TP-405 (6/87)

State of New York
Department of Taxation and Finance — Gift Tax

Instructions for Completing Resident and Non-Resident New York State Gift Tax Returns Forms TP-400 and TP-401 for gifts made after December 31, 1982.

References are to Article 26-A of the New York Tax Law as amended on July 24, 1985 and the Internal Revenue Code of 1954, with all amendments enacted on or before July 18, 1984.

General Description of Tax

The New York gift tax is imposed on all transfers of property by gift made after January 5, 1972 by any **individual**, resident or nonresident, during his lifetime, for which adequate and full consideration in money or money's worth was not received. Gifts include transfers made without adequate and full consideration, sales and exchanges made for less than an adequate and full consideration in money or money's worth not made in the ordinary course of business to the extent the value of the sale or exchange exceeds the value of the consideration received, forgiveness of a debt, assignment of the benefits of an insurance policy, the excercise or release of a power of appointment, and certain survivorship annuities. Consideration not reducible to a money value (e.g., love and affection) is to be wholly disregarded.

The gift tax applies to any gift of real property or personal property, whether tangible or intangible.

Exclusions:

The gift tax does not apply to —

1. a transfer made within one calendar year that is not more than the annual exclusion (See section 1 of these instructions).
2. a **"qualified transfer"** for educational or medical expenses
   a. "Qualified transfer" means any amount paid on behalf of an individual —
      (1) as **tuition** for the education or training of the individual, paid **directly to** an educational institution, or
      (2) for medical care for an individual, paid **directly to** a person or institution.
   b. **Before 1983** — This exclusion from taxable gifts does not apply to transfers made before 1983.
3. a transfer to a spouse that qualifies for the unlimited marital deduction
   a. For New York State purposes, the unlimited marital deduction applies to gifts to spouses made after September 30, 1983.
4. a transfer to a "qualified charitable organization"

The gift tax is cumulative in nature, i.e., the value of gifts made during the preceding calendar period determines the tax rate brackets applicable to the gifts most recently made.

Note: The term "preceding calendar period" means the first calendar quarter of the calendar year 1972 and all subsequent calendar quarters before the calendar year 1983, and all calendar years after 1982 and before the calendar year for which the tax is being computed.

The gift tax is applicable only to transfers made by **individuals**, not to transfers made by trusts, estates, partnerships, or corporations. However, where gifts are made by trusts, estates, partnerships, or corporations, the individual beneficiaries, partners, or stockholders are considered donors and may incur liability under the gift tax law. Where the donor dies before filing his return, the executor of his Will or the administrator of his estate must file the return.
For gifts and transfers made after 1984 — If the donor of New York gifts died during the calendar year in which the gifts were made, the required return must be filed and payment of the tax made within nine months after the date of such person's death.

The executor of the decedent's estate may **apply** for an extension of time to file under the provisions of Section 1007(b), which incorporates the provisions of Section 657.

The information in the following sections gives the provisions of the New York gift tax law applicable to gifts made after 1982. For information regarding gifts made prior to 1983, see provisions identified by the phrase **Before 1983.**

1. Requirement for Filing of Return

Any **individual** who, within any calendar year, makes a New York gift after 1982 is required to file a gift tax return on or before the 15th day of April following the close of the calendar year unless an extension of time for filing the return has been granted (see below and also Section 15 of these instructions for exceptions).

If an individual makes a New York gift to a spouse after September 30, 1983 **for which a marital deduction is allowed** (see Section 15 of these instructions), no return is required to be filed unless such deduction is allowed for qualified terminable interest property for which an election is made under Section 1004(b) of the Tax Law.

Before 1983 — For gifts made before 1983, returns had to be filed on a quarterly basis. Special filing requirements applied if the total amount of taxable gifts during a quarter were $25,000 or less. For more information, see the October, 1980 printing of Form TP-405.

Donors are required to file a gift tax return reporting taxable gifts of present interests and taxable gifts of future interests. Residents are required to file on Form TP-400. The term "resident" means a person who at the time of making the gift, was domiciled in New York State.

Nonresidents are required to file on Form TP-401. The term "nonresident" means a person who at the time of making the gift was not domiciled in New York State.

A married couple may not file a joint return.

After 1982, a return must be filed for any qualified charitable New York gift for the calendar year in which the gift was made and must be filed at the same time as returns for noncharitable taxable gifts. A "qualified charitable New York gift" is a New York gift for which a deduction is allowable under IRC Section 2522 for the amount of the gift.

Before 1983 - See Form TP-405 (10/80) for instructions regarding filing for charitable transfers.

Extension of time to file — An extension of time to file may be requested **before the due date** of the return, or before the end of any prior extension, explaining why the return cannot be filed on time. No extension for filing a return shall exceed six months. (See Section 5 of these instructions regarding penalty and interest charges).

An extension of time granted a taxpayer for filing a New York State personal income tax return for any year which is a calendar year shall be deemed to be an extension of time granted the taxpayer for filing of the annual gift tax return for such calendar year. **After 1984** — The above-mentioned automatic extension of time allowed to file will not apply where a donor dies during the calendar year.

Annual Exclusion — The donor is allowed an annual exclusion of the first $10,000 of gifts of a present interest made to any one donee during a calendar year. The allowable exclusion is subtracted from the fair market value of the gifted property to compute the amount of the taxable gift (also see Section 17 of these instructions). No part of a gift of a future interest can be excluded under the annual exclusion (see exception noted below for transfer for the benefit of a minor).

A gift is considered a "present interest" if the donee has all **immediate rights** to the use, possession, and enjoyment of the property and income from the property. "Future interests" include reversions, remainders, and other similar interests or estates, whether vested or contingent, that are to commence in use, possession or enjoyment at some future date or time. A gift of income that is to be accumulated and paid over at a later date is a gift of a future interest.

The annual exclusion, in situations where spouses consent to "split" their gifts to third parties (donees) in accordance with the provisions of IRC Section 2513 (see Section 10 of these instructions) allows a gift of $20,000 to any one person during any calendar year without gift tax liability if the gift is a gift of a present interest. In such instances, if the total gifts of husband and wife to one donee exceed $20,000, each spouse must file a return and report the gift to the same donee regardless of the amount.

A donor, in claiming the annual exclusion, has the burden of proving the value of the amount of the gift that is claimed to be a present interest.

A gift to a corporation is a gift of a future interest to all its stockholders and, therefore, does not qualify for the annual exclusion.

Before 1983 - For gifts made before 1983, the annual exclusion was $3,000 for gifts of a present interest to any one person during a calendar quarter. If gifts were made to a person during different calendar quarters during the year, only the first $3,000 qualified for the exclusion.

Transitional rule — The increase in the annual exclusion from $3,000 to $10,000 does not apply to any transfer made after July 19, 1984 if such transfer is subject to a power of appointment granted under a trust created before September 12, 1981 when the following apply:

1) The power may be exercised during any period after 1982.
2) The power is defined in terms of, or by reference to, the amount of the annual exclusion, and
3) The trust instrument has not been amended on or after September 12, 1981.

Transfers for the benefit of a minor — A transfer for the benefit of a person who has not reached age 18 (for New York State purposes) on the date of the gift is considered a gift of a present interest even though the minor is not given the unrestricted right to the immediate use, possession, or enjoyment of the property or of the income. In most instances, gifts to minors are made through trusts and will qualify for the annual exclusion if the following conditions are met:

a. If both the property and income therefrom may be expended by or for the benefit of the donee before his attaining age 18, and
b. To the extent not so expended, will (1) pass to the donee at age 18 and, (2) in the event the donee dies before age 18, the property and income will pass to the donee's estate or to persons appointed by him under the exercise of a general power of appointment. (See IRC Section 2503(c).)

2. Time for Filing of Return

The return must be filed within the time limitation stated previously in Section 1 of these instructions.

If the taxable amount of gifts reported on federal Form 709 has been changed or corrected by the Internal Revenue Service, the taxpayer must report such change to the Commissioner of Taxation and Finance within ninety days after the final determination of such change and either concede the accuracy of the determination or state wherein it is erroneous. Any taxpayer filing an amended federal gift tax return shall also file within ninety days thereafter an amended New York State gift tax return and shall furnish such information as the Commissioner of Taxation and Finance may require.

3. Place for Filing of Return

The return shall be mailed to:

New York State Department of Taxation and Finance
Processing Division - Gift Tax Section
W. A. Harriman Campus
Albany, NY 12227

4. Payment of Tax

The tax is the primary and personal liability of the donor. Payment is due with the return (or request for extension of time to file) and is due on or before the due date of the return without regard to any extension of time to file. Check or money order in payment of the tax shall be made payable to "Commissioner of Taxation and Finance". Insert the donor's social security number and indicate on the check or money order that payment is for gift tax. Remittance should be sent to the address given in Section 3 of these instructions.

5. Penalties and Interest

Late filing penalty — If you file late, you will be charged a penalty of 5% of the tax due for each month, or part of a month, the return is late (maximum 25%) unless you extend the time to file, or you attach to your return an explanation showing reasonable cause for delay. If your return is more than 60 days late, the penalty will not be less than $100 or 100% of the balance of tax due on your return, whichever is less. For information on filing an extension of time to file your return, see *Requirements for Filing of Return*, on page 1 of these instructions.

Late payment penalty — If you do not pay your tax when due, you will be charged a penalty of ½ of 1% of the unpaid amount for each month or part of a month it is not paid. This penalty is in addition to the interest charged for late payments.

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

Substantial Understatement of Liability — If you understate your tax by more than 10% of the tax required to be shown on your return or $2,000 (whichever is greater), 10% of any underpayment resulting from the substantial understatement may be added to your tax.

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.

Fraudulent returns — Penalties are imposed on any person who willfully fails to file a return, who files a fraudulent return, or who attempts to evade the tax in any manner. In addition, 50% of the interest due on any underpayment resulting from a fraudulent act will be added to your tax.

Interest — If the tax is not paid by the due date for filing the return, even if an extension of time for filing is granted, simple interest will be charged on any balance due at the rate or rates in effect from the original due date of the return (determined without regard to any extension of time to file) up to and including August 31, 1983. Effective September 1, 1983, interest will be computed and **compounded daily** to the date of payment on any balance which remains unpaid.

6. Supplemental Documents

A copy of federal Form 709 and supporting schedules, statements (including a copy of federal Form 712, with Part II completed) and documents must be attached. If the gift was made by means of a trust, a certified or verified copy of the trust instrument must be attached.

For stock of a close corporation or inactive stock, attach balance sheets, particularly the one nearest the date of the gift, and statements of the net earnings or operating results and dividends paid for each of the five preceeding years.

Attach a copy of any appraisal used to determine the value of real estate; otherwise, full information to explain how the value was determined must be included.

Any other documents required for an adequate explanation should be attached to the return.

7. Completion of Return

New York Forms TP-400 and TP-401 are two-page forms to which must be attached a copy of federal Form 709. If there is not enough space for entries under any of the schedules, use additional sheets of the same size and attach to the return. If a particular schedule does not apply, the word "none" should be written in that schedule. All questions should be answered.

8. Description and Valuation of Property

The description of the gifts must be complete enough to readily identify the property. Thus, for each parcel of real estate, you must give a legal description, the street number and name (if available), the area of the property, and a short statement of the character of any improvements.

Description of bonds must include the number transferred, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, and the exchange upon which the bond is listed, or the principal business office of the corporation if the bond is unlisted. Description of stocks must include number of shares, whether common or preferred and if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and if the stock is unlisted, the location of the principal business office and state in which incorporated and the date of incorporation. For a listed security, state principal exchange upon which it is sold. In describing an interest in property based on the duration of a person's life, the date of birth and sex of that person must be stated. Description of life insurance policies must give the name of the insurer and the number of the policy. If a description is furnished in this manner on federal Form 709, the item number as shown on such form can be used in lieu of description.

The fair market value of the property as of the date of the gift is the value of the gift. If a gift is not made in money (e.g., gifts resulting from the sale or exchange of property made for less than full and adequate consideration in money or moneys worth), both the fair market value of the property (sold or exchanged) and the fair market value of the consideration received by the donor should be given. In such instances, the difference between the fair market value of the property and the fair market value of the consideration received is the value of the gift.

For returns filed after July 24, 1985:

A. Additions to Tax for Valuation Understatement —

Where a valuation understatement results in the underpayment of tax imposed there is added to the tax an amount equal to the applicable percentage of the underpayment.

A valuation understatement occurs if the value of any transferred property reported on a gift tax return is 66⅔ percent or less of the amount determined to be the correct valuation.

No additional amount is added:

1. If the claimed valuation is more than 66⅔ percent of the correct value of the asset, or
2. If the resulting underpayment is less than $1,000 in New York State gift tax in any taxable period.

The amount added ranges from 10 to 30 percent of the amount of the underpayment depending on the amount of valuation understatment as follows:

1. If the claimed value is 50% or more, but not more than 66⅔% 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, but less than 50% of the correct value —	the addition to tax is 20%

3. If the value claimed is less than 40% of the correct value — the addition to tax is 30%

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

B. Below market loans —

After June 6, 1984: The following provisions apply to term loans made after June 6, 1984 and demand loans outstanding after such date.

Exception: These provisions do not apply to any demand loan outstanding on June 6, 1984 that was repaid before September 16, 1984. Loans that are renegotiated, extended, or revised after June 6, 1984 are treated as if made after that date.

1. A **below-market loan** is
   a. a demand loan on which the interest is payable at a rate less than the applicable federal rate, or
   b. a term loan in which the amount loaned (amount received by the borrower) exceeds the present value of all payments due under the loan.
2. A **demand loan** means any loan which is payable in full at any time on the demand of the lender.
3. A **term loan** means any loan which is not a demand loan.
4. A **gift loan** means any below-market loan where the foregone interest is in the nature of a gift. (Loans by both related and unrelated persons may qualify as gift loans.)
5. **Foregone interest** means, for any period during which the loan is outstanding, the excess of
   a. the amount of interest that would have been payable for the period if interest accrued at the applicable federal rate* and were payable annually on the last day of the calendar year, over
   b. any interest payable on the loan properly allocable to that period.

   (* refer to IRC Section 1274(d))

In general, uncharged interest on interest-free loans and low-interest loans is treated as a gift from the lender to the borrower when the total of all loans from that lender to that borrower on any day exceeds $10,000.

1. Any foregone interest attributable to periods during any calendar year is treated as transferred on the last day of such calendar year.
   a. Uncharged interest is **income** to the lender and deductible to the borrower, except if total loans to that borrower are less than $100,000 and the net investment income is under $1,000.

NOTE: If you have made a below-market loan that is a gift loan, consult IRC Section 7872 for full information.

9. New York Gifts

A. For an individual who is a resident of New York State, the New York gifts are the total amount of gifts made in any calendar year within the meaning of Section 2503 of the Internal Revenue Code (whether or not a federal gift tax return is required to be filed) modified as follows:

1. reduced by the value of transfers of real property or tangible personal property having an actual situs **outside** New York State;
2. reduced by the value of the remainder interest in qualified terminable interest property included in the federal gross gifts under the provisions of IRC Section 2519;
3. increased by the value of the remainder interest in qualified terminable interest property includible in the New York gross gifts under Section 1003(a)(3) of the New York Tax Law.

B. For an individual who is **not** a resident of New York State, the New York gifts are that portion of the total amount of gifts made in any calendar year within the meaning of Section 2503 of the Internal Revenue Code (whether or not a federal gift tax return is required to be filed), that is attributable to gifts of real property or tangible personal property having an actual situs in New York State and gifts of money, securities, credits, and other intangible personal property employed in carrying on any business in New York State by the donor, modified as follows:

1. reduced by the value of the remainder interest in qualified terminable interest property (including in the federal gross gifts under the provisions of Internal Revenue Code Section 2519) included in the above mentioned gifts;
2. increased by the value of the remainder interest in qualified terminable interest property (includible in the New York gross gifts under Section 1003(a)(3) of the New York Tax Law) included in the above mentioned gifts. (See Section 1003(a)(2) of the New York Tax Law).

10. Gifts by Husband or Wife to Third Parties ("Split Gifts")

Gifts made by a husband or a wife to a third party may be considered as made one-half by each if both spouses consent. This is known as **gift splitting**. Because of this gift splitting provision, the annual exclusion and the unified credit allowable to each spouse applies to the gift. Therefore, a husband and wife may transfer, as a gift, up to $20,000 per year without exceeding the annual exclusion.

If both spouses consent to split a gift for federal purposes, the gift must also be split for New York State purposes. The consent must also be indicated in the space provided on the face of the New York gift tax return.

To "split the gift," the spouses (1) must be legally married to each other at the time of the gift, (2) must not become married to a different person before the close of the calendar year, (3) the spouse making the gift must not give to the other spouse a general power of appointment over the property transferred, and (4) consent must also be signified on the federal return.

The consent may be signified by both spouses at any time after the close of the calendar year with the following exception:

1. The consent may not be signified after April 15 of the year following that in which the gifts were made unless no return has been filed for such year before April 15 by either spouse (in such case, the consent must be made on the first return for the year filed by either spouse).
2. The consent may not be signified after a notice of deficiency for the tax for the year has been sent to either spouse.

Note: The executor/administrator of the estate of a deceased spouse or a guardian of a legally incompetent spouse may signify the consent.

The consent is effective for the entire year; therefore **all** gifts made by either spouse to third parties during the calendar year (while married) must be treated in the same way. The entire tax imposed on the transfer becomes the joint and several liability of each spouse.

11. Joint Ownership of Property

A. Joint tenancy with right of survivorship — Where property is owned individually or is purchased by an individual totally with his/her own funds and title is either changed to or taken as joint tenants with right of survivorship between such individual (donor) and another person (donee), a gift has been made to the donee in the amount of one-half the value of the property. (This rule does not apply to the establishment of a joint bank account.)

B. Tenancies by the entirety (between husband and wife) — A tenancy by the entirety is essentially a joint interest in real or personal property except that it is only available to a husband and wife.

The provisions relating to creation of a tenancy by the entirety apply only to gifts and transfers made before October 1, 1983. The nontaxability of transfers made after September 30, 1983, between spouses renders the former provisions of law irrelevant (IRC Sections 2515 and 2515A have been repealed).

Before October 1, 1983 — For rules governing creation of joint tenancies, see the October, 1980, printing of Form TP-405.

12. Certain Property Settlements (transfer incident to divorce)

If divorce occurs within two years after the execution of a separation agreement, transfer of property interests made under terms of a written agreement between spouses in settlement of their marital or property rights or to provide a reasonable allowance for the support of minor children of the marriage are considered to be made for adequate and full consideration rather than a gift and are therefore exempt from gift tax.

If a husband and wife have a written agreement relative to their marital and property rights and a transfer is made pursuant to that agreement (1) to either spouse in settlement of his or her marital or property rights or (2) to provide a reasonable allowance for the support of minor issue of the marriage, and final decree of divorce is not granted by the due date for filing a gift tax return for the calendar year in which the agreement becomes effective, the transferor must show the transfer on a gift tax return for that calendar year. Attach a copy of the settlement agreement to the return. Send a certified copy of the final divorce decree to the Commissioner of Taxation and Finance not later than 60 days after

the divorce is granted. Until the Commissioner of Taxation and Finance receives evidence that the final decree of divorce has been granted (but no more than 2 years from the effective date of the agreement) the transfer will tentatively be treated as made for an adequate consideration in money or money's worth.

For gifts and transfers made after July 18, 1984 — Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the three-year period beginning on the date one year before the agreement is entered into, any transfers of property made pursuant to the agreement (1) to either spouse in settlement of his or her marital or property rights, or (2) to provide a reasonable allowance for the support of minor issue of the marriage are considered to be made for full and adequate consideration in money or money's worth.

13. Transfer of Certain Life Estates ("qualifying income interest")

A qualifying terminable interest received from a spouse for which a marital deduction was elected on the transferor-spouse's gift tax return or estate tax return is subject to gift tax if the transferee-spouse during his/her lifetime (either by gift, sale or otherwise) disposes of all or any part of the qualifying income interest. The amount of the gift is the **entire** value of the qualifying property involved less any amount received by the transferee-spouse upon disposition of the qualifying income interest (refer to IRC Section 2519).

The annual exclusion is allowed to the extent of the transfer of the life income interest. The portion of the value attributable to the remainder interest is a gift of a future interest for which no annual exclusion is allowed. The transferee-spouse is entitled to recover from the recipient(s) of the property the amount of the gift tax (see Estates, Powers and Trusts Law 2-1.12).

Before 1983 — The rules governing "terminable interest property" do not apply to gifts made prior to 1983.

14. Powers of Appointment and Disclaimers

A. **Powers of Appointment** — A power of appointment is a power to determine who will own or enjoy the property subject to the power. It must be created by someone other than the holder of the power. A general power of appointment is one in which the holder of the power can appoint the property subject to the power.

   If the holder of a power of appointment exercises or releases the power during lifetime, a taxable gift occurs (see IRC Section 2514 for further information).

B. **Qualified Disclaimers** — If a person makes a "qualified disclaimer" (as defined in IRC Section 2518) with respect to any interest in property, the property will be treated as if it had never been transferred to that person. Accordingly, no gift is considered to have been made.

15. Gifts to Spouses — (Marital Deduction)

Due to the elimination of the monetary ceiling on the marital deduction for gifts made to a spouse after September 30, 1983, no return is required for any gifts of property passing into absolute ownership of a spouse. If the transfer is a gift of a terminable interest, a return must be filed. "Terminable interests" are interests in property that will terminate or fail after the passage of time and are not usually allowed as a marital deduction. However, a terminable interest may qualify for the marital deduction if it is a life estate meeting **all** of the following requirements:

1. The donee-spouse must be entitled for life to all of the income from the entire interest.
2. The donee-spouse must receive the income annually or at more frequent intervals.
3. The donee-spouse must have the power, while living or by Will, to appoint the entire interest (which includes a power to invade the corpus).
4. The donee-spouse must be able to exercise the power alone and (whether exercisable during life or by Will) in all events.
5. The donee-spouse must have the only power to appoint any part of the interest in the property to another person.

If all of these requirements are not met, a taxable gift occurs and must be reported. It should be noted, however, that **all** terminable interests must be reported, whether or not they are taxable.

A. New exceptions to the rule in a nondeductible terminable interest applies to gifts made after September 30, 1983. These exceptions are for **qualified terminable interest property.** "Qualified terminable interest property;" is property that is transferred by the donor-spouse and in which the donee-spouse has a "qualifying income interest for life" (refer to IRC Section 2523(f)). The donee-spouse has a "qualifying income interest for life" if:

   1. The donee-spouse is entitled for life to all the income from the property, and
   2. the income is payable annually or at more frequent intervals, and
   3. no person has the power to appoint any part of the property to any person other than the donee-spouse.

If the interest meets all of these requirements, the donor-spouse may **elect** to claim a marital deduction for the property interest transferred. The effect of electing the marital deduction is that the **entire** property subject to the interest is treated as being transferred only to the donee-spouse; no one other than the donee-spouse is treated as receiving any part of the property subject to the interest.

Election — This election may be made by checking the block above Schedule A on page 2 of either Form TP-400 or TP-401. This election must be made on or before the **first** April 15th after the calendar year in which the interest was transferred. Once made, this election is irrevocable.

If the donor-spouse transfers a "qualifying income interest" to the donee-spouse with a remainder interest to charity, the entire value of the "Q-tip" property will be considered as passing to the donee-spouse and will qualify for the marital deduction. If the marital deduction is so elected, a charitable deduction for the value of the remainder interest will not be allowed.

This election will not be allowed for New York State purposes unless such election was made with respect to the federal gift tax. However, where no federal gift tax return is required to be filed, this election may be made for New York State purposes.

NOTE: With respect to gifts made after 1982 but before October 1, 1983, this election may be made for NYS purposes whether or not such election may be made for federal tax purposes and whether or not it was necessary to file a federal gift tax return.

A. If the donee-spouse transfers all or part of the qualifying income interest during life, the transfer is subject to gift tax (refer to Section 13 of these instructions).
B. If the donee-spouse does not dispose of the qualifying income interest during life, his/her gross estate will include the value of the property (refer to IRC Section 2044).

Before October 1, 1983 — For gifts made after June 30, 1978, and before October 1, 1983, the amount of the marital deduction was limited to:

1. the first $100,000 (reduced by any deductions allowed after June 30, 1978), and
2. 50% of such transfers in excess of $200,000

Note: Whenever lifetime gifts made to a spouse after June 30, 1978 and before October 1, 1983, are less than $200,000, the gift tax marital deduction will act to reduce the amount of the estate tax marital deduction.

16. Charitable, Public and Similar Gifts

The value of charitable, public, and similar gifts may be deducted from the total amount of gifts made during a calendar year if they are made to a qualified organization, as specified in IRC Section 2522.

If a donor transfers an interest in property for both charitable and noncharitable purposes, a charitable deduction is allowed for the portion of the interest passing to the charity if the interest is one of the following:

1. an undivided portion of the entire interest
2. a remainder interest in a personal residence or in a farm
3. a qualified conservation contribution

4. a remainder interest, a charitable remainder trust (annuity trust or unitrust), and pooled-income funds
5. income interests, guaranteed annuity interests and unitrust interests
6. works of art, i.e., a work of art to which there is a copyright under federal law.

   A work of art and its copyright are treated as separate properties if the transfer was a "qualified contribution" to a "qualified organization"(refer to IRC Section 2055(e)(4)).

Before 1983 — For transfers made before 1983, both the work of art and its copyright had to be transferred to qualify for a charitable deduction. A deduction will be allowed for amounts that are transfered to a qualified organization as a result of a "qualified disclaimer" that meets the conditions of IRC Section 2518.

Charitable gifts must be reported on a gift tax return filed for the calendar year in which the gift was made.

Before 1983 — Charitable gifts made before 1983 are reportable on a return filed for the fourth quarter of the calendar year in which the gift was made or for an earlier quarter for which the donor was required to file a return for gifts other than qualified charitable New York gifts.

17. Computation of Taxable Gifts

The New York taxable gifts of an individual are the total amount of the donor's New York gifts as determined under Section 1003 of the Tax Law (see Section 9 of these instructions) made during the calendar year, less:

1. the New York gift tax marital deduction, if applicable
2. the New York charitable deduction, if applicable

Schedule II, Form TP-400 — Page 2

If Schedule A of federal Form 709 includes gifts of real property or tangible personal property having an actual situs **outside** New York State, they should be listed in Schedule II on page 2 of Form TP-400, giving all information and entering the value in the last column. The total of the value column should be entered on line b(2) of "Computation of Taxable Gifts" according to the specific instructions for that line. (Intangible personal property, i.e., deposits in banks, shares of stock, bonds, notes, etc., should not be listed in the schedule or entered on line b(2).)

Specific line instructions for Form TP-400 — Page 2

(See Page 6 for instructions for Form TP-401)

Line a - Enter the amount shown on line 1, Schedule A, of federal Form 709.

Line b(1) - Enter the value of the remainder interests in **all** Qualified Terminable Interest Property included in the total of Schedule A of federal Form 709 under the provisions of IRC Section 2519.

(2) - Enter the total of Schedule II on page 2 of Form TP-400.

(5) - Enter the value of remainder interests in Qualified Terminable Interest Property includible for New York tax purposes under the provision of Section 1003(a)(3) of the Tax Law.

Line 1 - If it is not necessary to adjust the amount on line a, enter the amount shown on line a on line 1. If adjustments were made on any of lines b(1)-(5), add the amounts entered on lines (4) and (5), if any, entering total on line 1. This amount represents the total **New York** gross gifts of the donor (see Section 9 of these instructions).

Line 2 - As donor, if your spouse is not consenting to split gifts you made to third parties, the value of which is included on line 1, omit this line and enter the amount shown on line 1 on line 3. (see Section 10 of these instructions).

If your spouse is consenting to split such gifts, enter one-half of the value of such gifts on this line, indicating in the space provided the federal item numbers of the gifts treated in this manner.

Line 4 - If you consented to split gifts made by your spouse to third parties, enter the amount shown on line 2 of your spouse's return on this line and enter the total of lines 3 and 4 on line 5 (see Section 10 of these instructions).

If you did not consent to split gifts made by your spouse to third parties, or if you were the donor of all the gifts and your spouse is only filing a return to show consent to split the gifts, omit this line and enter the amount on line 3 on line 5.

Line 6 - Enter the total annual exclusions claimed for gifts of a present interest included in the amount shown on line 1 (see "Annual Exclusion" in Section 1 of these instructions). If you consent to split a gift to a third party made by your spouse, the annual exclusion may not be more than your half of the gift.

Line 8 - Enter **all** terminable interest gifts made by you to your spouse, the value of which is included in the amount shown on line 1, for which you are claiming a marital deduction (see Section 15 of these instructions). **Do not enter any gift that was not included in the amount shown on line 1.** (Indicate in the space provided the federal item numbers of the gifts to the spouse for which the marital deduction is claimed.)

Note: If such gifts were made before October 1, 1983, enter their value on line 1(a) of Schedule A on page 2 of Form TP-400.

The block above Schedule A on page 2 of Form TP-400 should be used to make the election to claim the marital deduction for qualified terminable interst property entered on line 8 or line 1(a) (see Sections 13 and 15 of these instructions).

Line 9 - Enter the value of the annual exclusion that was claimed against the gifts listed on line 8. (If the amount on line 7 includes gifts made to a spouse prior to October 1, 1983, omit this line, (see line 1(b) of Schedule A on Form TP-400.)

The annual exclusion is entered on this line for the purpose of computing the marital deduction.

Line 10 - Due to the different effective dates of provisions enacted under the federal Economic Recovery Tax Act of 1981 and the New York State conformity legislation, it is necessary to compute the New York State gift tax marital deduction independent of the federal marital deduction.

If gifts to a spouse were made after September 30, 1983, subtract line 9 from line 8 and enter difference on line 10.

If gifts to a spouse were made prior to October 1, 1983, the allowable marital deduction must be computed using Schedule A on page 2 of Form TP-400. The amount entered on line 6 of Schedule A should then be entered on line 10 (see Section 15 of these instructions).

Line 11 - Enter the total amount of gifts made to qualified charitable organizations, minus exclusions allowed (see Section 16 of these instructions). Indicate in the space provided the federal item numbers applicable to the gifts for which a deduction is claimed, the value of which is included in line 1.

Schedule A, Form TP-400 — If you, the donor, made gifts to your spouse prior to October 1, 1983, that qualify for the marital deduction, compute the allowable deduction on this schedule on lines 1(a) through 6 (see Sections 13 and 15).

Enter on line 1(a) the value of such gifts to your spouse, the value of which is included on line 1 of the "Computation of Taxable Gifts". Indicate in the space provided the federal item numbers of the gifts to your spouse for which the marital deduction is claimed.

Complete all remaining lines of the schedule, entering the amount shown on line 6 on line 10, above.

Schedule II, Form TP-400 — If Schedule A of federal Form 709 includes gifts of real property or tangible personal property having an actual situs **outside** New York State, they should be listed in Schedule II on page 2 of Form TP-400, giving all information and entering the value in the last column. The total of the value column should be entered on line b(2) of "Computation of Taxable Gifts" according to the specific instructions for that line. (Intangible personal property, i.e., deposits in banks, shares of stock, bonds, notes, etc., should not be listed in the schedule or entered on line b(2).)

18. Computation of Tax

A unified schedule of tax rates for gift and estate taxes, and a unified credit against these taxes, has been adopted by New York State for gifts made after 1982. The gift tax is computed on a calendar year basis for gifts made after 1982.

For a resident, the net tax is the amount by which:

a. the total of a tentative tax computed on the total taxable gifts for the current calendar year and the preceding calendar period (see explanation under "General Description of Tax" in these instructions) exceeds

b. a tentative tax computed on the total taxable gifts for each of the preceding calendar quarters prior to 1983, reduced by —
   (1) the amount of the allowable unified credit, and
   (2) the amount of gift taxes previously paid on gifts made for calendar years after 1982

The current unified rates, given in Table A, are used for determining the tentative tax in (a) and (b).

Specific line instructions for Form TP-400 — Page 1

(See below for instructions for Form TP-401)

Line 1 - Enter on this line the taxable gifts made by the donor during the calendar year for which this return is being filed.

Line 2(a) - Enter on this line the total amount of taxable gifts made by the donor for all calendar quarters prior to 1983 (this amount should be taken from Section A of Schedule I.)

(b) - Enter on this line the total amount of taxable gifts made by the decedent for calendar years after 1982 and **prior to the calendar year for which this return is being filed** (this amount should be taken from Section B of Schedule I.)

Lines 4 and 5 - Compute the tax using the rates given in Table A, on page 8 and enter the **difference** on line 6.

Line 6 - This amount represents the tentative tax on gifts made after 1982, before allowance of the unified credit.

Line 7 - Compute the unified credit allowable on the amount shown on line 6 using Table B on page 8.

Line 8 - This amount represents the tentative tax due before credit for gift taxes previously paid on gifts made after 1982.

Line 9 - Enter the **net** amount of tax computed on the total taxable gifts made after 1982, **excluding** the current years taxable gifts. (Do not include any interest and penalty which may have been paid.)

You may use the worksheet below to figure the amount to enter on line 9:

1. Total amount of lifetime taxable gifts for all prior periods (from line 2c of the "Computation of Tax" schedule, page 1, Form TP-400) ..... 1. _____
2. Tax computed on amount on line 1, above (see Table A in these instructions) ..... 2. _____
3. Tax computed on taxable gifts for calendar quarters prior to 1983 (enter amount from line 5 of "Computation of Tax" schedule, page 1, Form TP-400) ..... 3. _____
4. Tentative tax on taxable gifts made after 1982 but **prior** to the calendar year for which the return is being filed (line 2, above, minus line 3, above) ..... 4. _____
5. Unified Credit (compute on amount shown on line 4, above, using Table B in these instructions) ..... 5. _____
6. **Net** tax computed on total taxable gifts made after 1982, excluding current year's taxable gifts (line 4, above, minus line 5, above). Enter the result here and on line 9 of the "Computation of Tax" schedule, page 1, Form TP-400 .... 6. _____

Do not include any interest and penalty which may have been paid.

Line 10 - The amount entered on this line is the amount of **tax due.** Remittance should be made as outlined in Section 4 of these instructions.

New York taxable gifts for prior calendar periods

(Schedule I, Form TP-400 and Form TP-401)

The schedule is divided into two parts. Indicate in Section A gift tax returns filed for calendar quarters prior to 1983. Indicate in Section B gift tax returns filed for calendar years after 1982 and **prior to the calendar year for which the present return is being filed.** If there is any change in the donor's name or address as it appeared on any prior return, the change should be indicated in the space provided. The correct amount of taxable gift for each prior period (the amount as finally determined and not necessarily the amount previously reported) must be entered in the last column. The total of each section, as well as the schedule total, should be entered on the applicable lines in the "Computation of Tax."

Instructions for Completing Form TP-401 — Non-resident Gift Tax Return

Complete the general information for the donor on page 1 including the question in Schedule I. Where the donor made gifts in prior years that were subject to New York Gift Tax, enter the information from those returns in Schedule I. If no entry is required write "NONE" on the applicable line of the schedule. Go to page 2.

Schedule II — Page 2

Enter **all** gifts of real or tangible personal property actually located in New York State, and **all** gifts of money, credits, securities or other intangible personal property within the State employed in carrying on business in New York State by the donor made during the calendar year. Do not include gifts made to your spouse after September 30, 1983 unless they were gifts of terminable interests.

Computation of Taxable Gifts — Page 2

Line 1 - Enter the total amount from Schedule II

Line 2 - If your husband/wife elects to treat one-half of your gifts to third parties as his/her gifts, enter one-half of the amount from line 1. Also indicate the item numbers of these gifts from your federal return.

Line 3 - Subtract line 2 from line 1.

Line 4 - If you elect to treat one-half of the gifts made by your spouse to third parties as gifts made by you, enter one-half of their total New York gifts to third parties (from line 2, page 2 of their New York return, Form TP-401).

Line 5 - Add lines 3 and 4.

Line 6 - Enter the total amount of annual exclusions applicable to your New York gifts. Although the maximum annual exclusion per donee is $10,000, the exclusion may not exceed the actual value of the New York gifts to the donee. No exclusion is allowed for a gift of a future interest. The annual exclusion applicable to gifts you made to your spouse should not be deducted here unless you make an entry on line 8 or line 1a of Schedule A. See instructions for lines 8 and 9, and lines 1a and 1b of Schedule A.

Line 7 - Subtract line 6 from line 5.

Line 8 - Enter all your New York gifts of terminable interest property made to your spouse during the calendar year that are included in line 1 and for which you are claiming a marital deduction.

For 1983 Returns Only:
If the return is for calendar year 1983 and the gifts were made prior to October 1, 1983, do not enter the amount on line 8. Instead, enter the amount on line 1a of Schedule A and do the computation in Schedule A.

Note: All New York gifts you made to your spouse prior to October 1, 1983 must be included on line 1 and entered on line 1a of Schedule A.

Line 9 - If you made an entry on line 8, enter here the annual exclusion applicable to the gifts of New York terminable interest property you made to your spouse. The annual exclusion may not exceed the lesser of $10,000 or the amount of the gifts. In the case of gifts made both before and after October 1, 1983, the combined annual exclusion appearing here and on line 1b of Schedule A may not exceed $10,000.

Line 10 - Subtract line 9 from line 8 and enter that amount plus the amount of marital deduction from line 6 of Schedule A for gifts to your spouse prior to October 1, 1983, if applicable.

Line 11 - Enter the amount of any New York charitable gifts included on line 1 reduced by any applicable annual exclusions.

Line 12 - Enter the total of lines 10 and 11.

Line 13 - Subtract line 12 from line 7, enter the difference here and on line 1 of Computation of Tax, page 1.

Terminable Interest Marital Deduction — Page 2

Check the box if you elect to claim a marital deduction on terminable interest property you gifted to your spouse. Also indicate if you made the election on your federal return.

Schedule A — Page 2

Schedule A applies to New York gifts you made to your spouse during calendar year 1983 but prior to October 1, 1983, the effective date of the unlimited marital deduction for New York. If you made such gifts complete Schedule A and enter the amount from line 6 of Schedule A on line 10 of the Computation of Taxable gifts on page 2.

Computation of Tax — Page 1

Line 1 - Enter the amount from line 13 of the Computation of Taxable Gifts on page 2.

Line 2 - Enter the total from Schedule I.

Line 3 - Add lines 1 and 2.

Line 4 - Using Table A on page 8 (Unified Tax Rate Schedule), compute the tax on the amount shown on line 3.

Line 5 - Using Table A, compute the tax on the amount shown on line A of Schedule I — New York Gifts for Prior Calendar Periods. Line A is your **New York taxable gifts for calendar periods prior to 1983.**

Line 6 - Subtract the amount on line 5 from the amount on line 4.

Line 7 - Certain modifications must be made to determine the allowable unified credit for non-resident. You must compute your gifts as if you were a New York resident. This is your New York taxable gifts increased by gifts of intangible property after deducting the applicable annual exclusions and/or marital deduction. Consult the appropriate sections of the instructions for additional information on determining a New York residents taxable gifts.

Lines a, b c and d - The New York taxable gifts for the applicable calendar periods computed as if you were a resident of New York State, should be entered on the appropriate line and the total of lines a, b and c entered on line d.

Line e - Using Table A on page 8, compute the tax for the amount shown on line d.

Line f - Using Table A, compute the tax for the amount shown on line b.

Line g - Subtract line f from line e.

Line h - Using Table B on page 8 (Unified Credit), compute the credit that would be allowed a New York resident against the tax shown on line g.

Line j - To determine the amount of unified credit allowed a non-resident, multiply the amount of credit computed at line h by the results of dividing your total New York taxable gifts (line 1) by your total New York taxable gifts determined as if you were a New York resident (line 7a). Enter this amount on line 7.

Line 8 - Subtract line 7 from line 6. If line 7 is greater than 6 enter zeros on lines 8 and 10.

Line 9 - Enter the **net** amount of tax computed on the total taxable gifts made after 1982, **excluding** the current years taxable gifts. (Do not include any interest and penalty which may have been paid.)

You may use the worksheet below to figure the amount to enter on line 9:

1. Total amount of lifetime NY gifts for all periods (from line 2 of the "Computation of Tax" schedule, Page 1, Form TP-401) ..... 1. _____
2. Tax computed on the amount on line 1, above, (see Table A in these instructions) ..... 2. _____
3. Tax computed on NY taxable gifts for calendar quarters prior to 1983 (enter amount from line 5 of "Computation of Tax" schedule, page 1, Form TP-401) 3. _____
4. Tentative tax on NY taxable gifts made after 1982 but **prior** to the calendar year for which this return is being filed (line 2, above, minus line 3, above) 4. _____
5. Nonresident unified credit:
   a. Taxable gifts for calendar quarters prior to 1983 computed as if a NY resident (enter amount from line 7b of "Computation of Tax" schedule, page 1, Form TP-401) ..... a. _____
   b. Taxable gifts for calendar years after 1982 computed as if a NY resident (enter amount from line 7c of "Computation of Tax" schedule, page 1, Form TP-401) ..... b. _____
   c. Total amount of taxable gifts computed as if a resident (line a, above, plus line b, above) ..... c. _____
   d. Tax computed on amount on line c, above, (see Table A in these instructions) ..... d. _____
   e. Tax computed on amount on line a, above, (see Table A in these instructions) ..... e. _____
   f. Balance (line d, above, minus line e) ..... f. _____
   g. Credit computed on amount on line f, above (use Table B in these instructions) ..... g. _____
   H. Nonresident unified credit:
   NY taxable gifts for the most recent year after 1982 that a NY gift tax return was required to be filed except for current year.
   ___ / Taxable gifts computed as if a NY resident for the most recent year that a NY gift tax return was required to be filed except current year. × line g, above
   5. _____
6. **Net** tax computed on total NY taxable gifts made after 1982, excluding current years taxable gifts (line 4, above, minus line 5, above.) Enter the result here and on line 9, of the "Computation of Tax" schedule, page 1, Form TP-401. 6. _____

Line 10 - Subtract line 9 from line 8. This is your tax liability on your calendar year gifts. Make checks payable to the Commissioner of Taxation and Finance.

Remember to sign and date your return. If you paid someone to prepare your return, they must sign the return, enter their address and date it.

If someone prepares your return and does not charge you, they should not sign the return.

To make sure that Tax Department employees give courteous responses and correct information to taxpayers, a second Tax Department employee sometimes listens in on telephone calls. No record is kept of any taxpayer's name, address or social security number.

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

TABLE B
Unified Credit

1. If the tentative tax is $2,750 or less, the credit is the same as the tax.

2. If the tentative tax is greater than $2,750 but less than $5,000, the credit is the amount by which $5,500 exceeds the tax.

Example:				
NY Tentative Tax	$ 4,000	NY Tentative Tax	$ 4,000
Allowance	5,500	Unified Credit	1,500
Unified Credit	$ 1,500	Net Tax	$ 2,500

3. If the tentative tax is $5,000 or more, the credit is $500.

(The unified credit does not apply to gifts made before 1983.)