

Implementation of the Marriage Equality Act Related to the New York State Estate Tax

An estate of an individual who died while married to a same-sex spouse may make New York-only elections and deductions by filing a pro forma federal estate tax return computed as if marriages between same-sex couples were federally recognized.

New York State Marriage Equality Act

On June 24, 2011, Governor Cuomo signed into law the Marriage Equality Act. One purpose of the Act is to provide that all marriages, whether of same-sex couples or different-sex couples, will be treated equally under all laws of the state. Accordingly, the Act applies to all taxes administered by the Tax Department as of the effective date of July 24, 2011.

As a result of the Act, for New York State estate tax purposes, the term *spouse* includes both same-sex spouses and different-sex spouses. Accordingly, for estates of individuals dying on or after the Act's effective date, July 24, 2011, the same deductions and elections allowed for different-sex spouses are allowed for same-sex spouses, whether or not a federal estate tax return is filed.¹

Separate New York deductions, joint property values, and gift-splitting allowed

As detailed below, the estate of an individual married to a same-sex spouse must begin by computing the gross estate on a pro forma federal return as if the marriage were recognized for federal estate tax purposes, including the following deductions and valuations:

Marital deduction

The estate may claim a marital deduction equal to the deduction permitted for a surviving different-sex spouse under Internal Revenue Code (IRC) section 2056, as in effect on July 22, 1998, for New York State estate tax purposes. The estate may also make a qualified terminable interest property (Q-TIP) election. If the surviving spouse's estate is subject to the New York estate tax in the future, the value of the Q-TIP property for which the New York election was made must be included in the surviving spouse's New York gross estate.

¹ This is different than the general rule, which provides that when an estate tax return is filed for federal purposes, the amounts used to compute the gross estate and any elections reported on the federal return are binding for New York State purposes. See TSB-M-11(9)M, *Supplemental Information on New York State Estate Tax Filing Requirements Related to the Federal 2010 Tax Relief Act*.

Joint property values

One-half of the value of any qualified joint interest is includable in the gross estate of a same-sex spouse in the same manner as a different-sex spouse.

Gift splitting

A gift made on or after July 24, 2011, by one spouse to a third party may be considered as made one-half by the donor and one-half by the donor's same-sex spouse for New York State purposes, in the same manner as permitted by a different-sex spouse under IRC section 2513, as in effect on July 22, 1998. Although New York State does not have a gift tax, gift-splitting may affect whether the estate reaches the filing threshold for New York State estate tax purposes.

Separate pro forma federal return required

A federal pro forma return must be filed with Form ET-706, *New York State Estate Tax Return*, within 9 months of the date of death. If the estate of an individual who died while married to a same-sex spouse is required to file a federal estate tax return, both the pro forma federal return and the actual federal return filed must be attached to Form ET-706. A pro forma federal gift tax return (federal Form 709) must also be attached if same-sex spouses elect to have a gift of one spouse considered as made one-half by each spouse for purposes of calculating the New York State estate tax filing threshold.

Estates should use the federal Form 706 or Form 706-NA applicable to the date of death to complete the pro forma federal estate tax return to compute the federal gross estate. Amounts are then transferred to Form ET-706, Schedule A or B to compute the New York State estate tax.

More information

The Tax Department will be posting additional guidance regarding the Act on its Web site (www.tax.ny.gov) as it is developed.

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.