

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

TSB-M-83 (4) Revised  
Estate and Gift Tax  
July 15, 1984

Subject: Requirements for and general information on Estate Tax Waivers for estates of decedents dying on or after July 1, 1978.

This memorandum amends TSB-M-83(4), dated August 29, 1983, which should be destroyed.

The statutory provisions governing the delivery or transfer of certain money or financial assets of a resident decedent and the authority for the State Tax Commission to establish rules and regulations covering the release of these assets are contained in Section 249-cc of Article 10-C of the Tax Law. The pertinent regulations are contained in Title 20, Part 360 of the Official Compilation of Codes, Rules, and Regulations of the State of New York.

An estate tax "waiver" is an official notice issued by this department authorizing a transfer agent (bank, trust company, corporation or its transfer agent, insurance company) to release funds of a decedent to the heirs or beneficiaries without liability to the transfer agent for any estate tax that may be due and owing.

Recent amendments to the Regulations, promulgated on August 25, 1983, apply retroactively to estates of decedents dying on or after July 1, 1978, unless otherwise stated. Tax waivers must be issued before any of the following types of assets can be transferred or released:

1. Bank deposits, stocks and bonds (open market securities), annuity retirement contracts in an "unqualified plan" (usually purchased by an individual from an insurance company), held either individually or with one or more other individuals jointly, or held "in trust for" another person, if the aggregate value of such assets held by any one institution or transfer agent at the time of death, or, in the case of stocks and bonds on the value as of the date of submission to the transfer agent, is in excess of \$30,000.
  - a. If funds held by a transfer agent exceed \$30,000, a partial release of not more than \$30,000 in the aggregate may be made without a waiver.
2. Proceeds of all life insurance policies held by any one insurance company on the life of a resident decedent having a date of death value exceeding \$50,000 (for decedent dying on or after September 1, 1977).
  - a. A partial payment in an amount over \$30,000, but not exceeding \$50,000, may be made by an insurance company after submitting notice of such payment on Form TP-393.
  - b. Payments of not more than \$30,000 may be made without giving notice or obtaining a waiver.

3. Payments in excess of \$50,000 receivable by a beneficiary (other than an executor) made –
  - (i) as a death benefit pursuant to the terms of an employees' pension or profit-sharing plan or trust, or
  - (ii) under an employees' trust or retirement annuity contract purchased by an employer (qualifying under IRC Section 2039(c)) where such payments are attributable, to any extent, to contributions made by the decedent, or
  - (iii) under an individual retirement account or annuity or retirement bond (qualifying under IRC Section 2039(e) and receivable in the form of an annuity) to which contributions were made by the decedent
  - a. A partial payment in an amount over \$30,000, but not exceeding \$50,000, may be made by an employer or trustee of the plan after submitting notice of such payment on Form TP-390.
  - b. Payments of not more than \$30,000 may be made without giving notice or obtaining a waiver.

For estates of decedents dying after December 31, 1982, waivers are required where payments pursuant to the following plans exceed \$100,000 and in which no contributions are attributable to the decedent:

1. An employees' trust or retirement annuity contract qualifying for exclusion from the decedent's gross estate under Section 2039(c) of the Internal Revenue Code.  
  
(To qualify for exclusion from the gross estate, payment must be made to a beneficiary in the form of an annuity, or, if taken in a lump sum, the lump sum payment must be treated by the beneficiary as taxable income in the year received.)
2. An individual retirement account, retirement annuity or retirement bond (IRA) qualifying for exclusion from the decedent's gross estate under Section 2039(e) of the Internal Revenue Code. (To qualify for exclusion from the gross estate, payment must be made to a beneficiary in the form of an annuity.)

(Note: When payments made pursuant to the above plans are attributable to contributions made by the decedent, the rule given in item number 3, above, applies.)

Although a waiver may not be required to release certain assets (e.g., bank accounts, stocks and bonds), this should not be construed by the representative of the estate as evidence that the asset is excludable from the gross estate.

Waivers must be obtained on jointly held assets before delivery or transfer of more than \$30,000 is made, even though a jointly held asset may prove to be entirely or partially excludable from the estate (except as noted below).

For estates of decedents dying on or after October 1, 1983, assets may be released to a surviving spouse without a waiver and without giving notice to the State Tax Commission (regardless of the amount being held by the transfer agent) if the surviving spouse was the only joint tenant with the decedent in the case of cash, deposits or securities, or the named beneficiary

in the case of proceeds from a life insurance policy, death benefits from an employees' pension or profit-sharing plan or trust, or an individual retirement account.

Nonresident decedent-- The provisions of section 249-cc do not require waivers for the delivery or transfer of intangible assets standing in the name of a nonresident decedent. The prohibitions of this section apply only to tangible personal property having an actual situs in New York State. However, if the domicile of the decedent is in doubt, the transfer agent, to protect himself from possible tax liability if it is later determined that the decedent was a New York State resident, may require a tax waiver before delivering or transferring the asset. In such situations, the estate tax representative should file Form TT-141-A, Estate Tax Domicile Affidavit, listing the intangible assets located in New York State for which waivers are requested. Although estate tax is not imposed upon the transfer of intangible assets of a nonresident decedent, their value is taken into consideration when computing the tax where the estate consists of real and/or tangible personal property located in New York State.

Method of obtaining waivers-- Where Letters Testamentary or Letters of Administration have been issued by a Surrogate's Court appointing a responsible adult an executor or administrator of the estate and less than 18 months have elapsed since the date of death of the decedent, waivers may be issued without the payment of tax upon the filing of a completed Form TT-30, Application for Waivers. A copy of the decedent's death certificate and a copy of the Letters Testamentary or Letters of Administration must also be submitted.

For all estates where more than 18 months have passed since the date of death of the decedent, and in any estate where no executor or administrator has been appointed by Surrogate's Court, waivers will not be issued until either a formal estate tax proceeding (Form TT-86.5) has been entered in Surrogate's Court or a completed Form TT-102, Resident Affidavit, has been filed. Any tax, interest and penalty that is due must be paid in full.

If full payment is not received, or if an improper payment is made, a tax bill will be sent to the executor, administrator, or applicant. When all applicable payments are received, the necessary tax waivers will be issued. Tax waivers are forwarded to the estate representative who must then present them to the transfer agent to obtain the release of the funds held by the agent.