



Department of Taxation and Finance

Important

The information concerning the Estate Tax in this TSB-M is no longer current and is provided only for historical purposes.

For the most up-to-date information, see [Estate tax](#).

The TSB-M begins on page 2 below.

Amendment to the New York State Estate Tax Related to the Unified Credit and Filing Requirements Effective January 1, 2010

Chapter 57 of the Laws of 2010 amended section 951(a) of the Tax Law in relation to the unified credit for the New York State estate tax. Prior to the amendment, the unified credit referenced the federal Internal Revenue Code. However, the federal estate tax is not currently in effect for 2010 and its status remains uncertain. Accordingly, the amendment was made to allow for an independent unified credit in 2010 and going forward. As explained below, for dates of death on or after January 1, 2010, the unified credit is fixed at the amount allowable as if the federal applicable exclusion amount were \$1 million. In addition, since the unified credit is also used as a reference for the estate tax filing threshold for individuals who are residents or citizens of the United States, the New York State estate tax filing threshold is also fixed at \$1 million.

Unified credit

New York State's estate tax is generally conformed to the Internal Revenue Code of 1986 with all amendments enacted on or before July 22, 1998. Prior law provided that the unified credit against the estate tax is the federal unified credit in effect on the decedent's date of death, but not to exceed the amount allowable as if the federal unified credit did not exceed the tax due on an exclusion amount of \$1 million. This provision was intended to incorporate periodic increases in the federal unified credit after 1998, up to the \$1 million limitation. Because the federal estate tax is not in effect in 2010, there would be no unified credit for purposes of New York's estate tax without the amendment. The amendment eliminates the reference in the Tax Law to the federal unified credit in effect on the decedent's date of death, and fixes the unified credit at the amount allowable as if the federal applicable exclusion amount were \$1 million independent of the Internal Revenue Code. The maximum unified credit is therefore fixed at \$345,800.

Estate tax filing threshold

The unified credit is also used as a reference for the estate tax filing threshold. Without the amendment, many relatively small estates would have become subject to New York State's estate tax. With the amendment, for dates of death on or after January 1, 2010, an estate is required to file a New York State estate tax return if the total of the federal gross estate plus the federal adjusted taxable gifts and specific exemption exceeds \$1 million, and the individual was either:

- a resident of New York State at the time of death; or
- a resident or citizen of the United States at the time of death but not a resident of New York State, whose estate includes real or tangible personal property with an actual situs in New York State.

For an individual who was neither a resident nor citizen of the United States at the time of death, the filing threshold is not determined by reference to the unified credit. The estate of such an individual must file a New York State estate tax return if the estate includes real or tangible personal property having an actual situs in New York State and the gross estate located in the United States exceeds the filing limit. The filing limit is \$60,000 reduced by the sum of the gift tax specific exemption applicable to certain gifts made in 1976 and the total taxable gifts made after 1976 that are not included in the gross estate.

While the filing threshold for the estate of an individual who was neither a resident nor a citizen of the United States at the time of death is not determined by reference to the unified credit, if the decedent was a citizen of a country having a treaty with the United States that affects the unified credit, the applicable credit amount in effect under section 2010(c) of the federal Internal Revenue Code (IRC), referred to in section 2102(b)(3)(A) of the IRC, is determined by reference to that amount and limited to \$1 million.

Federal estate tax return for 2010 dates of death

Estates must use the federal estate tax return as the starting point for computing the New York State estate tax. If there is no federal estate tax for 2010 dates of death, a taxable estate must use the federal return for 2009 dates of death, Form 706 (Rev. 9-2009), or Form 706-NA (Rev. 9-2009) for the pro forma federal estate tax return.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.