

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

TSB-M-84 (5)
Estate and Gift Tax
September 26, 1984

Subject: Chapter 446, Laws of 1984, enacted July 19, 1984
Amendments to estate and gift tax laws (Article 26 and 26A)

This new legislation amends and updates the New York State estate and gift tax laws and appendices to conform them, with modifications, to technical and clarifying changes in the federal law made by the Technical Corrections Act of 1982, the Indian Tribal Government Tax Status Act of 1982, and also to certain provisions made by the Payment-in-Kind Tax Treatment Act of 1983, which is a federal unconsolidated law enacted March 11, 1983.

The Technical Corrections Act of 1982 made technical and clarifying changes in the federal estate and gift tax laws as previously adopted in accordance with the federal Economic Recovery Tax Act of 1981 and the federal Tax Equity and Fiscal Responsibility Act of 1982. The federal amendments made by the Economic Recovery Tax Act and the Tax Equity and Fiscal Responsibility Act were adopted by Chapters 916 and 917. Laws of 1982. Articles 26 and 26A of the Tax Law now conform, with modification, to the Internal Revenue Code of 1954, with all amendments enacted on or before January 14, 1983 and the Payment-in-Kind Tax Treatment Act of 1983.

The attached Appendices explain the provisions of Chapter 446. Appendix A explains those provisions of the New York State Tax Law and the New York unconsolidated laws which have been amended or added by reference to bill section and law section. Appendix B explains the provisions of the related IRC sections contained in the Tax Law by reference to bill section and law section. In Appendices A and B the effective date of each provision of the law is stated. Where there are exceptions to the effective dates or where further explanation is required, Appendices A and B cross-reference to Appendix C, which gives the exceptions and provides additional explanations.

Appendix A
Cross-reference between Bill section
and amended section of N.Y. Tax Law

<u>Bill Section</u>	<u>Amended New York Tax Law section</u>	<u>General content of amended provision</u>
1	<p style="text-align: center;">951(a) N.Y. eff.: applicable to estates of decedents dying after December 31, 1982 (See exception in Appendix C)</p>	Provides that the applicable IRC provisions affecting N.Y.S. estate tax shall be those in effect on or before January 14, 1983.
2	<p style="text-align: center;">954 (a) (4) (C) (New) N.Y. eff.: applicable to estates of decedents dying after December 31, 1982</p> <p style="text-align: center;">954 (a) (4) (D) (New) N.Y. eff.: same as above</p>	<p>Provides that QTIP property included in the donee-spouse's gross estate will be treated as passing from that spouse for estate tax and generation-skipping tax purposes, i.e., the property will get a step-up in basis when it is included in the surviving-donee spouse's estate. (See Appendix B, Bill Section 23, new IRC Section 2044(c).)</p> <p>Provides a cross-reference to EPTL Section 2-1.12 regarding the right of recovery of the estate tax applicable to property included in the decedent's gross estate previously treated as "qtip."</p>
3	<p style="text-align: center;">954-a (b) (1) N.Y. eff.: applicable to estates of decedents dying after July 19, 1984</p>	Provides that the "adjusted value of the federal gross estate" shall be determined without reference to the adjustments provided for in Section 954(a).
4	<p style="text-align: center;">954-a (b) (5) N.Y. eff.: applicable to estates of decedents dying after December 31, 1981</p>	Provides that the method for determining "active management" for purposes of applying the special use valuation is the same method that is contained in IRC Section 2032A.
5	<p style="text-align: center;">955 (c) (1) N.Y. eff.: applicable to estates of decedents dying after December 31, 1982</p>	Provides that the marital deduction election for certain "qtip" trusts be made in the manner prescribed by the Tax Commission.
6	<p style="text-align: center;">958-a (a) N.Y. eff.: same as above</p>	Corrects terminology to denote "unified credit" in place of "general credit."

<u>Bill Section</u>	<u>Amended New York Tax Law section</u>	<u>General content of amended provision</u>
7	958-a (e) (1) N.Y. eff.: applicable to estates of decedents dying after December 31, 1981	Amends provision to include the terms "qualified exchange property" and "qualified replacement property" and give them the same meaning as contained in IRC Section 2032A.
8	962 (b) (4) N.Y. eff.: applicable to estates of decedents dying after July 19, 1984	Amends provision to correct reference to subsection (c) to subsection (d) of Section 954.
9	962 (f) (1) N.Y. eff.: same as above	Amends provision to include reference to paragraphs (3) and (4) of subsection (a) of Section 954.
10	962 (k) (2) N.Y. eff.: effective January 15, 1983	Word correction--"of" to "or."
11	962 (k) (5) (A) N.Y. eff.: same as above	Amends provision to clarify the imposition of penalty rule in cases where extensions are obtained to provide that a penalty shall be imposed if the tax is not paid within the period of extension or in accordance with the terms of the extension.
12	962 (k) (6) N.Y. eff.: applicable to extensions granted after July 19, 1984 and to defaults occurring after July 19, 1984 regardless of whether such defaults were on an extension granted before or after such date.	Amends provision to provide that interest shall be charged and collected on any portion of tax not paid within period of extension from the date of death of the decedent until the tax is paid. (See TSB-M-82 (2.1), dated August 31, 1984.)
13	962 (k) (9) N.Y. eff.: effective January 15, 1983	Amends provision to include the phrase "under this article."
30	1000 (a) N.Y. eff.: applicable to gifts and transfers made after December 31, 1982	Provides that the applicable IRC provisions affecting NYS gift tax shall be those in effect on or before January 14, 1983.
31	1003 (a) (3) (A) N.Y. eff.: same as above	See Appendix B, Bill Section 36, regarding IRC Section 2519(a).

<u>Bill Section</u>	<u>Amended New York Tax Law section</u>	<u>General content of amended provision</u>
32	1003 (a) (3) (C) (New) N.Y. eff.: same as above	Provides a cross-reference to EPTL Section 2-1.12 regarding the right of recovery of the gift tax applicable to property transferred by a donee-spouse previously treated as "qtip."
33	1007 (a) (2) (old) N.Y. eff.: same as above	<u>Repealed</u> because, as a result of recent amendments that changed the gift tax return system from a quarterly to an annual basis, the due date rules for returns regarding qualified charitable NY gifts are the same as the due date rules for gift tax returns generally.
	1007 (a) (5) N.Y. eff.: same as above	Repealed -- see above.
34	1007 (a) (2) (New) N.Y. eff.: applicable to gifts and transfers made after December 31, 1984	Provides that where a donor of a NY gift dies during the calendar year in which such gift was made, the required return and payment of tax shall be filed and made within nine months after the date of such person's death.
	<u>Affected sections</u>	
44	1000/1009 (IRC Section 2503 (b)) N.Y. eff.: applicable to gifts and transfers made after July 19, 1984	Provides that notwithstanding the date of conformity contained in Section 1000 of Article 26A, the provision increasing the annual gift tax exclusion from \$3,000 to \$10,000 shall not apply to any transfer made after July 19, 1984 if such transfer is subject to a power of appointment granted under an instrument executed before September 12, 1981, if such power of appointment may be exercised during any period after December 31, 1982, if such power of appointment is expressly defined in terms of, or by reference to, the amount of the gift tax exclusion under subsection (b) of such Section 2503 (or the corresponding provision of prior law), and if such instrument has not been amended on or after September 12, 1981.

Bill
Section

Amended New York
Tax Law section

General content of amended provision

Affected sections

45

954-a
958-a
962(f)

Any provision of Article 26 which applies to any of the above N.Y. Tax Law sections.

IRC-2032A
IRC-6166

Provides, that for purposes of the provisions of law contained in these sections of Article 26 and these IRC sections, in the case of any land diverted from the production of an agricultural commodity under a "1983 Payment-in-Kind Program" (1) such land shall be treated as used during the 1983 crop year by the qualified taxpayer in the active conduct of the trade or business of farming; and (2) any qualified taxpayer who materially participates in the diversion to conservation uses required under a 1983 payment-in-kind program shall be treated as materially participating in the operation of such and during such crop year. However, in the case of any person, the provisions of this PIK Program shall not apply with respect to any land acquired by such person after February 23, 1983, unless such land was acquired in a qualified acquisition, provided, however, that this subsection shall not apply to any change in ownership by reason of a mere change in the form of conducting the trade or business so long as the land is retained in such trade or business and the person holding the lands before such change retains a direct or indirect 80 percent interest in such land. (This section of Chapter 446 is the NY analog to certain provisions contained in the federal Payment-in-Kind Tax Treatment Act of 1983.)

Appendix B
 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 content of amended provision</u>
14	2032A (b) (5) (C) (New) N.Y. eff.: applicable to estates of decedents dying after December 31, 1981	Provides that the "active management" of a surviving spouse may be "tacked" on to the material participation of a retired spouse to satisfy the 5-of-8 year's test.
15	2032A (i) (1) (B) (ii) N.Y. eff.: same as above	Amends provision by deleting the phrase "the other property" and inserting in lieu thereof "the qualified exchange property."
16	2032A (i) (3) N.Y. eff.: same as above	Amends provision by deleting an incorrect reference to subparagraph (C) of subsection (b) (2).
17	2035 (b) (2) N.Y. eff.: applicable to estates of decedents dying after December 31, 1982	Amends provision to delete an incorrect reference to subsection (a) of IRC Section 6019, which letter designation was deleted by ERTA '81 (because of the repeal of subsection (b) and (c)), and substitutes in lieu thereof "Section 6019 (2)."
18	2035 (d) (2) N.Y. eff.: same as above	Amends provision by adding reference to "paragraph (2) of subsection (b)" and deleting reference to IRC Section 2041.
19	2035 (d) (3) (C) N.Y. eff.: same as above	Deletes subparagraph (C) and reletters subparagraph (D) as (C)--(see Bill Section 20, below.)
20	2035 (d) (4) (NEW) N.Y. eff.: same as above	Provides that gifts made within 3 years of death must be included in the decedent's gross estate for purposes of determining the estates eligibility (the 35% test) for deferred payment of tax under IRC Section 6166. (See this appendix, Bill Section 29, new IRC Section 6166 (j) (5).)

<u>Bill Section</u>	<u>IRC section amended</u>	<u>General content of amended provision</u>
21	2039 (f) (1) (A) N.Y. eff.: same as above	Amends provision to change the phrase "without regard to the next to last sentence" to "without regard to third sentence" of IRC Section 402 (e) (4) (A).
	2039 (f) (1) (B) (New) N.Y. eff.: same as above	Clarifies the rule relating to the eligibility for exclusion from the gross estate of a lump sum distribution made to a beneficiary of a deceased employee.
22	2039 (f) (2) N.Y. eff.: same as above	Amends provision by deleting the phrase "A lump sum distribution" and inserting in lieu thereof "An amount."
23	2044 (c) (New) N.Y. eff.: same as above	Provides that QTIP property included in the donee-spouse's gross estate will be treated as passing from that spouse for estate tax and generation-skipping tax purposes, i.e., the property will get a step-up in basis when it is included in the surviving-donee spouse's estate. (NY Tax Law analog--see Appendix A, Bill Section 2, Tax Law Section 954 (a) (4) (C).)
24	2055 (f) (11) (New) N.Y. eff.: applicable to estates of decedents dying after December 31, 1982 and before January 1, 1985	Provides that under the provision of IRC Section 7871, Indian Tribal Governments will be treated as state governments. In connection therewith, charitable contributions made for exclusive public purposes to Indian Tribal Governments will be allowable as charitable deductions for estate and gift tax purposes.
25	2056 (b) (7) (B) (ii) N.Y. eff.: applicable to estates of decedents dying after December 31, 1982	Provides that, to the extent the federal regulations allow, an annuity will be treated as a qualifying income interest regardless of whether property from which the annuity is payable can be separately identified, e.g., a pooled income fund.
26	2056 (b) (9) (New) N.Y. eff.: same as above	Provides that the value of any interest in "qtip" property cannot be deducted from the gross estate more than once, i.e., if the estate takes a marital deduction for the value of the "qtip" property, a charitable deduction cannot be taken for the remainder interest.

<u>Bill Section</u>	<u>IRC section amended</u>	<u>General content of amended provision</u>
27	6166 (b) (3) N.Y. eff.: same as above	Amends provisions to correct "65-percent" reference to "35-percent."
28	6166 (g) (1) (B) N.Y. eff.: same as above	Provides that stock in a closely held business redeemed under IRC Section 303 and the withdrawal of funds from such a business shall not be treated as a distribution or withdrawal in determining whether installment payments of tax must be accelerated.
29	6166 (j) (5) (New) N.Y. eff.: same as above	Provides that the special 3-year rule regarding gifts made by the decedent only applies for purposes of determining eligibility for the installment payment of taxes under this section. (See this appendix, Bill Section 20, new IRC Section 2035 (d) (4).)
35	2518 (c) (3) N.Y. eff.: applicable to transfers creating an interest in the person disclaiming made after December 31, 1982.	Amends provision to delete redundant language (opening phrase).
36	2519 (a) N.Y. eff.: applicable to gifts and transfers made after December 31, 1982	Clarifies that the special provisions of this section applies only to the transfer, by the donee-spouse, of the remainder interest in "qtip" property. (The transfer of the life estate in "qtip" property is governed by the rules applicable to the disposition of any life estate held by the surviving spouse.) (NY Tax Law analog--see Appendix A, Bill Section 31, Tax Law Section 1003 (a) (3) (A).)
37	2519 (c) (New) N.Y. eff.: same as above	Provides for the cross-reference to IRC Section 2207A (the NY analog to this federal section is EPTL 2-1.12(b)).
38	2522 (d) (2) (New) N.Y. eff.: applicable to gifts and transfers made after December 31, 1982 and before January 1, 1985	See this appendix, Bill Section 24 and related IRC Section 2055(f)(11).

<u>Bill Section</u>	<u>IRC section amended</u>	<u>General content of amended provision</u>
39	2523 (f) (3) N.Y. eff.: applicable to gifts and transfers made after December 31, 1982	Amends provision to the effect that rules similar to rules in the estate tax provisions will apply in defining "qtip" property for gift tax purposes (see this appendix, Bill Section 25, IRC Section 2056 (b) (7) (B) (ii)).
40	2523 (f) (4) N.Y. eff.: same as above	Provides that the election to treat a terminable interest as qualified for the marital deduction must be made on or before the first April 15th after the calendar year in which the interest was transferred.
41	2523 (f) (5) (New) N.Y. eff.: same as above	Provides that a transfer by the donor-spouse of any retained interest in "qtip" property, after the transfer of the life interest to the donee-spouse, shall not be treated as a gift unless - 1) the donee's life interest was already transferred under IRC Section 2519 (NY analog--Section 1003(a) (3)), or 2) the donee's life interest had already been included in the donee-spouse's gross estate under IRC Section 2044 (NY analog--Section 954 (a) (4) (B).)
42	2523 (h) (New) N.Y. eff.: same as above	See this appendix, Bill Section 26 and related IRC Section 2056 (b) (9).

Appendix CExceptions

<u>Bill Section</u>	<u>Tax Law</u>	<u>Exception</u>
43	Chapter 916 Bill Section 83 (c) and Bill Section 83 (d)	Amends certain effective date provisions of Chapter 916, Laws of 1982, to conform to technical changes made by the federal Technical Corrections Act of 1982 to the federal Economic Recovery Tax Act of 1981.
46 (a)	NY Tax Law Section 951(a)	With respect to the amendments made by Bill Sections 14, 15, and 16 (see Appendix B), Section 1 of this Bill (see Appendix A) shall be applicable to estates of decedents dying after December 31, 1981.