other state **A.** _____

or

B. The result of the following:

(1) the value of the real and/or tangible personal property located in the other state that was subject to estate tax in the other state (1) _____

(2) the amount from line 1, page 1, of Form ET-90 (2) _____

(3) Maximum allowable federal credit for state death taxes, from line 1 above (3) _____

(1) ÷ (2) × (3) = **B.** _____

2. _____

Attach a copy of the receipt for payment of estate tax from the other state to the return. If tax was paid to more than one state, do the calculation for each state separately, and enter the total on line 2.

3. Subtract line 2 from line 1 **3.** _____

4. Enter amount from line 19a, page 1, of Form ET-90 **4.** _____

5. New York minimum tax: subtract line 4 from line 3 *(enter here and on line 19b, page 1)* **5.** _____

Nonresident

1. Multiply the maximum allowable federal credit for state death taxes, from line 15 of Federal Form 706, or from Table C on page 13 of these instructions, by the decimal entered on line 37, page 2, of Form ET-90 **1.** _____

2. Enter amount from line 19a, page 1, of Form ET-90 **2.** _____

3. New York minimum tax: if line 1 is greater than line 2, subtract line 2 from line 1; otherwise, enter "0" *(enter here and on line 19b, page 1)* **3.** _____

Table A — Tax rate schedule *

Taxable amount over	Taxable amount not over	Tax is			
$ 0	$ 50,000			2% of such amount	
50,000	150,000	$ 1,000	+	3% of excess over	$50,000
150,000	300,000	4,000	+	4% of excess over	150,000
300,000	500,000	10,000	+	5% of excess over	300,000
500,000	700,000	20,000	+	6% of excess over	500,000
700,000	900,000	32,000	+	7% of excess over	700,000
900,000	1,100,000	46,000	+	8% of excess over	900,000
1,100,000	1,600,000	62,000	+	9% of excess over	1,100,000
1,600,000	2,100,000	107,000	+	10% of excess over	1,600,000
2,100,000	2,600,000	157,000	+	11% of excess over	2,100,000
2,600,000	3,100,000	212,000	+	12% of excess over	2,600,000
3,100,000	3,600,000	272,000	+	13% of excess over	3,100,000
3,600,000	4,100,000	337,000	+	14% of excess over	3,600,000
4,100,000	5,100,000	407,000	+	15% of excess over	4,100,000
5,100,000	6,100,000	557,000	+	16% of excess over	5,100,000
6,100,000	7,100,000	717,000	+	17% of excess over	6,100,000
7,100,000	8,100,000	887,000	+	18% of excess over	7,100,000
8,100,000	9,100,000	1,067,000	+	19% of excess over	8,100,000
9,100,000	10,100,000	1,257,000	+	20% of excess over	9,100,000
10,100,000		1,457,000	+	21% of excess over	10,100,000

* This tax rate schedule applies to all dates of death after March 31, 1959, and before February 1, 2000, and also to gifts made after 1982 and before 2000.

Table B — Unified credit

Part I — For the estate of an individual whose date of death is on or after October 1, 1998.

1. If the tentative tax on line 6 of Form ET-90 is $10,000 or less, the unified credit is the amount of the tentative tax.
2. If the tentative tax on line 6 of Form ET-90 is greater than $10,000 but less than $19,500, the unified credit is $20,000, less the tentative tax.

Example: Line 6 of Form ET-90 is $15,000		
	Factor for calculation	*$20,000*
	Less, tentative tax	*15,000*
	Unified credit	*$5,000*
	Net Tax	*$10,000*

3. If the tentative tax on line 6 of Form ET-90 is $19,500 or more, the unified credit on line 7 of Form ET-90 is $500.

Part II — For the estate of an individual whose date of death is on or after June 10, 1994, and before October 1, 1998.

1. If the tentative tax on line 6 of Form ET-90 is $2,950 or less, the credit is the same as the tax.
2. If the tentative tax on line 6 of Form ET-90 is greater than $2,950 but less than $5,400, the unified credit is $5,900, minus the tax.

Example: Line 6 of Form ET-90 is $4,000		
	Factor for calculation	*$5,900*
	Less, tentative tax	*4,000*
	Unified credit	*$1,900*
	Net Tax	*$2,100*

3. If the tentative tax on line 6 of Form ET-90 is $5,400 or more, the unified credit on line 7 of Form ET-90 is $500.

Part III — For the estate of an individual whose date of death is before June 10, 1994.

1. If the tentative tax on line 6 of Form ET-90 is $2,750 or less, the credit is the same as the tax.
2. If the tentative tax on line 6 of Form ET-90 is greater than $2,750 but less than $5,000, the unified credit is $5,500, minus the tax.

Example: If the tentative tax is $4,000		
	Factor for calculation	*$5,500*
	Less, tentative tax	*4,000*
	Unified credit	*$1,500*
	Net Tax	*$2,500*

3. If the tentative tax on line 6 of ET-90 is $5,000 or more, the unified credit on line 7 of Form ET-90 is $500.

Table C worksheet

Federal adjusted taxable estate		
1.	Federal taxable estate (from Federal Form 706, Tax computation, line 3)	$ _____
2.	Adjustment	60,000
3.	Federal adjusted taxable estate. Subtract line 2 from line 1. Use this amount to compute maximum credit for state death taxes in Table C below.	_____

Table C — Computation of maximum credit for state death taxes

(Based on federal adjusted taxable estate computed using the worksheet above)

(1) Adjusted taxable estate equal to or more than—	(2) Adjusted taxable estate less than—	(3) Credit on amount in column (1)	(4) Rates of credit on excess over amount in column (1)	(1) Adjusted taxable estate equal to or more than—	(2) Adjusted taxable estate less than—	(3) Credit on amount in column (1)	(4) Rate of credit on excess over amount in column (1)
			(Percent)				(Percent)
0	$ 40,000	0	None	2,040,000	2,540,000	106,800	8.0
$ 40,000	90,000	0	0.8	2,540,000	3,040,000	146,800	8.8
90,000	140,000	$ 400	1.6	3,040,000	3,540,000	190,800	9.6
140,000	240,000	1,200	2.4	3,540,000	4,040,000	238,800	10.4
240,000	440,000	3,600	3.2	4,040,000	5,040,000	290,800	11.2
440,000	640,000	10,000	4.0	5,040,000	6,040,000	402,800	12.0
640,000	840,000	18,000	4.8	6,040,000	7,040,000	522,800	12.8
840,000	1,040,000	27,600	5.6	7,040,000	8,040,000	650,800	13.6
1,040,000	1,540,000	38,800	6.4	8,040,000	9,040,000	786,800	14.4
1,540,000	2,040,000	70,800	7.2	9,040,000	10,040,000	930,800	15.2
				10,040,000	- - - - - - - -	1,082,800	16.0

Instructions for Forms ET-90.1 – ET-90.4, Schedules A–N

Forms ET-90.1 through ET-90.4, Schedules A - N, must be completed **when the estate is not required to file a federal estate tax return.** If the estate is required to file a federal Form 706, omit Forms ET-90.1 through ET-90.4.

The following instructions refer to the individual schedules. Unless the executor elects to value the estate as of the alternate valuation date, do not fill in the alternate valuation date or alternate value on any of the schedules.

Schedule A — Real estate

Describe each parcel of real estate, wherever located, including any improvements thereon. Include the property address (street or road, city, town or village), section, block and lot numbers, and the place of record of the deed. State the exact right, title or interest the decedent had in the property.

Enter the assessed value and fair market value as of the decedent's date of death. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither one being under any compulsion to buy or to sell. The listed value must be supported by market information or a contract of sale. In most cases, an appraisal by a qualified real estate appraiser will be required.

If the alternate valuation date is elected, also enter the date and fair market value as of that date.

See the information under the line 54a instructions concerning valuation of certain real property devoted to farming or used in a closely held business. Two appraisals are needed for this *special use valuation* allowance - one appraisal giving the highest and best use value, and one appraisal giving the actual use value. Enter the date of death value based on qualified use in the column for date of death value and, if elected, the value based on qualified use, determined as of the alternate valuation date in the column provided for alternate value. Attach a schedule showing how the values were computed.

If any item of real estate is subject to a mortgage for which the decedent's estate is liable (i.e., if the mortgage indebtedness may be a claim against other property of the estate, or if the decedent was personally liable for the mortgage), report the full value of the property in the *Value at date of death* column and enter the amount of the outstanding mortgage under *Description* in this schedule. The amount of the unpaid mortgage may be **deducted** on *Schedule K* of Form ET-90.3.

Real property that the decedent had contracted to purchase should be listed in this schedule at its full value and not just the equity therein. The unpaid portion of the purchase price is deducted under *Schedule K* of Form ET-90.3.

All rents accrued but uncollected on the date of death should be apportioned to the date of the decedent's death and entered in this schedule.

Jointly owned real property is listed on *Schedule E* of Form ET-90.2.

Schedule B — Stocks and bonds

List stocks and bonds included in the decedent's New York adjusted gross estate, numbering each item in the left-hand column.

Description — The description of stock should indicate number of shares, whether common or preferred, issue, par value where needed for identification, price per share, exact name of corporation and the principal exchange upon which it is sold or, if not listed on a stock exchange, the post office address of the principal business office, the state in which incorporated, and the date of incorporation.

The description of bonds should include quantity and denomination, name of obligor, kind of bond, date of maturity, interest rate and interest due dates. State the exchange upon which listed, or if unlisted, the principal business office of the company.

Include the CUSIP number if available. The CUSIP (Committee on Uniform Security Identification Procedure) number is a nine-digit number assigned to all stocks and bonds traded on major exchanges and to many unlisted securities. Usually, the CUSIP number is printed on the face of the stock certificate. If the CUSIP number is not printed on the certificate, it may be obtained through the company's transfer agent.

Valuation — In the case of stocks and bonds listed on a stock exchange, the mean (midpoint) between the highest and lowest quoted selling prices on the date of death, **or** the alternate valuation date if alternate valuation is properly elected, is considered the fair market value per share or bond. If there were no sales on the date of valuation but there were sales on dates within a reasonable period before and after the date of valuation, determine the fair market value in the following way: take a weighted average of the mean between the highest and lowest sales prices on the nearest date before the date of valuation, and the mean between the highest and lowest sales prices on the nearest date after the date of valuation. The average must be weighted **inversely** by the respective numbers of **trading days** between the selling dates and the date of valuation. Any day the exchange is closed is not a **trading day** and is not counted.

Example: *The nearest transactions took place June 13, two trading days before the date of valuation at a mean selling price of $10, and on June 18, three trading days after the date of valuation at a mean selling price of $15. The price of $12 is the fair market value, obtained by the following computation:*

$$\frac{(3 \times \$10) + (2 \times \$15)}{5} = \$12$$

If no sales occurred within a reasonable period before and after the date of valuation, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the date of valuation, or if none, by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before, and the nearest trading date after, the date of valuation. Both of these dates must be within a reasonable period.

If the highest and lowest selling prices on the date of valuation are not available for bonds for which there is a market on a stock exchange, but the closing selling prices are available on the date of valuation and the trading day before the date of valuation, then the fair market value of the bonds is the mean between the quoted closing selling price on the date of valuation and the quoted closing selling price on the trading day before the date of valuation.

If the stocks or bonds are listed on more than one exchange, the records for the exchange where the stocks or bonds are principally dealt in should be used to value the stocks and bonds if the records are available in a generally available listing or publication of general circulation. If these records are not available and the stocks and bonds are in a composite listing of combined exchanges that is generally available, then use the records of the combined exchanges.

If no actual sale prices or bona fide bid and asked prices are available on a date within a reasonable period before the date of valuation, but are available on a date within a reasonable period after that date, or vice versa, then the mean between the highest and lowest available sale prices or bid and asked prices on that date may be taken as the fair market value.

If quotations are obtained from brokers, or evidence as to the sale of securities is obtained from the officers of the issuing companies, copies of the letters furnishing the quotations or evidence of sale should be attached to the schedule.

Accrued interest on bonds should be computed to the valuation date and reported separately.

Report on this schedule, as separate items, any dividends that have not been collected at death but which are payable to the decedent or his or her estate because the decedent was a stockholder of record on the date of his or her death.

Dividends declared on shares of stock prior to the death of the decedent but payable to stockholders of record on a date after his or her death are not includable in the decedent's New York adjusted gross estate for estate tax purposes. However, if the stock is being traded on an exchange and is selling ex-dividend on the date of the decedent's death, the amount of the dividend should not be included in the New York adjusted gross estate as a separate item but should be added to the ex-dividend quotation in determining the fair market value of the stock as of the date of death.

Inactive unlisted stock and stock in closed corporations should be valued upon the basis of the company's net worth and earning capacity using the rules contained in section 2031 of the IRC and applicable regulations. Submit complete financial statements and any other data the estate uses to determine value, including balance sheets (particularly the one nearest the valuation date), and statements of the net earnings or operating results and dividends paid for each of five years immediately preceding the valuation date. If there were any sales of these securities within a reasonable period before or after the valuation date, furnish a statement of these sales, showing the number and prices of shares sold.

Securities reported as having no value, having nominal value or being obsolete should be listed last. Attach copies of correspondence or statements used to determine their value or worthlessness.

(continued)

Bonds exempt from federal or state income taxes are not exempt from estate taxes unless exempted by a specific provision for estate tax.

Schedule C — Mortgages, notes, cash, and bank deposits

Mortgages and notes held by the decedent, and cash, including bank deposits, must be included on this schedule. Jointly owned assets must be reported on *Schedule E* of Form ET-90.2.

The classes of property reportable in this schedule should be listed in the following order:

Mortgages (receivables) — List: (1) face value and unpaid balance; (2) date of mortgage; (3) name of maker; (4) property mortgaged; (5) interest dates and rate of interest; (6) date to which interest was paid; and (7) date of maturity. Add accrued interest to date of death.

Example: *Bond and mortgage of $20,000, unpaid balance $10,000; dated January 2, 1995; John Doe to Richard Roe; 1 Any Street, Newton, Vermont; 7% interest, payable January 2 and July 1; paid to July 1, 2000; due January 2, 2005.*

If the asset listed represents a **second** mortgage, make a special notation to this effect. The estate may be requested to furnish a copy of the contract.

Notes (receivables) — For all promissory notes held by the decedent, give similar data as required under mortgages above.

Contract by decedent to sell land — List: (1) name of purchaser; (2) date of contract; (3) description of property; (4) sale price; (5) initial payment; (6) amount of installment payment; (7) unpaid balance of principal and accrued interest; (8) interest rate; and (9) date prior to death to which interest had been paid.

Cash in possession – List separately from bank deposits.

Cash in banks, savings and loan associations, and other types of financial organizations – List: (1) name and address of each financial organization; (2) amount in each account, (3) account number; and (4) nature of account; indicating whether checking, savings, time deposit, etc.

Schedule D — Insurance on the decedent's life

If there was any insurance on the decedent's life, whether or not included in the gross estate, you must complete Schedule D and file it with the return.

Insurance you must include in the gross estate on Schedule D

— Insurance on the decedent's life receivable by or for the benefit of the estate; and

— Insurance on the decedent's life receivable by beneficiaries other than the estate, as described below.

The term *insurance* refers to life insurance of every description, including: whole life policies; term insurance; group life insurance; double indemnity, travel and accident insurance; endowment contracts (before being paid up); death benefits paid by fraternal organizations operating under the lodge system; and death benefits paid under no-fault automobile insurance policies if the no-fault insurer was unconditionally bound to pay the benefit in the event of the insured's death.

Insurance in favor of the estate — Include on Schedule D the full amount of the proceeds of insurance on the life of the decedent receivable by the executor or otherwise payable to or for the benefit of the estate. Insurance in favor of the estate includes insurance used to pay the estate tax, and any other taxes, debts, or charges that are enforceable against the estate. The manner in which the policy is drawn is immaterial as long as there is an obligation, legally binding on the beneficiary, to use the proceeds to pay taxes, debts or charges. You must include the full amount even though the premiums or other consideration may have been paid by a person other than the decedent.

Insurance receivable by beneficiaries other than the estate — Include on Schedule D the proceeds of all insurance on the life of the decedent not receivable by or for the benefit of the decedent's estate if the decedent possessed at death any of the incidents of ownership, exercisable either alone or in conjunction with any person.

Incidents of ownership in a policy include:

— the right of the insured or estate to its economic benefits;

— the power to change the beneficiary;

— the power to surrender or cancel the policy;

— the power to assign the policy or to revoke an assignment;

— the power to pledge the policy for a loan;

— the power to obtain from the insurer a loan against the surrender value for the policy;

— a reversionary interest if the value of the reversionary interest was more than 5% of the value of the policy immediately before the decedent died. An interest in an insurance policy is considered a *reversionary interest* if, for example, the proceeds become payable to the insured's estate or payable as the insured directs if the beneficiary dies before the insured.

If the decedent had a *retirement income* insurance policy, or if life insurance was purchased by a decedent's employer as part of a pension plan, the benefits payable at the time of a decedent's death are generally includable in the New York adjusted gross estate under various sections of the IRC, as conformed to by New York State, depending upon the facts of the particular situation.

If the decedent, at the time of death, owned a life insurance policy **on the life of another individual,** see the instructions for Schedule F on page 16.

If the decedent made a gift of a life insurance policy to another individual, see the instructions for Schedule G on page 16.

How to complete Schedule D

You must list every policy of insurance on the life of the decedent, whether or not it is included in the New York adjusted gross estate.

Under *Description* list:

— the name of the insurance company **and**

— the number of the policy.

For every policy of life insurance listed on the schedule, you must request a federal Form 712, *Life Insurance Statement,* from the company that issued the policy. Attach the Form(s) 712 to the back of Schedule D of Form ET-90.1.

If the policy proceeds are paid in one sum, enter the net proceeds received (from Form 712, line 24) in the value (and alternative value) columns of Schedule D. If the policy proceeds are not paid in one sum, enter the value of the proceeds as of the date of the decedent's death (from Form 712, line 25).

If part or all of the policy proceeds are not included in the New York adjusted gross estate, you must explain why they were not included.

Schedule E — Jointly owned property

Include all property, whether real estate or personal property (including bank accounts), in which the decedent, at the time of death, held an interest either as a joint tenant, a tenant by the entirety or as an owner of community property, whether or not the decedent's interest is includable in the New York adjusted gross estate.

Property held by the decedent as a tenant in common should not be listed here, but the value of the interest should be reported on *Schedule A,* if real estate, or if personal property, on the appropriate schedule. Report the value of the decedent's interest in a partnership on *Schedule F* of Form ET-90.2.

Qualified joint interests — Report all property, both real and personal, held by the decedent and decedent's surviving spouse as *qualified joint interests* at full value in *Part I* of this schedule, with the total of all such assets entered on line 1. **One-half** of the amount on line 1 should be entered on line 2 and included in the **Total** on line 4. Under the *Description* column, describe the property reported in the same manner as stated in these instructions for Schedules A, B, C, and F.

Special rules allow for the treatment of certain property held jointly between spouses to be considered *qualified joint interests.* If joint interests meet the requirements given below, one-half of the value of such *qualifying joint interests* is included in the New York adjusted gross estate of the first spouse to die.

A *qualified joint interest* means any interest in property **held** by the decedent and decedent's surviving spouse as either tenants by the entirety or joint tenants with the right of survivorship, but only if the spouses are the only joint tenants. Interest in property that meets either of these two requirements is includable in the gross estate of the first spouse to die and is reported in *Part I* of the Schedule. This rule applies even if the surviving spouse furnished the total consideration for the property.

> **Note:** If the surviving spouse is not a citizen of the United States, the interest is not a qualified joint interest, even when the election provided in section 955(e)(2) of the Tax Law is made.

All other joint interests — Property held jointly by the decedent and someone **other than** a surviving spouse who is a U.S. citizen should be reported in *Part II* of this schedule. For each item of property reported, enter the name of the surviving joint tenant. The description of the property reported must include the same information as set forth in these instructions for Schedules A, B, C, and F.

(continued)

Generally, you must include the full value of the property in the New York adjusted gross estate, unless you can show that a part of the property originally was never received or acquired by them from the decedent for less than adequate and full consideration in money or money's worth, or unless you can show that part of the property was acquired with consideration originally belonging to the surviving joint tenant or tenants. In this case, you may exclude from the value of the property an amount proportionate to the consideration furnished by the other tenant or tenants.

As the executor of the estate, you must prove that the other person (joint owner) acquired his or her interest for consideration or by bequest or gift. Consideration provided by a surviving joint owner does not include money or property that was acquired from the decedent for less than a full and adequate consideration in money or money's worth.

If the owners of property in joint tenancy were jointly and severally liable on a mortgage on that property, and if, at the death of a joint tenant, the mortgage is outstanding, the surviving joint tenant's total contribution to the purchase is the sum of that survivor's actual payments for the purchase, later mortgage payments, and one-half of the mortgage indebtedness that remained outstanding at death. See Schedule A instructions for the value to show for real property that is subject to a mortgage.

When property was acquired by gift, bequest, devise, or inheritance by the decedent and another person or persons as joint tenants, and their interests are not otherwise specified or fixed by law, include only the fractional part of the value of the property obtained by dividing the full value of the property by the number of joint tenants.

If you believe that less than the full value of the entire property is includable in the New York adjusted gross estate for tax purposes, you must establish the right to include a lesser value by submitting proof of the extent, origin, and nature of the decedent's interest and the interest(s) of decedent's co-tenant or co-tenants.

Schedule F — Other miscellaneous property

Include in this schedule all items of the New York adjusted gross estate not reportable under any other schedule, such as the following: debts due the decedent (other than notes and mortgages reported on Schedule C); interests in business, gains, patents, rights, royalties, judgments; shares in trust funds; reversionary or remainder interests; claims (including the value of the decedent's interest in a claim for refund of income taxes or the amount of the refund actually received); the unused portion of pension benefits; leaseholds; farm products and growing crops; livestock; farm machinery; automobiles; household goods and personal effects including wearing apparel; articles of artistic or intrinsic value; insurance on the life of another (the value of such insurance is the cost of replacing the policy and not the cash surrender value). Submit a copy of federal Form 712, *Life Insurance Statement,* to establish the value. You must request Form 712 from the company that issued the policy. Part II of the form shows the value to report.

Damages recovered for personal injury to a decedent (pain and suffering) resulting in the death of the injured person are includable in the decedent's New York adjusted gross estate (see Estates, Powers and Trusts Law 11-3.3). (Wrongful death damages are not includable in the decedent's New York adjusted gross estate since the damages awarded are paid directly to the decedent's distributees - see EPTL 5-4.4.)

Note for single premium or paid up policies: In certain situations, such as when the surrender value of the policy exceeds its replacement cost, the true economic value of the policy will be greater than the amount shown on line 56 of federal Form 712. In these situations, you must report the full economic value of the policy on Schedule F.

The written appraisal of an expert should be filed with the return when any one article included among the household and personal effects has a marked artistic or intrinsic value in excess of $3,000, or any collection of similar articles is valued at more than $10,000.

If the decedent owned any interest in a partnership or unincorporated business, submit financial statements as of the valuation date and for the five years preceding death, salaries of the decedent and of any partners, and the method of accounting for goodwill. The same information should be furnished, and the same methods followed, as explained previously in the instructions for valuing closely held corporations.

Qualified Terminable Interest Property (QTIP) - For estates of decedents dying after 1982, an estate representative may elect a marital deduction for certain qualified terminable interest property that passes to the surviving spouse (see the instructions for *Schedule M*). Also, if an inter vivos gift of terminable interest property is made between spouses after 1982, the donor may elect a marital deduction for qualifying property.

When the **spouse who received the property dies,** the value of any property in which the spouse had a qualifying income interest for life and for which a marital deduction was previously allowed, under either election (estate tax or gift tax), is includable in his or her New York adjusted gross estate and reportable in this schedule. However, any part of the property disposed of before death is not includable in the New York adjusted gross estate. (Refer to IRC section 2044.)

QTIP property included in a donee-spouse's estate will be treated as passing from that spouse for estate tax purposes.

When the New York gross estate includes the value of this marital deduction property, the estate may recover the estate tax applicable to this property from the recipient(s) of that property, unless the decedent's will directs otherwise. (Refer to EPTL 2-1.12.)

Schedule G — Transfers during decedent's life

You must complete Schedule G and file it with the return if the decedent made any of the transfers described below in one through five or if you answered *Yes* on Form ET-90, page 3, line 60.

Five types of transfers should be reported on this schedule:

1. **Certain gift taxes –** Enter at item 1 of the Schedule the total amount of New York State gift taxes that were paid by the decedent or the estate on gifts made by the decedent or the decedent's spouse within three years before death.

The date of the gift, not the date of payment of the gift tax, determines whether a gift tax paid is included in the New York adjusted gross estate under this rule. Therefore, you should carefully examine the Forms TP-400 filed by the decedent and the decedent's spouse to determine what part of the total gift taxes reported on them was attributable to gifts made within three years before death. For example, if the decedent died on July 10, 1993, you should examine gift tax returns for 1993, 1992, 1991, and 1990. However, the gift taxes on the 1990 returns that are attributable to gifts made before July 10, 1990, are not included in the New York adjusted gross estate.

Attach an explanation of how you computed the includable gift taxes if you do not include in the New York gross estate the entire New York State gift taxes shown on any return filed within three years of death. Also attach copies of any pertinent gift tax returns filed by the decedent's spouse within three years of death.

2. **Other transfers within three years before death (IRC section 2035(a)) –** These transfers include only the following:

— any transfer by the decedent with respect to a life insurance policy within three years before death;

— any transfer within three years before death of a retained life estate (IRC section 2036), reversionary interest (IRC section 2037), or power to revoke, etc. (IRC section 2038), if the property subject to the life estate, interest, or power would have been included in the New York adjusted gross estate had the decedent continued to possess the life estate, interest, or power until death.

These transfers are reported on Schedule G regardless of whether a gift tax return was required to be filed for them when they were made. However, the amount includable and the information required to be shown for the transfers are determined:

— For insurance on the life of the decedent, using the instructions for Schedule D (attach federal Form(s) 712).

— For insurance on the life of another, using the instructions for Schedule F (attach federal Form(s) 712).

— For IRC sections 2036, 2037, and 2038 transfers, using paragraphs 3, 4, and 5 below.

3. **Transfers with retained life estate (IRC section 2036) –** These are transfers in which the decedent retained the income from the transferred property or the right to designate the person or persons who will possess or enjoy the transferred property, or the income from the transferred property if the transfer was made:

(a) Between March 4, 1931, and June 6, 1932, inclusive, and the decedent alone retained the right to so designate for life, or for any period that did not in fact end before the decedent's death; or

(b) After June 6, 1932, and the decedent retained the right to so designate, either alone or with any person, for life, for any period that must be ascertained by reference to the decedent's death, or for any period that did not in fact end before the decedent's death.

Retained voting rights — Transfers with a retained life estate also include transfers of stock in a *controlled corporation* after June 22, 1976, if the decedent retained or acquired voting rights in

(continued)

the stock. If the decedent retained direct or indirect voting rights in a controlled corporation, the decedent is considered to have retained enjoyment of the transferred property. A corporation is a *controlled corporation* if the decedent owned (actually or constructively) or had the right (either alone or with any other person) to vote at least 20% of the total combined voting power of all classes of stock (see IRC section 2036(b)). If these voting rights ceased or were relinquished within 3 years before the decedent's death, the corporate interests are included in the gross estate as if the decedent had actually retained the voting rights until death.

4. Transfers taking effect at death (IRC section 2037) — These are transfers made on or after September 8, 1916, that took effect at the decedent's death. A transfer that takes effect at the decedent's death is one under which possession or enjoyment can be obtained only by surviving the decedent. A transfer is not treated as one that takes effect at the decedent's death unless the decedent retained a reversionary interest in the property that immediately before the decedent's death had a value of more than 5% of the value of the transferred property. If the transfer was made before October 8, 1949, the reversionary interest must have arisen by the express terms of the instrument of transfer.

5. **Revocable transfers (IRC section 2038) —** These are transfers in which the enjoyment of the transferred property was subject at decedent's death to any change through the exercise of a power to alter, amend, revoke, or terminate, as follows:

— If the transfer was made before 4:01 p.m., eastern standard time, June 2, 1924, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or with a person who had no substantial adverse interest in the transferred property.

— If the transfer was made on or after 4:01 p.m., eastern standard time, June 2, 1924, and before June 23, 1936, and the power was reserved at the time of the transfer and was exercisable by the decedent alone or with any person (regardless of whether that person had a substantial adverse interest in the transferred property).

— If the transfer was made after June 22, 1936, regardless of whether the power was reserved at the time of the transfer or later created or conferred, regardless of the source from which the power was acquired, regardless of whether the power was exercisable by the decedent alone or with any other person, and regardless of whether that person had a substantial adverse interest in the transferred property.

— If the decedent relinquished within 3 years before death any of the includable powers described above, you should determine the New York adjusted gross estate as if the decedent had actually retained the power until death.

Special valuation rules for certain lifetime transfers

Note: Section 1009 of the Tax Law was amended by Chapter 826, Laws of 1992, to incorporate sections 2701, 2702, 2703, and 2704 of the federal IRC as enacted by the federal Omnibus Budget Reconciliation Act of 1990. These sections provide rules for valuing certain transfers to family members and are generally effective for transfers occurring after August 7, 1992.

IRC section 2701 deals with the transfer of an interest in a corporation or partnership while retaining certain distribution rights, or a liquidation, put, call, or conversion right.

IRC section 2702 deals with the transfer of an interest in a trust while retaining any interest other than a qualified interest. In general, a qualified interest is a right to receive certain distributions from the trust at least annually, or a noncontingent remainder interest if all of the other interests in the trust are distribution rights specified in section 2702.

IRC section 2703 provides rules for the valuation of property transferred to a family member but subject to an option, agreement, or other right to acquire or use the property at less than fair market value. It also applies to transfers subject to restrictions on the right to sell or use the property.

Finally, IRC section 2704 provides that in certain cases the lapse of a voting or liquidation right in a family-owned corporation or partnership will result in a deemed transfer.

These rules have potential consequences for the valuation of property in an estate. If the decedent (or any member of his or her family) was involved in any such transactions, see sections 2701-2704 of the federal IRC for additional details.

Generally, all transfers made within 3 years of death are includable in the federal gross estate for the limited purpose of determining the estate's qualification for any of the following:

1. special use valuation;
2. deferral of estate taxes when the estate consists mainly of an interest in a closely held business (The estate must meet the *35% test* both with and without the inclusion of such gifts in order to be eligible for the deferred payment plan.); **or**
3. determining property that is subject to estate tax liens.

All gifts to a surviving spouse made within 3 years of the donor's death are includable in the New York adjusted gross estate for the purpose of determining the estate's eligibility for the special treatments indicated above, even though no gift tax return was required to be filed because of the unlimited marital deduction.

Transfers made in settlement of marital rights — A deduction from the decedent's taxable estate will be allowed for agreed-upon post-death property transfers to a former spouse made under a **written** agreement in settlement of marital or property rights if divorce occurred within the 3-year period beginning 1 year before the execution of the agreement. If the transferor dies before completing the transfers covered by the **written** agreement, no estate tax will be imposed with respect to the property transferred by the estate provided the transfers are made to the former spouse in settlement of his or her property rights or to provide a reasonable allowance for the support of minor children of the marriage.

Property transfers not covered by a written agreement are not exempt from estate tax unless the transfer occurs in satisfaction of a court order.

For reporting purposes, the asset (property transferred) would be includable in the decedent's gross estate under IRC section 2043(a) and allowed as a deduction under IRC section 2053(e) based on IRC section 2043(b)(2).

In all cases, the value of gifts or transfers includable in the New York adjusted gross estate is the value of the transferred property at the date of death or alternate valuation date, consistent with the estate's election of the valuation date of the estate tax return.

If, after June 30, 1978, a person makes a *qualified disclaimer* with respect to any interest in property, the estate and gift tax provisions apply to the disclaimed interest in the same manner as if there had never been a transfer to the person making the qualified disclaimer. A person who makes a *qualified disclaimer* will not be considered as having made a gift to the person to whom the disclaimed interest passes. A *qualified disclaimer* is an irrevocable and unqualified refusal by a person to accept an interest in property. Such disclaimer must meet all of the explicit conditions enumerated in section 2518 of the IRC as conformed to by New York State. (The provisions of this section relate in the same manner to IRC section 2046, regarding estate tax.) A surviving spouse can, under this rule, disclaim an interest in property that, as a result and without direction on his or her part, passes to a trust in which he or she has an income interest.

For transfers made after 1982, local law (state) will be applicable to determine the identity of the transferee, **but the transfer need not satisfy any requirements of the local disclaimer statute.** The disclaimer will be considered an effective disclaimer for estate tax purposes if all other requirements of IRC section 2518 are met. Renunciation (disclaimer) of property interests is provided for in EPTL 2-1.11.

How to complete Schedule G

All transfers (other than outright transfers not in trust and bona fide sales) made by the decedent at any time during life must be reported on the Schedule regardless of whether or not you believe the transfers are subject to tax. If the decedent made any transfers not described in the instructions, the transfers should not be shown on Schedule G. Instead, attach a settlement describing these transfers. List the date of the transfer, the amount or value, and the type of transfer.

Complete the schedule for each transfer that is included in the gross estate under sections 2035(a), 2036, 2037, and 2038 of the IRC as previously described.

In the *Item number* column, number each transfer consecutively. In the *Description* column, list the name of the transferee, the date of the transfer, and give a complete description of the property. Transfers included in the New York adjusted gross estate should be valued on the date of the decedent's death or, if the alternate valuation is adopted, according to section 2032 of the IRC.

If only part of the property transferred meets the terms of section 2035(a), 2036, 2037, or 2038 of the IRC, then only a corresponding part of the value of the property should be included in the value of the New York adjusted gross estate. If the transferee makes additions or improvements to the property, the increased value of the property at the valuation date should not be

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included on Schedule G. However, if only a part of the value of the property is included, enter the value of the whole under the column headed *Description* and explain what part was included.

Attachments — If a transfer, by trust or otherwise, was made by a written instrument, attach a copy of the instrument to the Schedule. If of public record, the copy should be certified; if not of record, the copy should be verified.

Schedule H — Powers of appointment

On Schedule H include in the New York adjusted gross estate:

1. the value of property for which the decedent possessed a general power of appointment on the date of his or her death; **and**
2. the value of property for which the decedent possessed a general power of appointment that he or she exercised or released before death by disposing of it in such a way that if it were a transfer of property owned by the decedent, the property would be includable in the decedent's New York adjusted gross estate. (See section 2041 of the federal IRC.)

Powers of appointment

A power of appointment includes all powers that are in substance and affect powers of appointment regardless of how they are identified and regardless of local property laws. For example, if a settler transfers property in trust for the life of his wife, with a power in the wife to appropriate or consume the principal of the trust, the wife has a power of appointment.

General power of appointment — A general power of appointment is a power that is exercisable in favor of the decedent, the decedent's estate, the decedent's creditors, or the creditors of the decedent's estate, except:

1. a power to consume, invade, or appropriate property for the benefit of the decedent that is limited by an ascertainable standard relating to health, education, support, or maintenance of the decedent;
2. a power created on or before October 21, 1942, that is exercisable by the decedent only in conjunction with another person;
3. a power created after October 21, 1942, exercisable by the decedent only in conjunction with (a) the creator of the power, or (b) a person who has a substantial interest in the property subject to the power, which is adverse to the exercise of the power in favor of the decedent.

A part of a power created after October 21, 1942, is considered a general power of appointment if the power:

1. may only be exercised by the decedent in conjunction with another person; **and**
2. is also exercisable in favor of the other person (in addition to being exercisable in favor of the decedent, the decedent's creditors, the decedent's estate, or the creditor of the decedent's estate).

The part to include in the New York adjusted gross estate as general power of appointment is figured by dividing the value of the property by the number of persons (including the decedent) in favor of whom the power is exercisable.

Date power was created — Generally, a power of appointment created by will is considered created on the date of the testator's death. However, a power of appointment created by a will executed on or before October 21, 1942, is considered a power created on or before that date if the person executing the will died before July 1, 1949, without having republished the will, by codicil otherwise, after October 21, 1942.

A power of appointment created by an inter vivos instrument is considered created on the date the instrument takes effect. If the holder of a power exercises it by creating a second power, the second power is considered as created at the time of the exercise of the first.

Limited power of appointment created prior to September 1, 1930 — This particular power and the property covered by the power applies to property conveyed before September 1, 1930, that was not subject to New York State estate or death taxes in the estate of the grantor of such power, by virtue of the law then in effect, with the expectation that a deferred tax would be paid by the grantee (donee) of the power upon the exercise of the power. The value of the property passing under such limited power of appointment must be added to the federal gross estate of a deceased resident if the limited power of appointment is exercised by the decedent by will or by a disposition which is of such nature that if it were a transfer of property owned by the decedent such property would be includable in the New York gross estate as a transfer under IRC section 2035, 2036, 2037 or 2038.

If the estate contends that property passing by a power of appointment is not taxable, the reasons must be set forth in the schedule.

Schedule I — Annuities

The New York adjusted gross estate includes the value of an annuity or other payment receivable by any beneficiary following the death of the decedent under any type of contract or agreement entered into after March 31, 1931, including employee benefit plans and Individual Retirement Arrangements (IRAs), including self-employed H.R. 10 (Keogh) plans.

Annuity or other payment refers to one or more payments extending over a period of time. Payments do not have to be made in equal amounts or at regular intervals.

The tests for the includability in the New York adjusted gross estate of payments to a beneficiary revolve about the rights of the primary annuitant and also who paid for the annuity. The gross estate generally includes the value of the contract or other agreement attributable to contributions of both the decedent and the employer, if made by reason of employment. If someone, such as a spouse, contributed a portion or all of the cost of the purchase of an annuity, the gross estate does not include that part of the date of death value of the annuity or other payment receivable by the surviving beneficiary that such contributions (to the cost of the annuity) bear to the total cost.

Contract or agreement includes any arrangement, understanding, or plan that resulted from the decedent's employment.

A combination annuity contract and life insurance policy on the decedent's life (e.g., a *retirement income* policy with death benefits) that matured during the decedent's lifetime so that there was no longer an insurance element (risk) at the time of death is taxed as an annuity.

For an annuity payable for the life of a beneficiary, the date of birth of that beneficiary should be given. If the annuity is payable for a term of years, the duration of the term and the date on which payment began should be given.

Annuities not includable under this schedule may be includable on another.

Repeal of exclusion for annuity and lump-sum payments from qualified plans — Chapter 543, New York Laws of 1985, enacted July 24, 1985, and applicable to decedents dying after that date, conformed Article 26 to the IRC of 1954 as amended by P.L. 98-369 enacted July 18, 1984. Section 525(a) of the Federal Act repealed subsections (c) through (g) of section 2039 of the IRC.

Section 2039(c) of the IRC previously provided an exclusion of up to $100,000 for the amount of the proceeds from an annuity under a *qualified plan* (determined under section 401 of the IRC), payable to a named beneficiary, that was attributable to **employer** contributions to such plan.

Section 525(a) of P.L. 98-369 grandfathered the exclusion for persons who had met certain qualifications that are applicable to New York estate tax. The exclusion may apply if either of the following conditions is met:

1. on December 31, 1985, the decedent was both a participant in the qualifying plan and receiving payments from the plan, and the decedent had irrevocably elected the form of benefit before July 25, 1985; **or**
2. the decedent had separated from service prior to January 1, 1986, and did not change the form of benefit before death.

If either of the above conditions is met, the exclusion may be allowed. The exclusion may not exceed $100,000, unless either of two additional conditions is met:

1. on December 31, 1982, the decedent was both a participant in the qualifying plan and receiving payments from the plan, and the decedent had irrevocably elected the form of the benefit before January 1, 1983; **or**
2. the decedent was separated from service before January 1, 1983, and did not change the form of benefit before death.

The exclusion does not apply to IRAs.

If the decedent met the above qualifications, refer to the federal instructions for federal Form 706, for information on qualifying plans and the method of allocating the exclusion when both the employee and employer contributed to the plan. If information provided by the qualifying plan is insufficient to determine the date of death value of the plan, and the value must be computed on an actuarial basis, contact the Tax Department for guidance.

Schedule J — Funeral and administration expenses

The combined total of the deductions claimed on Schedules J and K may not exceed the value of the property subject to claims unless the deductions represent amounts actually paid at the time the return is filed.

Property *subject to claims* generally relates to those assets subject to probate and may be defined as property includable in the gross estate which, or the avails of which, would, under the applicable law, bear the burden of the payment of such deductions in the final adjustment and settlement of the decedent's estate, except that the value of the property shall be reduced by the

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amount of deductible losses incurred during the settlement of the estate arising from fires, storms, or other casualties or from theft when such losses are not compensated for by insurance or otherwise. (Expenses incurred in administering property **not** subject to claims should be listed on Schedule L.)

On Schedule J, itemize funeral expenses and expenses incurred in administering property subject to claims. List the names and addresses of persons to whom the expenses are payable and describe the nature of the expenses.

Include in this schedule the following types of expenses:

1. Itemized funeral expenses **actually expended** by the executor. Funeral expenses must be reduced by any V.A. payments or social security death benefits that are **paid directly to a funeral director.**
2. Expenses of administering property and settling the estate, if not deducted in the estate's income tax return, should be itemized, giving names and addresses of persons to whom payable and the exact nature of each particular expense. If an amount is estimated, indicate that fact. Administration expenses are limited to such expenses as are **actually and necessarily incurred** in the administration of the estate (i.e., collection of assets, payment of debts, and distribution of property based on the terms of the decedent's will or the laws of intestacy to persons entitled to such property). These expenses include:

   (a) executor's commissions, (b) attorney's fees, and (c) miscellaneous expenses.

Executor's commissions are allowed on the **distributable** assets (i.e., on assets which the executor actually takes possession of and actually distributes), not assets passing outside the will and/or by operation of law or specifically devised real property. Commissions allowed are governed by rates as prescribed by section 2307 of the Surrogate's Court Procedure Act.

> **Note:** Executors' commissions are taxable income to the executors. Therefore, be sure to include them as income on your individual income tax return.

Attorney's fees are those incurred for services that benefit the estate and should be deducted in the amount paid or reasonably expected to be paid, in accordance with section 20.2053-3(c) of the Federal Tax Regulations.

Do not deduct attorney fees incidental to litigation incurred by the beneficiaries. These expenses are charged against the beneficiaries personally and are not administration expenses.

Miscellaneous expenses include court costs, surrogate fees, accountant's fees, appraiser's fees, executor/administrator bonds, and necessary expenses incurred in preserving and distributing estate assets. Expenses for selling property of the estate, including real estate broker's commissions, are **not** deductible unless the sale is necessary in order to pay the decedent's debts, expenses of administration or taxes, to preserve the estate, or effect distribution. (Refer to Federal Tax Regulations, section 20.2053-3(d)(2).)

Schedule K — Debts of decedent, including mortgages and liens

Amounts that may be deducted as claims against the decedent's estate are only those that represent enforceable personal obligations of the decedent at the time of death, and interest that has accrued on the obligations. Only interest accrued to the date of death is deductible, even if the executor elects the alternate valuation.

Debts — Itemize fully all valid debts of the decedent owed at the time of death. If the amount of any debt is disputed or the subject of litigation, deduct only the amount that the estate concedes to be a valid claim. If the claim is contested, that fact should be indicated.

Generally, if the claim against the estate is based on a promise or agreement, the deduction is limited to the extent that the liability was a contract for an adequate and full consideration in money or money's worth. However, any enforceable claim based on a promise or agreement of the decedent to make a contribution or gift (such as a pledge or a subscription) to or for the use of a charitable, public, religious, etc., organization is deductible to the extent that the deduction would be allowed as a bequest under the statute that applies. Real property taxes are not deductible unless they accrued prior to the decedent's death and are an enforceable obligation of the decedent at the time of death. Since real property taxes are usually payable in advance, they would have to be proportioned between decedent and devisee.

Unpaid income taxes are deductible if they are on income properly includable in an income tax return of the decedent for a period before his or her death. (Taxes on income received after death are not deductible.)

Unpaid gift taxes on transfers made by a decedent before his or her death qualify for deduction.

Include in this schedule notes unsecured by mortgage or other lien and give full details, including name of payee, face and unpaid balance, date and terms of note, interest rate, and date to which interest was paid before death. Include the exact nature of the claim as well as the name of the creditor.

Claims for services rendered to the decedent over a period of time should be included, giving complete facts.

Certain claims of a former spouse against the estate based on the relinquishment of marital rights are deductible on Schedule K. For these claims to be deductible, **all** of the following conditions must be met:

1. the decedent and the decedent's spouse must have entered into a written agreement relative to their marital and property rights;
2. the decedent and the spouse must have been divorced before the decedent's death and the divorce must have occurred within the three-year period beginning on the date one year before the agreement was entered into (it is not required that the agreement be approved by the divorce decree); **and**
3. the property or interest transferred under the agreement must be transferred either to the decedent's spouse in settlement of the spouse's marital rights or to provide a reasonable allowance for the support of the children of the marriage during their minority.

You may not deduct a claim made against the estate by a remainderman relating to property includable in the estate under section 2044 of the IRC as adopted by New York.

If the amount of any claim represents the unpaid balance due on a contract for the purchase of any property included in the gross estate, indicate the schedule and item number where the property is reported. If the claim represents a joint and several liability, the facts must be fully reported and the financial responsibility of the co-obligor explained.

Mortgages and liens — Itemize obligations secured by mortgages or other liens upon property that is included in the gross estate at its full value, or at a value that was undiminished by the amount of the mortgage or lien. If the mortgage is on jointly held property, only that part of the mortgage for which the decedent was liable and for which the estate must pay is deductible. Include in the *Description* column the particular schedule and item number where such property subject to the mortgage or lien is reported in the gross estate. Fully and completely provide all pertinent information relating to the mortgage, note or other agreement under which the indebtedness is established. A mortgage may not be deducted for more than the value of the property.

Notes and other obligations secured by the deposit of collateral, such as stocks, bonds, etc., should be listed in this schedule.

Schedule L — Net losses during administration and expenses incurred in administering property not subject to claims

Net losses during administration — A deduction from the gross estate is allowed for casualty losses or losses from theft incurred during the settlement of the estate to the extent they are not compensated by insurance or otherwise. Losses are not deductible if they occur after distribution of the asset to the beneficiary.

The term *casualty losses* means losses resulting from fires, storms, shipwreck, and war.

Describe in detail the loss sustained and the cause. If you received insurance or other compensation for the loss, state the amount collected. Identify the property for which you are claiming the loss by indicating the particular schedule and item number where the property is included in the gross estate.

If you elect alternate valuation, do not deduct the amount by which you reduced the value of an item to include in the gross estate.

Do not deduct losses claimed as a deduction on your income tax return or depreciation in the value of securities or other property.

Expenses incurred in administering property not subject to claims — A deduction is allowed for expenses incurred in administering property not subject to claims (generally, nonprobate assets). Such expenses are deductible where they would be allowed as deductions if the property being administered were subject to claims, and they are paid within the period of limitations for assessment.

The expenses deductible under this schedule are usually expenses incurred in connection with the administration of a trust established during the decedent's lifetime and expenses incurred in the collection of other assets or the transfer or clearance of title to other property included in the gross estate for tax purposes but not included in

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the decedent's probate estate. (For examples of deductible expenses, see Federal Tax Regulation section 20.2053-8.)

List the names and addresses of the persons to whom each expense was payable and the nature of the expense. Identify the property for which the expense was incurred by indicating the schedule and item number where the property is included in the New York adjusted gross estate.

Schedule M — Bequests, etc., to surviving spouse
(marital deduction)

The marital deduction is a deduction from the New York adjusted gross estate of the value of certain property included in the New York adjusted gross estate that passes or has passed from the decedent to the surviving spouse. If property passes to the surviving spouse as the result of a qualified disclaimer, attach a copy of the written disclaimer meeting the requirements of section 2518 of the IRC, as adopted by New York.

A marital deduction is allowable only for (1) property passing into absolute ownership of the surviving spouse; or (2) a life estate with a power of appointment in the surviving spouse satisfying the requirements of section 2056 of the IRC and section 955 of the Tax Law; or (3) life insurance, endowment, or annuity payments held by the insurer for the benefit of the surviving spouse, under a contract which satisfied the requirements of section 2056 and section 955.

The fact that the decedent's will contains a *common disaster* clause or a provision making the surviving spouse's interest conditional upon the spouse surviving the decedent by a period of not more than 6 months will not prevent allowance of a marital deduction if the spouse does not in fact die as the result of a common disaster or within the time specified.

Terminable interest — Certain interests in property passing from a decedent to a surviving spouse are referred to as *terminable interests.* These are interests that will terminate or fail after the passage of time or on the occurrence or nonoccurrence of some contingency.

Exceptions to the rule on a nondeductible terminable interest apply to estates of decedents dying after 1982. These exceptions are for *qualified terminable interest property* and *qualified charitable remainder trusts* (IRC section 2056(b)(7) and (8)).

Qualified terminable interest property (QTIP) is property that passes from the decedent and in which the surviving spouse has a **qualifying income interest for life.** A surviving spouse has a **qualifying income interest for life** if (1) the surviving spouse is entitled to all of the income from the property, (2) the income is payable annually or at more frequent intervals, and (3) during the surviving spouse's lifetime, no person has the power to appoint any part of the property to any person other than the surviving spouse. If the interest meets these requirements, the executor may **elect** to claim a marital deduction for the property interest.

> **Note:** Section 2056(b)(7) as amended by the federal Technical and Miscellaneous Revenue Act of 1988 creates an automatic QTIP election for certain joint and survivor annuities. The executor may elect out of QTIP treatment by checking the box on Schedule M. Include on Schedule M only those annuities that are being treated as QTIP property.

The effect of the marital deduction is that the **entire** property subject to the interest is treated as passing only to the surviving spouse; no one other than the surviving spouse is treated as having received any part of the property. No charitable deduction can be taken for the value of a remainder interest in the property so transferred even if such remainder interest passes to a qualified charitable organization.

If you are required to file a federal estate tax return, you are required to make the same election for New York State as is made for federal purposes. The amount of the QTIP property interest elected for federal purposes is the amount allowable for New York purposes. You may not increase or decrease the amount elected for New York. If the estate is not required to file a federal estate tax return, the election to claim the marital deduction for QTIP property may be made on a late filed or amended return, but once elected is irrevocable.

If the surviving spouse does not dispose of the qualifying income interest during life, his or her New York adjusted gross estate will include the value of the property (refer to IRC section 2044).

If the surviving spouse transfers all or part of the qualifying income interest during life, the transfer is subject to New York gift tax (refer to IRC section 2519).

Qualified charitable remainder trusts are either charitable remainder annuity trusts or charitable remainder unitrusts. If the surviving spouse is the only noncharitable beneficiary of a *qualified charitable remainder trust,* the marital deduction is allowed for any interest in the trust that passes to the surviving spouse.

If this special treatment is elected, the entire property will be considered as passing to the surviving spouse. Therefore, the entire value of the property will be eligible for the marital deduction.

Upon the spouse's death, if the income interest was not disposed of, the entire value of the property will be included in the spouse's New York adjusted gross estate (see IRC section 2044), but because the spouse's life interest terminates at death, any property passing outright to charity may qualify for a charitable deduction.

How to complete Schedule M

Schedule M is divided into 3 parts. If you do not make a QTIP election, complete only Parts I and III.

If you make a QTIP election and have additional marital property, complete all 3 parts. You must divide the property interests between those subject to the QTIP election (entered on Part II) and those not subject to the QTIP election (entered on Part I). **Do not enter the same property interest on both Parts I and II.**

List separately on Schedule M each property interest passing to the surviving spouse for which a marital deduction is claimed.

Enter the value of each property interest before taking into account any estate tax or other expenses that may be payable out of the property transferred to the surviving spouse. The marital deduction must be reduced by the amount of any estate tax or other expenses paid out of the interests involved. The payment of estate taxes under such circumstances creates a situation know as an *interrelated computation* of estate taxes. Specify the schedule and item number under which such property is listed. If the residue, or part of the residue, passes to the surviving spouse, submit a computation showing how the value of the residue was arrived at. If the interest passing to the surviving spouse is subject to any encumbrance (for example, a mortgage), only the **net** value over and above such encumbrance is deductible. Enter the taxes and expenses payable out of the marital share in the area provided.

If the interest of the surviving spouse in any property listed in this schedule is affected by (1) a proceeding to contest the will or for judicial construction of the will, instituted or intended by any party, or (2) exercise or nonexercise of the surviving spouse's right to elect other benefits as against the will, or (3) a claim to any of said property asserted by any party other than the surviving spouse, the facts must be fully stated on this schedule.

No deduction is allowable for an interest disclaimed by the surviving spouse. A deduction may be allowed, however, for an interest passing to the surviving spouse as the result of a disclaimer by any other person.

Unlimited marital deduction — The monetary limitation on the estate tax marital deduction is eliminated for estates of decedents dying after September 30, 1983. For these estates, the marital deduction is unlimited (i.e., the amount of the marital deduction is the value of the property passing to the surviving spouse, if the property qualifies for the deduction). Therefore, no reduction (cut-down) to the marital deduction should be made for gifts the decedent made to the spouse.

The unlimited marital deduction does not apply to a maximum marital deduction formula clause contained in a will executed or trust created before September 12, 1981, unless the formula clause was amended after September 12, 1981, and before the decedent's death to refer specifically to the unlimited marital deduction. The purpose of this transitional rule is to preserve the interest of the testator who may not have intended to pass to the surviving spouse more than the maximum deduction allowable at the time the will or trust was executed or created.

Note: The orphan's deduction (formerly Schedule N) is not allowed for the estate of a decedent dying after 1982.

Schedule N — Charitable, public, and similar gifts and bequests

A deduction from the New York adjusted gross estate is allowed for the value of property included in the New York adjusted gross estate that a decedent transferred by will, or in some instances during life, to a qualified charitable or public organization. (Pledges made by the decedent to charitable institutions or organizations during his or her lifetime are deductible as a **debt** of the decedent on *Schedule K* of Form ET-90.3.)

The deduction is limited to the amount actually available for charitable uses. Therefore, if estate taxes are payable out of the property transferred to a qualified charity, the value of the transferred

(continued)

property must be reduced by the amount used to satisfy the taxes. The payment of estate taxes under such circumstances creates a situation referred to as an *interrelated computation* of estate tax.

If claim is made for deduction of the value of the residue of the estate, or a portion of the residue, passing to charity under the decedent's will, submit a copy of the computation determining the value.

The paragraph of the decedent's will in which such bequests are directed to be made should be given in column C on *Schedule N.*

If, in the will or trust, a remainder clause contains both charitable and noncharitable interests, a charitable deduction will be allowed for the portion passing to the qualified charity. This remainder interest must be in the form of a qualified charitable remainder annuity trust, unitrust, or pooled-income fund. Refer to section 2055 of the IRC, as conformed to by New York State, for specific governing rules.

List the dates of birth and sex of all life tenants or annuitants, the duration of whose lives may affect the value of charitable interests.

A deduction will be allowed for amounts that are transferred to a qualified charitable organization as a result of a *qualified disclaimer* that meets the conditions of IRC section 2518.

For estates of decedents dying after 1982, a *work of art* and the copyright on the work of art will be treated as separate properties if there is a *qualified contribution* to a *qualified organization* (refer to IRC section 2055(e)(4)).

1995 estate tax change

Chapter 2, Laws of 1995, enacted June 7, 1995, brought about the following change:

- **Estate tax deduction for principal residence**

  The estate of an individual whose date of death is on or after June 8, 1995, is eligible to deduct the net value of the individual's principal residence, up to $250,000, in determining the New York State estate tax. The estate of an individual is allowed the deduction, regardless of the individual's domicile at the time of death or the location of the principal residence (in or outside New York State).

1994 estate and gift tax changes

Chapter 170, Laws of 1994, enacted June 9, 1994, makes changes to New York State Estate Tax Law (Article 26) and Gift Tax Law (Article 26A):

- **Increase in the maximum unified credit**

  Section 952(b) of the Estate Tax Law was amended to increase the maximum unified credit from $2,750 to $2,950. This increase applies to the estate of a decedent whose date of death is on or after June 10, 1994. A corresponding amendment was made to section 1002(a)(3)(A) of the Gift Tax Law, increasing the maximum credit to $2,950 for gifts made after December 31, 1993, provided the donor was alive on June 9, 1994.

- **Increase in the estate tax filing threshold**

  Section 971(a) of the Estate Tax Law was amended to increase the threshold at which estates must file returns, from $108,333 to $115,000, for the estate of a decedent whose date of death is on or after June 10, 1994.

- **Estate tax credit for certain closely held businesses**

  Section 958-b was added to the Estate Tax Law to provide a credit against the New York State estate tax for certain closely held businesses. This credit is equal to 5% of the first $15 million of qualified property owned by the decedent that has vested in one or more qualified heirs. The credit applies to the estate of a decedent whose date of death is on or after June 10, 1994.

Department of Taxation and Finance

Change in Mailing Address and Assistance Information for Certain Estate Tax Forms

TP-38
(10/15)

On July 1, 2008, we changed processing centers. Any estate tax form that instructs you to mail the form to: NYS Estate Tax, Processing Center, PO Box 5556, New York NY 10087-5556, must be mailed to this address instead (see *Private delivery services* below):

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

Any estate tax form that instructs you to mail the form to: TTTB-Estate Tax Audit-855, TTTB-Estate Tax-855, Transaction and Transfer Tax Bureau-Estate Tax, TTTB-Estate Tax Audit, or TTTB-Estate Tax, must be mailed to one of these addresses instead:

If you are sending by U.S. Mail:

NYS TAX DEPARTMENT
TDAB/ESTATE TAX
W A HARRIMAN CAMPUS
ALBANY NY 12227-2994

If you are sending by a private delivery service:

NYS TAX DEPARTMENT
TDAB/ESTATE TAX
90 COHOES AVENUE
GREEN ISLAND NY 12183-1515

Note: Forms mailed to the old address may be delayed in processing.

Private delivery services

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

Need help?

Visit our Web site at ***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) Hotline (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.

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, call the information center.