

## New York State Department of Taxation and Finance



## Estate Tax Waivers

**Note: An estate tax waiver is not required for the estate of an individual whose date of death is on or after February 1, 2000.**

Also see *Which estates are required to file a New York State estate tax return?* on page 7 for filing requirements applicable to these estates.

### What are estate assets?

When a person dies, the property he or she owned at the time of death, either outright or as a partial interest, makes up the estate assets. These assets may include *real property* (house and/or land), *tangible personal property* (e.g., car or jewelry), or *intangible personal property* (e.g., bank accounts, life insurance proceeds, stocks or bonds).

### What court has authority over a deceased individual's estate?

In New York State, each county has a surrogate's court that is responsible for handling estate matters. For a resident of New York State, the surrogate's court in the county where the deceased was domiciled at the time of death is the proper court of jurisdiction. If a nonresident had real property in New York State, the surrogate's court in the county where the real property is located has jurisdiction over an ancillary proceeding. An ancillary proceeding is necessary to execute an executor's deed, transferring title to the real property of a nonresident decedent.

### Duties of the court

The surrogate's court determines the authenticity (probate) of the decedent's will and authorizes the person or persons named in the will as executor(s) to carry out their duties. The court also sees that estate assets are distributed in accordance with the terms of the will, and resolves any conflict between the language of the will and existing law. If the individual dies without a will (intestate), the court appoints an administrator and oversees the distribution of the assets under the rules of intestacy as applicable in New York.

### What is probate?

*Probate* is the process of proving before a court that the document offered as the deceased individual's last will and testament is genuine.

### What are probate assets and the probate estate?

Assets that are to be distributed according to the wishes of the deceased, as expressed in his or her will, are referred to as *probate assets* and make up the *probate estate*.

**What are non-probate assets?**

Excluded from the probate estate are those assets that pass by operation of law and not under the terms of the will. Included are bank accounts held as joint tenants with right of survivorship and life insurance proceeds payable to a named beneficiary. These assets are said to pass outside the estate (probate estate), which sometimes leads to confusion as to what assets should be included in a deceased individual's (*decedent's*) estate for estate tax purposes.

**What property is included in the estate for estate tax purposes?**

For estate tax purposes, a decedent's estate consists of all property in which the decedent had an interest, and includes property that is often excluded from the probate estate.

**What are letters of appointment?**

*Letters of appointment* are legal documents issued by a court that has jurisdiction over the estate of the deceased individual. They authorize the person named to act on behalf of the estate, and may set limitations on the powers of the person named. For purposes of this publication they include letters testamentary and letters of administration.

**Who issues letters of appointment?**

In New York State, the surrogate's court, in the county where the deceased was a resident prior to his or her death, has jurisdiction over the estate. If the deceased left a will, the justice of the surrogate's court issues *letters testamentary* to the individual named in the decedent's will to act as executor. In the absence of a will, the justice issues *letters of administration* to the person designated to administer the estate. Again, there may be limitations placed on the person to whom the letters are issued.

**What control does the Tax Department have over the release of a decedent's assets?**

To ensure collection of the proper estate tax, the Tax Department has established guidelines for the release of property held by banks, stockbrokers, insurance companies, etc. In most cases, these guidelines allow the partial release of assets, so the estate may remain solvent. In some cases, the entire asset may be released without authorization from the department.

**What is a waiver or a release of lien?**

When authorization is required for the release of personal property, this authorization is generally referred to as an *estate tax waiver* or a consent to transfer. Authorization to transfer real property is referred to as a *release of lien*. A validated Form ET-99, *Estate Tax Waiver Notice*, is the *waiver*, and a validated Form ET-117, *Release of Lien of Estate Tax*, is the *release of lien*.

**Does a waiver release anyone from responsibility for the estate tax?**

Without a waiver and subject to limitations established by regulation, no person or institution in possession of the assets of a decedent may transfer those assets unless notice of the transfer is given to the Commissioner of Taxation and Finance at least 10 days prior to the transfer, and a sufficient portion of the assets is retained to pay any estate tax on those assets.

The waiver or consent to transfer releases the institution (or person) holding the assets from these requirements without liability for the estate tax. However, obtaining an estate tax waiver does not release the executor or the beneficiary from his or her liability for any estate tax due.

## Who is responsible for the estate tax on the assets released?

The executor or person acting as executor (including a person applying for waivers) may be held personally liable for unpaid estate tax if he or she distributes assets to a beneficiary of the estate before payment in full of the New York State estate tax.

All beneficiaries of the estate may be held personally liable for the estate tax, up to the value of the property received from the estate.

The executor generally has authority under the Estates, Powers and Trusts Law to require reimbursement by the beneficiaries of an estate for estate taxes paid.

## What assets require a waiver and what are the exceptions?

You will need an estate tax waiver for the release of the following assets.

### *Monies*

- Money on deposit with an institution, including IRA's (individual retirement accounts), Keogh Plans and annuities (that are not part of an employee pension or profit sharing plan or trust), checking and savings accounts, and CD's (certificates of deposit), if the aggregate of all deposits with that institution **exceeds \$30,000**, as **valued on the date of death**, when held:
  - in the name of the deceased individual alone, including accounts held in trust for another (Totten Trusts), unless held in trust for the surviving spouse only, or the surviving spouse is named as the sole beneficiary of the IRA, Keogh Plan or annuity; or
  - in the name of the deceased individual as custodian of an account established under the Uniform Transfers to Minors Act, for a person who has not reached the age of 21 (or 18, if that age was elected by the transferor), when the custodian is the donor of the property; or
  - jointly in the name of the deceased individual and one or more other individuals, unless held by the deceased and his or her spouse as the only joint tenants.

### *Securities*

- Open market securities, if the total amount held in accounts with a brokerage house, the aggregate amount presented to a broker or other transfer agent, or the total amount of securities of a single entity (corporation) **exceeds \$30,000**, as valued on the date of request for transfer, when held:
  - in the name of the deceased individual alone, including accounts held in trust for another (Totten Trusts), unless held in trust for the surviving spouse only; or
  - in the name of the deceased individual as custodian of securities purchased under the Uniform Transfers to Minors Act, for a person who has not reached the age of 21 (or 18, if that age was elected by the transferor), when the custodian is the donor of the property; or
  - jointly in the name of the deceased individual and one or more other individuals (regardless of who established the joint account or the share of contributions), unless held by the deceased and his or her spouse as the only joint tenants.

### *Life insurance*

- Proceeds from life insurance policies, if the total amount payable by an insurance company **exceeds \$50,000**, valued as of the date of death.

In addition to the waiver requirements, the department must be notified in writing by the insurer if it intends to pay out part of the proceeds without a waiver and the amount to be paid out exceeds \$30,000, but does not exceed \$50,000. Notification may be mailed to the department at the time payment is made to the beneficiary.

If the surviving spouse is named on the insurance policy as the only beneficiary, the entire proceeds may be paid to the surviving spouse without a waiver and without notifying the department.

### *Pensions and death benefits*

- Payment of death benefits from an employee pension or profit sharing plan or trust if the total **exceeds \$50,000**, valued as of the date of death.

The department must be notified in writing by the plan or trust if it intends to pay out part of the proceeds without a waiver and the amount to be paid out exceeds \$30,000, but does not exceed \$50,000. Notification may be mailed to the department at the time payment is made to the beneficiary.

If the surviving spouse is named as the only beneficiary of the death benefits, the entire proceeds may be paid to the surviving spouse without a waiver and without notifying the department.

### **What other assets may waivers be requested for?**

Waivers may be requested for:

- property held in storage by a warehouseman
- stock in a closely held corporation
- an interest in a partnership

### **May someone open the deceased's safe deposit box without authorization from the Tax Department?**

A decedent's safe deposit box may be opened without authorization from the Tax Department under the following circumstances:

### *Will Search Order*

- The opening of a decedent's safe deposit box pursuant to a surrogate's court *Will Search Order* where the person named in the order is authorized to remove papers that appear to be a will of the deceased, the deed to a burial plot, and any life insurance policies on the life of the deceased that are payable to a named beneficiary. If there are other contents in the safe deposit box, they may not be removed and the box must be sealed until a release is obtained from the department.

### *To photocopy important papers*

- When there is a joint lessee or a person who was authorized by the deceased to have access to the safe deposit box, that person is permitted to copy any papers expressing the wishes of the deceased concerning burial, or other disposal of his or her remains, and a deed to a cemetery plot or proof of membership in a burial society. The original papers must be returned to the box and the box sealed until a release is obtained from the department.

## **How do I apply for a release of a safe deposit box?**

To apply for a release of a safe deposit box, obtain Form ET-92, *Application for Release of Safe Deposit Box*. Complete the application and mail it with a photocopy of the death certificate to the address indicated on the form. An authorization letter will be issued, authorizing the bank to release the safe deposit box to the authorized representative of the estate. A form to inventory the contents of the box will also be included. The completed inventory form is then returned to the Tax Department.

**Note:** Although it is not a requirement under the Tax Law, a bank may legally require that a copy of the *letters of appointment* be produced before authorizing entry into and release of the safe deposit box.

The estate of an individual whose date of death is on or after February 1, 2000, is not required to obtain a release of the safe deposit box from the Tax Department. However, as stated above, other laws may apply to the release of safe deposit boxes. Check with your bank or safe deposit company for any additional requirements.

## **Who should apply for a waiver or release of lien?**

If an executor or administrator has been appointed and issued *letters of appointment*, that person or his or her legal representative with a power of attorney, should apply for all the waivers and releases of lien that are needed to transfer the various assets of the estate.

If no executor is named by the court, and an administrator has not been appointed, a person with an interest in the estate, such as a beneficiary of the estate, may apply for tax waivers. Additional requirements are imposed on a person applying for waivers who has not received letters of appointment. Refer to the section that follows.

## **How do I apply for waivers or releases of lien when an executor or administrator has been appointed?**

If you received letters of appointment and *less than nine months* has passed since the individual died, submit the following:

- A completed Form ET-30, *Application for Estate Tax Waivers / Releases of Estate Tax Lien*.
- A completed Form ET-99, *Estate Tax Waiver Notice*. A separate form is needed for each bank, insurance company, brokerage house, etc., that requires a waiver, but you may list more than one item on a single Form ET-99. For securities held by a broker, you may attach a listing sheet of all the securities held in the account.
- A completed Form ET-117, *Release of Lien of Estate Tax*. If properties are located in more than one county, submit a separate Form ET-117 for each county (within New York State).
- A photocopy of the death certificate, if you have not submitted one before.
- A certified copy of the letters of appointment.
- An *Estate Tax Power of Attorney*, Form ET-14, if you have appointed a person to represent you before the department regarding the estate.

If the deceased was not a resident of New York State, letters of appointment naming you executor or administrator of the estate, when issued by a court outside New York State with jurisdiction over the estate, are acceptable.

If you have received letters of appointment and **more than nine months** has passed since the decedent's death and the estate is required to file a New York State estate tax return, and you have not obtained an extension of time to file the return, you must file Form ET-90, *New York State Estate Tax Return*. You must pay any estate tax due, unless an extension to pay the tax has been granted.

Form ET-85, *New York State Estate Tax Certification*, may also be used to request waivers when the estate is required to file a New York State estate tax return, more than nine but not more than **15 months** has passed since the date of death, and you obtained an extension of time to file the estate tax return. However, if the estate is subject to tax, a tentative payment must be made unless you have also been granted an extension of time to pay the estate tax.

If the estate is not required to file a New York State estate tax return, and more than nine months has passed since the date of death, submit a completed Form ET-85, *New York State Estate Tax Certification*, in place of Form ET-30.

If no one has received letters of appointment and less than nine months has passed since the decedent's death, submit the following:

**How do I apply for waivers and releases of lien when no executor or administrator has been appointed?**

- A completed Form ET-90, *New York State Estate Tax Return*, with a payment for any estate tax due.

Instead of Form ET-90, you may submit a completed Form ET-85, *New York State Estate Tax Certification* along with Form ET-130, *Tentative Payment of Estate Tax*, and a payment of the estimated tax. You must then file the New York State estate tax return by the due date or extended due date.

- A completed Form ET-99, *Estate Tax Waiver Notice*. A separate form is needed for each bank, insurance company, brokerage house, etc., that requires a waiver, but you may list more than one item on a single Form ET-99. For securities held by a broker, you may attach a listing sheet of all the securities held in the account.
- A completed Form ET-117, *Release of Lien of Estate Tax*. If properties are located in more than one county, submit a separate Form ET-117 for each county (within New York State).
- A photocopy of the death certificate, if you have not submitted one before.
- An *Estate Tax Power of Attorney*, Form ET-14, if you have appointed a person to represent you before the department regarding the estate.



If no one has received letters of appointment and **more than nine months** has passed since the decedent's death, and the estate is required to file a New York State estate tax return, and you have not obtained an extension of time to file the return, you must file Form ET-90, *New York State Estate Tax Return*, with a payment for any estate tax due, in addition to the forms noted above.

If the estate is not required to file a New York State estate tax return, you may submit Form ET-85 regardless of the time passed since the date of death.

**If the deceased was not domiciled in New York State, will waivers be required?**

Waivers are not required before an institution may release intangible assets of a nonresident decedent. However, some institutions, as a matter of caution, may require that waivers be submitted before releasing the assets. In such cases, you may obtain the waivers by following the procedures discussed previously. Form ET-141, *Estate Tax Domicile Affidavit*, should be completed and filed with Forms ET-30, ET-85, and ET-90.

**What happens after I submit Forms ET-99 and ET-117?**

The originals of Form ET-99, *Estate Tax Waiver Notice*, and Form ET-117, *Release of Estate Tax Lien*, will be validated by the Tax Department and returned to you. You may then submit the validated ET-99 (waiver) to the institution or person holding the assets, who will release the asset to you as executor, the beneficiary or the joint tenant. The ET-117 may be filed with the county clerk or given to the purchaser of the real property.

**Which estates are required to file a New York State estate tax return?**

If the individual was a resident of New York State at the time of death, the estate must file a New York State estate tax return if the total of the New York adjusted gross estate and New York adjusted taxable gifts is \$300,000 or more (\$115,000 for estates of decedents who died after June 9, 1994, and before October 1, 1998; \$108,333 for estates of decedents who died before June 10, 1994).

If the individual was not a resident of New York State at the time of death, the estate must file a New York State estate tax return if the total of the New York adjusted gross estate, computed as if the decedent was a resident at the time of death, and the New York adjusted taxable gifts is \$300,000 or more (\$115,000 for estates of decedents who died after June 9, 1994, and before October 1, 1998; \$108,333 for estates of decedents who died before June 10, 1994), **and** the estate consists of real property or tangible personal property located in New York State.

For information on filing a New York State estate tax return refer to the instructions packet ET-90-P.

**Note:** The estate of an individual whose date of death is on or after February 1, 2000, is required to file a New York State estate tax return if the estate is required to file a federal estate tax return, and the individual was domiciled in New York State at the time of his or her death, or the individual was not domiciled in New York State, but the estate included real property or tangible personal property located in New York State.

Although these estates will be exempt from waiver requirements, the need to obtain Form ET-117, *Release of Estate Tax Lien*, for the transfer of real property remains.

## Need help?



Visit our Web site at ***www.tax.ny.gov***

- get information and manage your taxes online
- check for new online services and features



**Text Telephone (TTY) Hotline** (for persons with hearing and speech disabilities using a TTY): If you have access to a TTY, contact us at (518) 485-5082. If you do not own a TTY, check with independent living centers or community action programs to find out where machines are available for public use.



### Telephone assistance

**Estate Tax** Information Center: (518) 457-5387

To order forms and publications: (518) 457-5431



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, call the information center.