



## **New York State Estate Tax Reformed**

This TSB-M provides a summary of amendments to the New York State estate tax effective April 1, 2014.

Chapter 59 of the Laws of 2014 (Part X) made significant amendments to the New York State estate tax effective for estates of individuals with dates of death on or after April 1, 2014. Prior to these amendments, the New York State estate tax was generally conformed with the Internal Revenue Code (IRC) of 1986 with all amendments enacted on or before July 22, 1998, and was based on the maximum amount allowed on the federal estate tax return as a credit for state death taxes.

As amended by Chapter 59, the New York State estate tax generally conforms with the IRC of 1986 with all amendments enacted on or before January 1, 2014, unless specifically provided otherwise in the law. Chapter 59 also amends the definitions of *New York gross estate* and *New York taxable estate* for both resident and nonresident estates; increases the filing threshold effective April 1, 2014 (with gradual increases each year after); provides an *applicable credit* for certain estates; and conforms provisions related to alternate valuation, qualified domestic trust, and qualified terminable interest property elections to the new tax law.

### **New York taxable estate - resident**

The *New York taxable estate* for the estate of an individual who was a New York State resident at the time of his or her death is the New York gross estate minus the deductions allowable for determining the federal taxable estate, except to the extent that any such deductions relate to real or tangible personal property located outside of New York State.

The new law does not conform to the federal law in that it does not provide for portability of the deceased spousal unused exclusion.

The *New York gross estate* of a deceased resident means his or her federal gross estate (whether or not a return is required):

- reduced by any real or tangible property located outside of New York State,
- increased by the amount related to limited powers of appointment created prior to September 1, 1930, and
- increased by the amount of any gift that would be taxable under IRC section 2503 made during the three-year period ending on the individual's date of death that was not otherwise included in the federal gross estate of the individual. However, gifts are not added to the gross estate if they consisted of real or tangible personal property having a location outside New York State, or if the gift was made:
  - when the individual was a nonresident of New York State;
  - before April 1, 2014; or
  - on or after January 1, 2019.

### **New York taxable estate - nonresident**

The *New York taxable estate* for the estate of an individual who was a nonresident at the time of his or her death will be computed in the same manner as the New York taxable estate for the estate of a resident, except that it does not include:

- the value of any intangible personal property otherwise includible in the deceased individual's New York gross estate, and
- the amount of any gift otherwise includible in the New York gross estate of a resident, unless the gift was made while the nonresident individual was a resident of New York State and it consisted of real or tangible personal property having a location in New York State or intangible personal property employed in a business, trade, or profession carried on in this state.

The New York taxable estate of a nonresident also excludes any works of art that are loaned to (or en route to or from) a public gallery or museum in New York State solely for exhibition purposes at the time of the individual's death, provided no part of the net earnings for the public gallery or museum inure to the benefit of any private stockholder or individual. However, for purposes of determining whether a nonresident estate meets the filing threshold only, a work of art that meets the conditions above would still be considered located in New York State and included in the federal gross estate. (See *Filing requirements – dates of death on or after April 1, 2014* on page 3.)

### **Computation of tax**

The estate tax will be computed based on the New York taxable estate of a resident or nonresident (as described above) using the following tax table:

If the New York taxable estate is:	The tax is:
Not over \$500,000	3.06% of taxable estate
Over \$ 500,000 but not over \$ 1,000,000	\$ 15,300 plus 5.0% of excess over \$ 500,000
Over \$ 1,000,000 but not over \$ 1,500,000	\$ 40,300 plus 5.5% of excess over \$ 1,000,000
Over \$ 1,500,000 but not over \$ 2,100,000	\$ 67,800 plus 6.5% of excess over \$ 1,500,000
Over \$ 2,100,000 but not over \$ 2,600,000	\$106,800 plus 8.0% of excess over \$ 2,100,000
Over \$ 2,600,000 but not over \$ 3,100,000	\$146,800 plus 8.8% of excess over \$ 2,600,000
Over \$ 3,100,000 but not over \$ 3,600,000	\$190,800 plus 9.6% of excess over \$ 3,100,000
Over \$ 3,600,000 but not over \$ 4,100,000	\$238,800 plus 10.4% of excess over \$ 3,600,000
Over \$ 4,100,000 but not over \$ 5,100,000	\$290,800 plus 11.2% of excess over \$ 4,100,000
Over \$ 5,100,000 but not over \$ 6,100,000	\$402,800 plus 12.0% of excess over \$ 5,100,000
Over \$ 6,100,000 but not over \$ 7,100,000	\$522,800 plus 12.8% of excess over \$ 6,100,000
Over \$ 7,100,000 but not over \$ 8,100,000	\$650,800 plus 13.6% of excess over \$ 7,100,000
Over \$ 8,100,000 but not over \$ 9,100,000	\$786,800 plus 14.4% of excess over \$ 8,100,000
Over \$ 9,100,000 but not over \$10,100,000	\$930,800 plus 15.2% of excess over \$ 9,100,000
Over \$10,100,000	\$1,082,800 plus 16.0% of excess over \$10,100,000

**Basic exclusion amount**

The basic exclusion amount is used to determine the estate's filing threshold and also to determine the amount of the applicable credit (if any). The basic exclusion amount is increased from \$1 million to \$2,062,500 for dates of death on and after April 1, 2014, and will be further increased as follows:

For dates of death on or after:	The basic exclusion amount is:
April 1, 2015 and before April 1, 2016	\$3,125,000.00
April 1, 2016 and before April 1, 2017	\$4,187,500.00
April 1, 2017 and before January 1, 2019	\$5,250,000.00

For the estate of an individual dying on or after January 1, 2019, the basic exclusion amount will be equal to the federal basic exclusion amount and will be indexed annually in the same manner as the federal exclusion amount.

**Filing requirements - dates of death on or after April 1, 2014**

The estate of an individual who was a New York **resident** must file a New York State estate tax return if the federal gross estate, increased by the amount of any gifts includible in his or her New York gross estate, exceeds the basic exclusion amount applicable to the date of death. The estate of an individual who was a New York **nonresident** must file a New York State estate tax return if the federal gross estate, increased by the amount of any gifts includible in the New York gross estate, exceeds the basic exclusion amount applicable to the date of death, and the estate included any real or tangible property located in New York State.

**Applicable credit amount**

An applicable credit is allowed against the estate tax when a New York taxable estate (including gifts) is not greater than 105% of the basic exclusion amount. The amount of the credit cannot exceed the tax imposed.

If the New York taxable estate is less than or equal to the basic exclusion amount, the applicable credit amount will be the amount of tax that is computed on the taxable estate.

The applicable credit is phased out as the New York taxable estate approaches 105% of the basic exclusion amount. If the New York taxable estate is greater than the basic exclusion amount but not greater than 105% of the basic exclusion amount, then the applicable credit is equal to the estate tax that would be due on an amount computed by multiplying the basic exclusion amount by one minus a fraction. The numerator of the fraction equals the New York taxable estate minus the basic exclusion amount, and the denominator equals five percent of the basic exclusion amount.

## Examples

The following examples apply to the estates of individuals with dates of death from April 1, 2014, to March 31, 2015. The basic exclusion for that period is \$2,062,500. For that period, the applicable credit applies to estates with taxable amounts of \$2,165,625 ( $\$2,062,500 \times 105\%$ ) or less.

*Example 1: The taxable estate of Individual A is \$1,525,120. Because the taxable estate is less than or equal to the basic exclusion amount, the applicable credit is equal to the amount of tax.*

Taxable estate	\$ 1,525,120
Tax computed	69,433
Applicable credit	<u>69,433</u>
Estate tax due	\$ 0

*Example 2: The taxable estate of Individual B is \$2,100,000. The applicable credit applies because the taxable estate exceeds the basic exclusion amount by an amount that is less than or equal to 5% of the basic exclusion amount. Under the formula described above, the numerator of the fraction is \$37,500 ( $\$2,100,000 - \$2,062,500$ ), and the denominator is \$103,125 ( $.05 \times \$2,062,500$ ).*

*The applicable credit is \$57,492 ( $\$2,062,500 \times (1 - 37,500/103,125) = 2,062,500 \times .6364 = 1,312,575$ ). The applicable credit equals tax on \$1,312,575, or \$57,492.*

*Accordingly, the estate tax due is computed as follows:*

Taxable estate	\$ 2,100,000
Tax computed	106,800
Applicable credit	<u>57,492</u>
Estate tax due	\$ 49,308

## Alternate valuation

The value of the New York State gross estate is determined at the time of the individual's death, and is the same as the federal gross estate amount. However, if the estate elected alternate valuation under IRC section 2032 on the federal estate tax return, the New York gross estate will be valued as of the applicable federal valuation date.

If a federal estate tax return is not required to be filed, but the alternate valuation could have been elected, the estate may elect to use the alternate valuation for determining the value of the New York gross estate. However, this election will not be allowed unless it decreases the value of the New York gross estate and the amount of tax imposed reduced by any credits allowed. The election must be made no later than the due date of the return (including extensions) or at any time thereafter as may be allowed by the commissioner. Once the election is made, it is irrevocable.

### **Qualified Terminable Interest Property election**

If the qualified terminable interest property election was made for purposes of the federal estate tax return under the IRC, the election must also be made by the executor on the New York return. If, however, no federal return was required to be filed, the executor may still make the election for New York State purposes on a pro forma federal return attached to the New York return. Once the election is made, it is irrevocable.

### **Federal Elections**

Elections made or waived on a federal estate tax return will be binding on a New York estate tax return. If a federal estate tax return is required to be filed and the right to any federal estate tax deduction is waived on the federal return, it is also waived for New York estate tax purposes. A federal estate tax return is considered “required to be filed” when a deceased individual’s gross estate exceeds the federal filing threshold, and also when the federal return is the only means for claiming certain tax treatment (e.g., such as claiming portability of a deceased spouse’s unified credit for federal 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.*)

In addition, an executor or administrator has the choice of claiming administration expenses and casualty losses as deductions on either the estate tax return or the fiduciary income tax return, but not on both. In this situation, if a federal deduction for administration expenses or a casualty loss is claimed on the federal fiduciary income tax return for the estate, the deduction cannot be made on the New York estate tax return. This applies regardless of whether a federal estate tax return was required to be filed.

### **Effect on the New York State estate tax forms**

The Tax Department will issue a revised version of Form ET-706, *New York State Estate Tax Return*, to be used for dates of death on or after April 1, 2014, and before April 1, 2015. For dates of death in 2014 prior to April 1, estates should file Form ET-706, *New York State Estate Tax Return - For estates of individuals with dates of death on or after January 1, 2014 and before April 1, 2014*. In either case, the estate tax return is due nine months from the date of death. These forms will be available on the Tax Department’s Web site.

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.