



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

TSB-M-98(5)M
Estate and Gift Tax
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**1998 Amendments to Estate, Gift, and Generation-Skipping Transfer Taxes
(Articles 26, 26-A, and 26-B of the Tax Law)**

On April 28, 1998, Governor George E. Pataki signed Chapter 56 into Law. This Act conforms estate and generation skipping transfer (GST) tax provisions of the New York State Tax Law with changes to the Internal Revenue Code(IRC) as amended through August 5, 1997. Highlights of the 1998 changes follow.

Effective January 1, 1998, and applicable to estates of individuals dying on or after January 1, 1998, and before February 1, 2000, an election may be made to exclude the value of the decedent's interest in a family-owned business otherwise includable in the New York gross estate. The maximum amount that may be excluded is \$675,000 for 1998, 650,000 for 1999, and \$625,000 for 2000.

Effective January 1, 1998, and applicable to estates of individuals dying on or after January 1, 1998, and before February 1, 2000, an election may be made to exclude the value of a qualified conservation easement on land that is includable in the New York gross estate. The maximum amount that may be excluded is \$100,000 for 1998, \$200,000 for 1999, and \$300,000 for 2000.

Effective January 1, 1998, and applicable to estates of individuals dying on or after that date, the interest rate charged on deferred payments of estate tax where an estate consists largely of an interest in a closely-held business is reduced from 4% to 2%. With this reduced interest rate, the estate is no longer allowed to claim a deduction for the interest paid on the installment payments for estate tax purposes as an administrative expense. Additionally, payments of interest at the reduced rate are not deductible for income tax purposes. Estates of individuals dying before January 1, 1998, who are currently paying their estate taxes in installments, may elect to have the interest rate reduced from 4% to 2%. If this election is made, the estate will not be allowed a deduction for the interest paid. The reduced 2% interest rate will apply to payments that become due after the date the election is made. The election must be made by July 1, 1999.

Effective immediately, an estate is allowed to exclude certain property from the New York gross estate of an individual who was a victim of Nazi persecution. For further information regarding this exclusion, refer to TSB-M-98(4)M.

The following appendix explains the specific provisions of Chapter 56, by reference to act sections, New York Tax Law sections, and if applicable, Internal Revenue Code sections as amended through August 5, 1997.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
33	951(a)(Applicable internal revenue code provisions) Effective date: Applicable to estates of individuals dying on or after April 28, 1998	For purposes of Article 26 of the Tax Law, any reference to the internal revenue code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before August 5, 1997.(Date of enactment of the Taxpayer Relief Act of 1997).
34	954(d)(1) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Adds reference to IRC section 2033A (Family-Owned Business Exclusion).
35	954-b Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Adds new section 954-b that allows an estate not required to file a Federal estate tax return an exclusion from the gross estate for land subject to a qualified conservation easement, in the same manner as under section 2031(c) of the IRC.
36	954-b Effective date: Applicable to estates of individuals dying on or after February 1, 2000(the effective date of the pick-up tax).	Repeals section 954-b of the Tax Law.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
37	954-c Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Adds new section 954-c that allows an estate not required to file a Federal estate tax return a family-owned business exclusion from gross estate in the same manner as under section 2033A of the IRC.
38	954-c Effective date: Applicable to estates of individuals dying on or after February 1, 2000.	Repeals section 954-c of the Tax Law.
39	958-a (Credit for exemption for permitted purposes) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Adds a new subsection (i) that states that if the family-owned business exclusion is elected either under section 2033-A of the IRC or section 954-c of the Tax Law, no credit may be claimed under section 958-a.
40	958-b (Credit for certain closely-held businesses) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Adds a new subsection (f) that states that if the family-owned business exclusion is elected either under section 2033-A of the IRC or section 954-c of the Tax Law, no credit may be claimed under section 958-b.
41	997(g)(Extensions of time for payment of estate tax if estate consists largely of interest in closely-held businesses) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Amends the first paragraph of subsection (g) by changing the interest rate from four percent to two percent.
42	997(j)(1),(2),(3) and (4) (Extensions of time for payment of estate tax if estate consists largely of interest in closely-held businesses) Effective date: Applicable to estates of decedents dying on or after January 1, 1998	Amends paragraphs (1),(2),(3), and (4) by changing the rate of interest from four percent to two percent.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
43	2013(g) of the IRC (Credit for Tax on Prior Transfers) Effective date: Applicable to estates of individuals dying on or after January 1, 1997	Repeals subsection (g) of IRC section 2013, which provided that for purposes of the credit for tax on prior transfers, tax paid does not include the tax on excess retirement plan accumulations imposed by IRC section 4980A, which has been repealed.
44	2031(c) of the IRC (Definition of Gross Estate) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Relettered to subsection (d) and adds a new subsection (c), that allows an election to exclude from the gross estate the value of land subject to a qualified conservation easement.
45	2032A(a) of the IRC (Valuation of Certain Farm, Etc., Real Property) Effective date: Applicable to estates of individuals dying on or after April 29, 1998	Adds a new paragraph 3, that provides for an inflation adjustment after calendar year 1998, which increases the \$750,000 maximum reduction in value for qualified real property.
46	2032A(b)(5)(A) of the IRC (Valuation of Certain Farm, Etc., Real Property) Effective date: Applicable to estates of individuals dying on or after April 28, 1998	Deletes the reference that allows the surviving spouse to rent the qualified property on a net cash basis to a member of such spouse's family and still have such property treated as a qualified use.
47	2032A(c)(7) of the IRC (Valuation of Certain Farm, Etc., Real Property) Effective date: Applicable to estates of individuals dying on or after April 28, 1998	Adds a new subparagraph (E), that, for purposes of the recapture tax, allows the surviving spouse or descendant of the decedent to rent qualified property on a net cash basis to a family member of such spouse or descendant, and still have the property treated as a qualified use.
48	2032A(c) of the IRC (Valuation of Certain Farm, Etc., Real Property) Effective date: Applicable to easements granted on or after January 1, 1998.	Adds a new paragraph (8), that allows for a qualified conservation contribution without such contribution being deemed a disposition, for purposes of the recapture tax, under section 2032A.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
49	2032A(d)(3) of the IRC (Valuation of Certain Farm, Etc., Real Property) Effective date: Applicable to estates of individuals dying on or after April 29, 1998	Amends paragraph 3 to cure a defective special use valuation election.
50	2033A of the IRC (Family-Owned Business Exclusion) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Adds a new section 2033A that allows an exclusion from gross estate for a portion of the value of a qualified family-owned business.
51	2035 of the IRC (Adjustments for Gifts Made Within 3 Years of Decedent's Death) Effective date: Applicable to estates of individuals dying on or after August 6, 1997.	Section 2035 is repealed, and a new section 2035 is added to conform to federal changes made in 1997 to improve clarity, without substantive change.
52	2053(c)(1)(B) of the IRC (Expenses, Indebtedness, and Taxes) Effective date: Applicable to estates of individuals dying on or after January 1, 1997	Subparagraph (B) of paragraph (1) of subsection (c) of section 2053 is amended to disallow a deduction for any increase in tax on excess distributions from qualified retirement plans under section 4980A. (Section 4980A is repealed by section 63 of this Act)
53	2053(c)(1) of the IRC (Expenses, Indebtedness, and Taxes) Effective date: Applicable to estates of individuals dying on or after April 29, 1998	Adds a new subparagraph (D) that disallows a deduction for any interest payable under section 6601 on any unpaid portion of tax during which an extension of time for payment of tax is in effect under section 6166. (Act sections 41, 42 lower interest rate from 4% to 2%)
54	2055(a)(3)(4) of the IRC (Transfers for Public, Charitable and Religious Uses) Effective date: Applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan on or after August 6, 1997.	Paragraphs 3 and 4 are amended to make grammatical corrections, and a new paragraph 5 is added to allow a deduction for a qualified gratuitous transfer of qualified employer securities to an employee stock ownership plan.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
55	2055(e)(3)(G) of the IRC (Transfers for Public, Charitable and Religious Uses) Effective date: Applicable to transfers in trust on or after July 29, 1997, except that such amendments shall not apply to transfers in trust under terms of a will (or other testamentary instrument) executed on or before July 28, 1997. This applies only if the decedent dies before January 1, 1999, without having republished the will (or amended such instrument) by codicil or otherwise, or was on July 28, 1997, under mental disability to change the disposition of his other property and did not regain competence to dispose of such property before the date of death.	Subparagraph G is amended to provide that the one-year statute of limitations for assessing tax in connection with reformations of trusts applies to reformations under new subparagraph J (added by Act section 56).
56	2055(e)(3) of the IRC (Transfers for Public, Charitable and Religious Uses) Effective date: Applicable to transfers in trust on or after July 29, 1997, except that such amendments shall not apply to transfers in trust under terms of a will (or other testamentary instrument) executed on or before July 28, 1997. This applies only if the decedent dies before January 1, 1999, without having republished the will (or amended such instrument) by codicil or otherwise, or was on July 28, 1997, under mental disability to change the disposition of his or her property and did not regain competence to dispose of such property before the date of death.	Adds a new subparagraph (J) that allows certain charitable remainder trusts to be declared null and void or to be changed by reformation in order to qualify for deduction under IRC section 2055.
57	2056(b)(7)(C) of the IRC (Bequests, etc., to Surviving Spouse) Effective date: Applicable to estates of individuals dying on or after August 6, 1997.	Subparagraph C is amended to allow an interest in an annuity arising under the community property laws of a state, included in the gross estate of the decedent under IRC section 2033, to be considered a qualifying income interest for life, and to qualify for the marital deduction.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
58	2056(b)(8) of the IRC (Bequests, etc., to Surviving Spouse) Effective date: Applicable to transfers made by trusts to, or for the use of, an employee stock ownership plan on or after August 6, 1997.	Amends paragraph 8 to allow a marital deduction for a charitable remainder trust, if the surviving spouse of the decedent is the only beneficiary of a charitable remainder trust and who is not a charitable beneficiary nor an ESOP beneficiary. This amendment also defines a charitable beneficiary and an ESOP beneficiary.
59	2056(b) of the IRC (Bequests, etc., to Surviving Spouse) Effective date: Applicable to estates of individuals dying on or after April 29, 1998.	Adds a new paragraph 10 which defines the term <i>specific portion</i> for purposes of the marital deduction for terminable interest property under paragraphs (5), (6), and (7)(B)(IV).
60	2056A(a)(1)(A) of the IRC (Qualified Domestic Trust) Effective date: Applicable to estates of individuals dying on or after April 29, 1998.	Amends subparagraph A to allow the secretary to make an exception, by regulation, as to the requirement that at least one trustee of the trust be an individual citizen of the United States or a domestic corporation.
61	2056A(c) of the IRC (Qualified Domestic Trust) Effective date: Applicable to estates of individuals dying on or after April 29, 1998	Adds a new paragraph 3 that allows, to the extent provided in regulations provided by the secretary, the term <i>trust</i> to include other arrangements that have substantially the same effect as a trust.
62	2105(b) of the IRC (Property Without the United States) Effective date: Applicable to estates of individuals dying on or after August 6, 1997.	Adds a new paragraph 4 relating to property of a nonresident alien that is deemed outside the U.S. (and therefore exempt from U.S. estate tax), to expand obligations to be considered outside the U.S. to include those paying both contingent interest and portfolio interest.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
63	4980A(d) of the IRC (Tax on excess distributions from qualified retirement plans) Effective date: Applicable to estates of individuals dying on or after January 1, 1997	Repeals subsection (d), which increased estate tax by 15 percent of the excess retirement accumulation.
64	6166(b)(7)(A)(iii) of the IRC (Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely-Held Business) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Amends clause(iii) to change the interest rate under section 6601(j) from four percent to two percent. This rate does not apply to extensions relating to partnership interests or non-readily-tradable stock.
65	6166(b)(8)(A)(iii) of the IRC (Extension of Time for Payment of Estate Tax Where Estate Consists Largely of Interest in Closely-Held Business) Effective date: Applicable to estates of individuals dying on or after January 1, 1998	Amends clause(iii) to change the interest rate under section 6601(j) from four percent to two percent. This rate does not apply to extensions relating to holding company stock.
66	1007(a)(1)(A) (Administration) Effective date: Applicable to transfers made on or after August 5, 1997.	Amends paragraph A to add a new paragraph (E) providing an exemption from the requirement to file a gift tax return for charitable gifts, if the transfer qualifies for the qualified conservation contribution deduction or is of the donor's entire interest in the property transferred, and no other interest in such property is or has been transferred from the donor to a person, or to a use, not described in (A) or (B) of section 2522.

<u>Act Section</u>	<u>Amended New York Tax Law Section</u>	<u>General Content of Amended Provision</u>
67	1020(a)(Applicable internal revenue code provisions) Effective date: Applicable to generation-skipping transfers made on or after April 28, 1998.	For purposes of Article 26-B of the Tax Law, any reference to the internal revenue code means the United States Internal Revenue Code of 1986, with all amendments enacted on or before August 5, 1997(date of enactment of the Taxpayer Relief Act of 1997).
68	2612(c) of the IRC (Taxable termination; taxable distribution; direct skip) Effective date: Applicable to terminations, distributions, and transfers occurring on or after January 1, 1998.	Deletes paragraph 2 of subsection (c) regrading special rules for transfers to grandchildren, for purposes of determining whether any transfer is a direct skip, and relabels paragraph 3 to paragraph 2.(see Act section 69)
69	2651(e) of the IRC (Generation assignment) Effective date: Applicable to terminations, distributions, and transfers occurring on or after January 1, 1998.	Subsection (e) is relettered (f), and a new subsection (e) is added providing special rules for persons with a deceased parent, for purposes of determining whether any transfer is a generation-skipping transfer.
70	2652(b)(1) of the IRC (Other definitions) Effective date: Applicable to generatiion-skipping transfers on or after April 28, 1998.	Amends paragraph 1 of subsection (b) to add that the term <i>trust</i> shall not include any transfer during any period the trust is treated as part of an estate under section 646 of the IRC.
71	Subdivision (i) of section 385 of Chapter 190, Laws of 1990. Effective date: Applicable to applications for releases of lien filed on or after May 13, 1998.	Eliminates the \$10 fee for a release of lien imposed by subdivision c of section 249-bb(for further information, see TSB-M-98(3)M).
91	954(a)(Resident's New York gross estate) Effective date: These provisions are effective immediately, but deemed to have been in full force and effect on or after April 1, 1963.	Adds three new paragraphs 6, 7, and 8, which allow an exclusion for certain property from the New York gross estate of an individual who was a victim of Nazi persecution (for further information, see TSB-M-98(4)M).