

### **New York State Estate Tax Law Changes for 2004**

Governor Pataki recently signed into law certain amendments affecting the estate tax. These provisions include:

- Repealed Article 10 of the Tax Law.
- Amended section 952(b) of the Tax Law, modifying the method of calculating the New York State estate tax when the estate includes property located outside New York State.
- Amended section 976(b) of the Tax Law, changing the date from which interest is calculated when an estate fails to pay the estate tax during the period of extension.
- Amended section 696(h) of the Tax Law, to exempt the estates of astronauts who have died in the line of duty after 2002.

#### **Article 10 repeal**

Article 10 of the Tax Law applies to estates of decedents that died prior to September 1, 1930, and was superseded by Article 10-C of the Tax Law (Chapter 710 of the Laws of 1930), but was never formally repealed.

Article 10 imposed an inheritance tax, under which the rate of tax depended on the relationship of the transferee to the decedent; that is, the tax rate is greater the farther removed the transferee is from the decedent. When the estate made a contingent transfer and the identity of the contingent remainder person was not known at the time of the transfer (thus the actual tax could not be determined), Article 10 required the estate to pay the tax at the highest rate and file for a refund if, upon the occurrence of the contingent event, the actual tax was lower.

The repeal is strictly technical and does not impact the application of the law to those estates for purposes of obtaining a refund.

#### **Modification of calculation for estates with property outside New York State**

Section 952(b) of the Tax Law was amended to modify the calculation of the New York State estate tax for estates of residents and nonresidents when the estate includes property located outside New York State. Before amendment, the New York State estate tax imposed a tax on the transfer of the New York estate equal to the maximum amount allowable against the federal estate tax as a credit for state death taxes, using the federal credit that was in effect in 2001. When the estate of a resident included real or tangible personal property located in a sister state, the tax was reduced by the lesser

of (1) the amount of the tax paid to the sister state, or (2) the proportional share of the federal credit for state death taxes that was in effect in 2001, based on the value of the out-of-state property. A similar calculation was used to compute the tax of a nonresident estate.

Now, the New York State estate tax for estates having property located outside New York State will be the maximum federal state death tax credit, using the credit in effect in 2001, reduced by the proportional share of the federal state death tax credit in effect in 2001, based on the value of the out-of-state property. The amendment is applicable to estates of individuals who died on or after January 1, 2002.

The amendments cure the unintended disparity in the New York calculation resulting from the federal *Economic Growth and Tax Relief Reconciliation Act of 2001*. The 2001 Act reduced the credit allowable for state death taxes, while the New York State estate tax continues to use the federal credit for state death taxes that was in effect in 2001 to calculate the tax. The reduction in the federal credit created a problem in the New York calculation when other states conformed to the reduced federal credit. In effect, the decrease in the amount of tax paid to a conforming state resulted in an increase in the amount due New York.

### **Change in calculation of interest for late payment of estate tax when the estate is granted an extension of time to pay tax**

Under section 976(b) of the Tax Law, before it was amended, when an estate was granted an extension of time to pay the estate tax but failed to pay the tax within the period of extension, interest on that portion of the tax which was subject to the extension and remained unpaid was calculated from the date of death. However, if the same estate had not obtained an extension of time to pay the tax, and had failed to pay the tax by the date that is nine months after the date of death, interest on the tax that remained unpaid would have been calculated from such nine month date to the date of payment.

With this amendment, interest on all unpaid estate tax, applicable to estates of decedents who died on or after February 1, 2000, will be calculated from the same date; that is, the date that is nine months after the date of death.

### **Death of astronauts in the line of duty**

Section 696(h) of the Tax Law was amended to exempt the estates of astronauts, who have died in the line of duty after 2002, from the New York State estate tax. However, the estate is not exempt from the requirements to file a New York State estate tax return.

The estate tax return should be marked *U. S. Astronaut* at the top of the front page, to facilitate processing the return.