

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

TSB-M-81(13)I
Income Tax
October 20, 1981

This memorandum supersedes memorandum TSB-M-81-(13)-I dated September 2, 1981, which should be destroyed.

1981 Legislation

Modifications to Reflect Gains or Losses from Property Acquired from Decedent

Chapter 103 of the Laws of 1981 added a new section 612(r) to Article 22 of the New York State Tax Law and a new section T46-112.0(q) to the Administrative Code of the City of New York.

Section 612(r) provides a plus modification under section 612(b)(17) and a minus modification under section 612(c)(19) to take into account the amount necessary to properly reflect the gain or loss realized from the sale or other disposition of property acquired from a decedent when a Federal Estate Tax return is not required to be filed.

For Estate tax purposes, the New York gross estate is valued as of the date of the decedent's death; except where a Federal Estate Tax return is filed and the alternate valuation is elected. When the estate is not sufficient to require the filing of a Federal Estate Tax return, the executor may elect to value the estate under the alternate method for New York State purposes. This may result in the property having a different basis for Federal and State tax purposes.

When property acquired from a decedent is sold or disposed of, a gain or loss may be realized. In computing the gain or loss, where no Federal Estate Tax return was required to be filed, Federal adjusted gross income will reflect the gain or loss based on the value of the property as of the date of the decedent's death. If the property was valued under the alternate valuation for New York State purposes, the New York gain or loss realized will be based on the value of the property as of the alternate valuation date or dates. This may result in a different gain or loss for Federal and State tax purposes. The difference becomes a modification (plus or minus) to Federal adjusted gross income under section 612(r).

Section 638(a)(3) was correspondingly amended to provide for the inclusion of these modifications in determining the New York taxable income of a nonresident estate or trust.

This amendment took effect May 15, 1981.