

New York State Department of Taxation and Finance
Taxpayer Services Division
Technical Services Bureau

TSB-M-80 (5)
Estate & Gift Tax
August 15, 1980

Subject: Chapter 417, Laws of 1980
Amendments to Estate and Gift Tax Law,
Article 10-C, Article 26, Article 26-A,
and Estates, Powers and Trusts Law

The purpose of this new act is to conform the provisions of the New York State Tax Law to changes made in the federal estate and gift tax statutes by the federal Revenue Act of 1978, the federal Technical Corrections Act of 1979 and by the enactment of (federal) Public Law 95-472. Certain procedural changes in the New York State Estate Tax Law and Estates, Powers and Trusts Law have also been made.

The federal Acts made important clarifications and changes in the estate and gift tax laws, as originally adopted in accordance with the federal Tax Reform Act of 1976. Articles 26 and 26-A, previously amended by Chapter 67, Laws of 1978, now conform, with modifications, to the Internal Revenue Code of 1954 with all amendments enacted on or before April 1, 1980.

The most significant changes in the Tax Law include the following:

1. The need for actuarial computations to determine the amount of gift tax where a joint tenancy between husband and wife in personal property was created on or after July 1, 1978 has been eliminated, unless life expectancy is a factor, thereby establishing the retained interest of each spouse as one-half of the value of the joint interest. (See Appendix for controlling dates).
2. Any gifts made after July 1, 1978 and within three years of death for which no gift tax return was required to be filed because of the \$3,000 annual exclusion are not includible in the decedent's gross estate. This exception does not apply to the gift of a life insurance policy. Where a gift tax return is required to be filed, however, the value of gifts made within three years of death is includible in the gross estate with no reduction in date of death value for the annual exclusion. . . Effective for estates of decedents dying on or after July 1, 1978. (Prior to conformity under the Revenue Act of 1978, the law provided for subtracting from the date of death value the amount qualifying for the annual gift tax exclusion when the gift was made.)
3. Lump sum distributions from qualified pension plans may be excluded from the gross estate if the recipient of the payment elects, irrevocably in writing, to treat the lump sum distribution as an income distribution without applying the 10-year averaging method. Also, capital gains treatment will not be available . . . Effective for estates of decedents dying on or after January 1, 1979.

4. Any gifts between spouses not required to be included in a gift tax return, i.e. gifts of \$3,000 or less, or any interspousal gifts included in the gross estate because of being made within three years of the date of death are excluded in the computation of the reduction (cut down) of the estate tax marital deduction. (See Appendix for controlling dates.)
5. Delivery of an estate tax return may be made to any heir at law, next of kin, beneficiary under the will of the decedent or donee of property if the State Tax Commission finds that such person has a material interest which will be affected by information contained in such return. Also, the statute has been amended thereby allowing papers or documents which constitute a part of a tax proceeding, provided for in the Surrogates Court Procedure Act, to be open to public inspection without a court order and, therefore, not subject to the secrecy provisions of the estate tax law. . .Effective immediately

The attached Appendices explain the provisions of Chapter 417 and related sections of the Internal Revenue Code.

Appendix
Cross-reference Between Bill Section
and IRC Provisions Contained in
New York Tax Law

<u>Bill Section</u>	<u>IRC Section Amended</u>	<u>General Description of IRC Section</u>
4 N.Y. Eff: applicable to gifts made on or after July 1, 1978.	2503(d)	The bill makes clear that the contributions to an individual retirement account for the benefit of a non-working spouse are to be considered to be gifts of present interest that qualify for the \$3,000 annual gift tax exclusion.
5 N.Y. Eff: immediately	2515	Limits section <u>heading</u> to apply to tenancies by the entirety in real property.
6 N.Y. eff:applicable to joint interests created on or after July 1, 1978. (1)	2515A (added)	Eliminates actuarial computations in determining the amount of gift tax where a joint tenancy in personal property is created after 1976 unless the fair market value of a joint interest cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses.
7 N.Y. Eff: applicable to transfer creating an interest in the person disclaiming made on or after July 1, 1978.	2518(b)(4)	The bill provides that where a surviving spouse refuses to accept interest in property, the disclaimer will be valid although the surviving spouse receives an income interest with respect to the property if the income interest does not result from any direction by the surviving spouse and the disclaimer is otherwise qualified.
<u>Bill Section</u>	<u>IRC Section Amended</u>	<u>General Description of IRC Section</u>
9 N.Y. Eff: applicable to estates of decedents dying on or after August 11, 1977.	2032A(b)(1)	Clarifies an ambiguity by restricting qualified real property eligible for special use valuation at its farm or business use only to the extent that it passes to qualified heirs.

(1) See explanation on page 6.

<u>Bill Section</u>	<u>IRC Section Amended</u>	<u>General Description of IRC Section</u>
10 N.Y. Eff: Applicable to estates of decedents dying on or after August 11, 1977.	2032A(c)(6)	Along with newly added § 2032A(e)(1) enables a qualified heir to avoid personal liability for potential additional estate tax imposed on his interest in the qualified property if he furnishes a bond for the maximum amount of additional estate tax that could be imposed with respect to his interest in the property.
11 N.Y. Eff: applicable to estates of decedents dying on or after August 11, 1977.	2032A(e)(9,10)	Under present law property is eligible for special use valuation only if 50% or more of the adjusted value of the Federal gross estate consists of property which was acquired from or passed from the decedent to a qualified heir. Under the bill, property will be considered to have been acquired from or passed from a decedent if it is acquired from an estate in satisfaction of a right to a pecuniary bequest. The bill also provides for equal treatment of community and individually owned real property.
11 N.Y. Eff: same as above	2032A (e)(11)	See preceding description under bill § 10 relating to avoidance of personal liability by a qualified heir furnishing a bond.
11 N.Y. Eff: same as above	2032A(h)	Provides for the continuation of the special valuation treatment given to farms and other qualified real property for purposes of estate tax where there has been an involuntary conversion of such property.
12 N.Y. Eff: applicable to estates of decedents dying on or after July 1, 1978 except as to transfers made by a decedent before July 1, 1978.	2035(b)	Under the bill any gifts made within 3 years of death for which no gift tax return was required to be filed are not includible in the Federal gross estate. If the gifts are required to be shown on a gift tax return, gifts made within 3 years of the decedent's death are required to be included in the gross estate. This exception does not apply to the gift of a life insurance policy.

<u>Bill Section</u>	<u>IRC Section Amended</u>	<u>General Description of IRC Section</u>
13,14 N.Y. Eff: applicable to estates of decedents dying on or after July 1, 1978.	2036(a),(b),(c)	Amends the voting retention rule so that only transfers of stock in controlled corporations in which the decedent and his relatives own 20% or more of the corporation are includible in his Federal gross estate and also clarifies application of the rule to indirect retention of voting rights in controlled corporations where the decedent subsequently acquires voting rights in stock of the corporation.
15 N.Y. Eff: applicable to estates of decedents dying on or after January 1, 1979.	2039(c)	Allows a lump sum distribution to qualify for the estate tax exclusion, if the recipient elects to subject the distribution to income tax under IRC § 402(a), but capital gain treatment will not be available.
16 N.Y. Eff: applicable to estates of decedents dying on or after July 1, 1978.	2039(e)	Provides that annuities paid from an individual retirement account created for a non-working spouse may qualify for an estate tax exclusion.
17 N.Y. Eff: applicable to estates of decedents dying on or after January 1, 1979.	2039(f)	Describes lump sum distribution which may now qualify for an estate tax exclusion.
18 N.Y. Eff: applicable to estates of decedents dying on or after June 23, 1980 (2).	2040(c)	An elective rule for valuing closely held farms and business property held in joint tenancy by husband and wife; it allows a reduction of the value of such property of up to 50% of the value of the joint interest, but not to exceed \$500,000 to reflect (1) an interest factor on the consideration furnished by the surviving spouse to acquire such jointly held property and (2) a factor for the material participation of the surviving spouse in the operation of these enterprises.

(2) See explanation on page 6.

<u>Bill Section</u>	<u>IRC Section Amended</u>	<u>General Description of IRC Section</u>
18 N.Y. Eff: applicable to estates of decedents dying on or after November 6, 1978.	2040(d), (e)	Allows the same benefits of a "qualified joint interest" to a joint interest created before 1977 without formally severing the joint tenancy and then re-creating it if donor-spouse elects to report a gift of property in a gift tax return filed in any calendar quarter in 1977, 1978 or 1979. Under existing law, the pre-1977 joint tenancy must be severed and re-created to get this benefit.
19 N.Y. Eff: applicable to estates of decedents dying on or after July 1, 1978(3).	2055(e)(3)	Allows an extension of time for amending (or commencing judicial proceedings to amend) governing instruments in order to meet the requirements imposed under the Federal Tax Reform Act of 1969 until December 31, 1978 in order to gain a charitable income, gift or estate tax deduction for a charitable split-interest trust. The extension applies to charitable remainder trust for gift and income tax purposes, as well as for estate tax purposes and to charitable lead (income) trusts for estate, gift and income tax purposes.
20 N.Y. Eff: applicable to estates of decedents dying on or after July 1, 1978(4).	2056(c)(1)(B)	Amends the estate tax marital deduction so that any gift not required to be included in a gift tax return, i.e., gifts of \$3,000 or less, is excluded in the computation of the reduction of estate tax marital deduction on account of intervivos gifts and also such deduction will not be reduced if a gift to a spouse is included in the estate of the donor dying after 1976, as a gift in contemplation of death.

(3) See explanation on page 6.

(4) " " " "

<u>Bill Section</u>	<u>IRC Section Amended</u>	<u>General Description of IRC Section</u>
21, 22 N.Y. Eff: applicable to estates of decedents dying on or after July 1, 1978(3).	2057(c),(d),(e)	Provides that a single "qualified minor's trust" which meets certain requirements may be set up for the benefit of all of a decedent's children as a group. Limited amounts passing to such a trust qualify for an estate tax deduction, multiplied by the difference between the child's age and age 21. If a child beneficiary dies before the youngest orphan reaches age 23, the trust property may pass to someone other than the child's estate.
23 N.Y. Eff: applicable to estates of decedents dying on or after November 7, 1978.	6166(b)(2)(D)	Allows an estate to use the attribution rule in order to see if a decedent meets the 20% of capital interest or voting stock requirement to find an interest in a closely held business.
24 N.Y. Eff: applicable to estates of decedents dying on or after November 7, 1978.	6166(b)(7)	Requires that stock involved must be stock that is "not readily tradable", i.e., at time of decedent's death, no market in a stock exchange or in over-the-counter trade existed.

1. However, for joint interests created between July 1, 1978 and June 23, 1980 (date Chap.417 became law), the taxpayer may elect to determine the tax under the law as in effect prior to June 23, 1980.
2. Providing further, where no federal estate tax return is required to be filed, the election for this special valuation shall be made no later than nine months from the decedent's death in such manner as the State Tax Commission shall provide by regulation or instruction.
3. However, in the case of trusts created before December 31, 1977, provisions comparable to paragraph 3 of section 2055(e) of the I.R.C. of 1954, as amended by this act, shall be deemed to be included in section 2522 of such code with respect to transfers made after December 31, 1969 to the extent that such section is deemed to be included for federal gift tax purposes.
4. However, in the case of a decedent dying on or after July 1, 1978 and before June 23, 1980, the estate may elect to compute the tax under the law as in effect prior to June 23, 1980.