



Treatment of Certain Deductions for New York State Estate Tax

This TSB-M explains the treatment of deductions related to real or tangible personal property located outside of New York State and to intangible personal property. It also explains how to report certain deductions when a federal estate tax return is filed solely to claim a federal portability election.

Chapter 59 (Part X) of the Laws of 2014 and Chapter 59 (Part BB) of the Laws of 2015 substantially reformed the New York estate tax for dates of death on or after April 1, 2014. As a result of these amendments, in computing the New York taxable estate, both resident and nonresident estates must exclude any deductions that relate to property not included in the New York gross estate.

The *New York taxable estate* for the estate of an individual who was a resident at the time of his or her death is the New York gross estate minus the deductions allowable for determining the federal taxable estate, except to the extent that any such deductions relate to real or tangible personal property located outside of New York State.

The *New York taxable estate* for the estate of an individual who was a nonresident at the time of his or her death will be computed in the same manner as the New York taxable estate for the estate of a resident, except that it does not include:

- the value of any intangible personal property otherwise includible in the deceased individual's New York gross estate;
- the value of any deduction allowable under the Internal Revenue Code (IRC) related to any intangible personal property otherwise includible in the decedent's New York gross estate; and
- the amount of any gift otherwise includible in the New York gross estate of a resident, unless the gift was made while the nonresident individual was a resident of New York State and it consisted of real or tangible personal property having a location in New York State or intangible personal property employed in a business, trade, or profession carried on in this state.

For further information, see TSB-M-14(6)M, *New York State Estate Tax Reformed*, and TSB-M-15(3)M, *2015 Legislation Amending the New York State Estate Tax*.

How to compute the allowable deductions - resident estate

For the estate of an individual who was a resident of New York State at the time of death, the amount of allowable federal deductions for New York State purposes equals the total federal deductions reported on federal Form 706 minus federal deductions directly and indirectly related to real and tangible personal property that is located outside of New York State.

To determine the amount of deductions indirectly related to property located outside of New York State, multiply the total federal deductions not directly related to property inside or outside of New York State or to intangible personal property by a fraction. The numerator of the fraction is the total value of real and tangible personal property located outside of New York State and the denominator of the fraction is the total value of the federal gross estate.

Because intangible personal property is includible in the New York gross estate of a resident individual, any deductions related to intangible personal property are allowable.

How to compute the allowable deductions - nonresident estate

For the estate of an individual who was not a resident of New York State at the time of death, the amount of allowable federal deductions for New York State purposes equals the total federal deductions reported on federal Form 706 or Form 706-NA minus the federal deductions directly and indirectly related to real and tangible personal property located outside of New York or to intangible personal property.

To determine the amount of deductions indirectly related to property located outside of New York State, multiply the total federal deductions not directly related to property inside or outside of New York State or to intangible personal property by a fraction. The numerator of the fraction is the total value of real and tangible personal property located outside of New York State plus intangible personal property and the denominator of the fraction is the total value of the federal gross estate.

Because intangible personal property is not includible in the New York gross estate of a nonresident individual, any deductions related to intangible personal property are not allowable.

Examples of deductions *directly* related to real property, tangible personal property, or intangible personal property

Deductions directly related to real and tangible personal property (from federal Form 706) include:

- charitable deductions for the donation of land that is included in gross estate (Schedule O)
- mortgages secured by real property (Schedule K)
- the amount for any real or tangible personal property included as part of the marital deduction on Schedule M

Deductions directly related to intangible personal property (from federal Form 706) include:

- broker fees (Schedules J or L)
- the amount for any stocks, bonds, or cash included as part of the marital deduction on Schedule M. An ownership interest in a co-operative apartment corporation is considered intangible personal property for New York estate tax purposes.

Examples of deductions *indirectly* related to real property, tangible personal property, or intangible personal property

Deductions not directly related to real, tangible, or intangible personal property (from federal Form 706) include:

- executor’s commissions on Schedule J
- accounting fees on Schedule J
- attorney fees on Schedule J
- funeral expenses on Schedule J
- deductions for unsecured debts of the decedent (Schedule K)

Examples

Example 1: Estate of a resident: Estate of individual R had a federal gross estate of \$45 million. R was a resident of New York State on the date of his death. The estate includes \$25 million in real property in New York State, and \$10 million in Florida. The estate also had \$10 million in cash.

The federal estate tax return showed total federal deductions of \$37,130,000. This included a marital deduction on the federal Schedule M which included \$25 million of property located in New York State, \$6 million of real property in Florida, and \$5 million in cash.

In addition, there were funeral expenses of \$20,000, executor’s commissions of \$1 million, New York property tax of \$80,000, and Florida property tax of \$30,000.

Description of allowable federal deductions	Total on federal return	Deductions directly related to property inside NYS or intangible personal property	Deductions directly related to property outside NYS	Deductions not directly related to property inside or outside of New York State or intangible personal property
Funeral expenses	\$ 20,000			\$ 20,000
Executor's commissions	\$ 1,000,000			\$1,000,000
Property tax for NYS property	\$ 80,000	\$ 80,000		
Property tax for Florida property	\$ 30,000		\$ 30,000	
Marital deduction of property in NYS (cash and real property)	\$30,000,000	\$30,000,000		
Marital deduction of property in Florida	\$ 6,000,000		\$6,000,000	
Total	\$37,130,000	\$30,080,000	\$6,030,000	\$1,020,000

Using the information above, the amount of federal deductions allowable for New York State purposes is computed as follows:

1	Property outside of New York State	\$10,000,000
2	Federal gross estate	\$45,000,000
3	Allocation percentage (divide line 1 by line 2)	0.2222
4	Deductions not directly related to property inside or outside of New York State or intangible personal property	\$ 1,020,000
5	Deductions allocated to property outside of New York State (multiply line 3 by line 4)	\$ 226,644
6	Deductions directly related to property outside of New York State	\$ 6,030,000
7	Federal deductions not allowed for New York State purposes (add lines 5 and 6)	\$ 6,256,644

The amount on line 7 would then be subtracted from total allowable federal deductions to compute the total allowable deductions for New York purposes.

$$\$37,130,000 - \$6,256,644 = \$ 30,873,356$$

Example 2: Estate of a nonresident: Using the same facts in the example above, except that R was a nonresident of New York State on date of death, the allowable deductions for New York State purposes would be computed as follows:

Description of allowable federal deductions	Total on federal return	Deductions directly related to property inside NYS	Deductions directly related to property outside NYS or intangible personal property	Deductions not directly related to property inside or outside of New York State or intangible personal property
Funeral expenses	\$ 20,000			\$ 20,000
Executor's commissions	\$ 1,000,000			\$1,000,000
Property tax for NYS property	\$ 80,000	\$ 80,000		
Property tax for Florida property	\$ 30,000		\$ 30,000	
Marital deduction of property in NYS	\$25,000,000	\$25,000,000		
Marital deduction of property in Florida (cash and real property)	\$11,000,000		\$11,000,000	
Total	\$37,130,000	\$25,080,000	\$11,030,000	\$1,020,000

Using the information above, the amount of federal deductions allowable for New York State purposes is computed as follows:

1	Property outside of New York State and intangible personal property	\$20,000,000
2	Federal gross estate	\$45,000,000
3	Allocation percentage (divide line 1 by line 2)	0.4444
4	Deductions not directly related to property inside or outside of New York State or intangible personal property	\$ 1,020,000
5	Deductions allocated to property outside of New York State and intangible personal property (multiply line 3 by line 4)	\$ 453,288
6	Deductions directly related to property outside of New York State or intangible personal property	\$11,030,000
7	Federal deductions not allowed for New York State purposes (add lines 5 and 6)	\$11,483,288

The amount on line 7 would then be subtracted from total allowable federal deductions to compute the total allowable deductions for New York purposes.

$$\$37,130,000 - \$11,483,288 = \$25,646,712$$

Effect on previously filed returns

The treatment of deductions, as described in this memorandum, applies to estates of individuals with dates of death on or after April 1, 2014.

If you already filed Form ET-706, *New York State Estate Tax Return*, for an estate of an individual who died on or after April 1, 2014, and the calculation of allowable federal deductions for New York State purposes is affected by this guidance, you will need to file an amended return.

If you already filed Form ET-706, and have overpaid estate taxes, you must file any claim for credit or refund by the later of:

- three years from the date the original return was filed (if the original return was filed before the due date, three years from the due date), or
- two years from the date the tax was paid.

How to report deductions when a federal return is filed solely to claim a portability election

On June 12, 2015, the Internal Revenue Service issued final regulations on the portability of the deceased spousal unused exclusion amount (CFR 20.2010-2). Under section 20.2010-2 (a)(7)(ii), if the federal return is being filed only for the purpose of electing portability, the estate does not have to report the value of property qualifying for the marital deduction or charitable deduction. Instead, the value of the gross estate must be estimated based on a good faith determination and the property must be listed on the applicable schedules for the federal estate tax return (Form 706).

The New York Estate Tax Law for estates of individuals with dates of death on or after April 1, 2014, does not conform to the federal portability rules. Accordingly, the special rule provided by section 20.2010-2 (a)(7)(ii) does not apply for New York State estate tax purposes. A New York taxable estate that files a federal estate tax return pursuant to section 20.2010-2 (a)(7)(ii) must submit both of the following when filing Form ET-706, *New York State Estate Tax Return*:

- a copy of the actual federal estate tax return filed with the IRS, and
- a completed (pro forma) *Part 5 - Recapitulation* (Form 706) and all applicable schedules reporting the actual date of death value of all property subject to the special rule.

This continues the treatment that existed prior to New York estate tax reform. For more information, see TSB-M-12(4)M, *New York State Reporting Requirements for Certain Estates Making a Federal Portability Election*.

Note: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.