

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

TSB-M-81 (2)  
Estate and Gift Tax  
January 28, 1981

Subject: Works of fine art (personal property) owned by a non-resident decedent situated in New York State at the time of death.

Tangible personal property of a decedent located in New York State at the time of death is subject to New York estate tax, under the provisions of section 960 of the Tax Law, if such property is includible in the decedent's federal gross estate or would be includible in the decedent's New York gross estate (if the decedent were a resident of New York State) by virtue of having certain limited powers of appointment over such property.

Chapter 190, Laws of 1980, amended section 960, effective June 3, 1980, by adding a new subsection (d). This newly enacted sub-section provides that if the laws of a decedent's state of residence provide for the imposition of a transfer or death tax on works of art (personal property) if such works of art were located in the state of residence at the time of death, but does not collect such tax because the works of art were not situated in the domicile state at the time of decedent's death but were, in fact, located in New York State solely-

1. for exhibition purposes, loaned for such purpose to a public gallery or museum  
or
2. on exhibition, or en route to or from exhibition in a public gallery or museum

New York State will collect a tax equal to the tax which would have been imposed by the state of residence. However,

- a. N.Y.S. can not collect a tax of a greater amount than that which would be imposed by the provisions of subsection (a) of section 952. Therefore, if the tax which would have been imposed by the state of residence (had the works of art been located in the state of domicile at the time of death) is greater than the New York State tax, as imposed in accordance with subsection (a) of section 960, only such amount as computed under the New York statute would be due and payable.
- b. if the state of residence of the decedent does, in fact, impose and collect a tax on such assets even though the works of art were located in New York State at the time of a decedent's death, for exhibition purposes, then such works of art would be exempt from New York State tax.

A public gallery or museum is defined in this provision as one in which no part of the earnings inure to the benefit of any private stockholder or individual.