

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

TSB-M-78 (1) Estate
Instructions and Interpretations Section
May 2, 1978

Subject: Chapter 67 of the Laws of 1978
Amendment to Estate and Gift Tax Law
Articles 26 and 26A

The purpose of the new act is to eliminate small estates from estate tax liability and to conform the provisions of New York State law to changes made in Federal Transfer Tax Statute by the Federal Tax Reform Act of 1976.

There are 24 provisions in the act that amends those sections of the Internal Revenue Code contained in the Tax Law to conform them to existing Federal law. The most significant of these include:

Adoption of a \$250,000.00 minimum marital deduction.

\$100,000.00 lifetime marital deduction under the Gift Tax.

Adoption of a deduction for bequests to orphans.

Disallowance of exclusion for Lump Sum distributions.

Under certain conditions, one half of the value of qualified joint interests of husband and wife are excluded from Gross Estate.

Special valuation for farms and closely held businesses in accordance with Chapter 879 of the Laws of 1977.

All Transfers within three years of death are includible in the Estate Tax Return whether or not they were made in contemplation of death.

Some of the features not conforming to the Federal Internal Revenue Code or not previously provided by Articles 26 or 26A are:

New York State does not have a unified Estate and Gift Tax rate or a unified credit against the tax. The rates for each tax are the same as previously.

Instead of the unified credit, this act provides for a general credit against estate tax. This credit virtually eliminates tax liability for all estates with taxable assets of \$108,000.00 or less.

The structure of the credit is as follows:

If the Gross Tax is \$2,750.00 or less, the entire gross tax is the credit.

If the Gross Tax is greater than \$2,750.00 but less than \$5,000.00, the credit is the difference between the gross tax and \$5,500.00 (eg. Gross Tax from table \$4,000.00, \$5,500.00 - \$4,000.00 = \$1,500.00 credit).

If the gross tax is \$5,000.00 or more, the credit is \$500.00.

Section 958 of the Tax Law has been repealed by this act. There is no Personal or Insurance Exemption credit allowable for any decedent who dies on or after July 1, 1978.

Section 954 of the Tax Law provides for an election to value the assets of the estate as to the date of death value or their alternate value in accordance with Section 2032 of the Internal Revenue Code, whether or not a Federal Return has been filed. Previously the alternate value was not available for estates unless a Federal Return was filed.

CROSS-REFERENCE BETWEEN CHAPTER 67
AND AMENDED SECTION OF NEW YORK LAW

<u>Chapter 67 Section</u>	<u>New York Law Section Amended</u>	<u>General Description of State Law Section</u>
1	951	Estate tax: applicable Internal Revenue Code (IRC) provisions
2	952 (b)	Provides general estate tax credit of \$2,750 to \$500
3	952 (d)	Provides cross-reference to other Tax Law credits
4	954(b) (2), (c)	Allows alternate valuation to estates not required to file a Federal return; defines resident's New York gross estate in relation to gifts made within three years of death and provides cross-references to IRC
5	954-a (b) (4)	Provides that the additional tax due to reduced valuation imposed on estates of farmers which later sell such farms is to be computed without reference to the agricultural credit
6	955(a) and (c)	Deletes obsolete reference to Federal \$60,000 exemption from estate tax and provides cross-references to deductions allowable against Federal estates
7	956(c)	Revision of allowable estate tax marital deduction
8	958 (repealed)	Authorizes credits for personal exemptions and life insurance proceeds
9	958-a (a)	Ensures that estates of farmers receive the larger of the agricultural or the general credit

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<u>Chapter 67 Section</u>	<u>New York Law Section Amended</u>	<u>General Description of State Law Section</u>
10	958-a (c)	Eliminates reference to §958 which is repealed by this act
11	958-a (d)	Clarifies the treatment of additional taxes, due to both the reduced valuation and the agricultural credit to be imposed on estates of farmers which later sell such farms
12	959 (a) and (b)	Deletes reference to repealed §958, and provides that the computation of the credit for tax on prior transfers shall be made after consideration of the general and agricultural credits
13	959-a	Clarifies the computation of the credit for gift tax in a similar manner
14	960 (a)	Eliminates reference to a nonresident's payment of estate taxes where New York property exceeds \$2,000, in view of the benefit of the general credit
15	960 (b)	Updates computation of nonresident's estate tax
16	962 (d)	Sets interest rate for additional taxes at not less than 6% nor more than the rate set by the Banking Board
17	962 (e)	Adds agricultural credits to the special lien for the additional taxes until potential tax liability ceases
18	962 (f)	Reduces the rate of interest from 9% to not more than 6% nor more than the rate set by the Banking Board
19	1000	Gift tax: applicable IRC provisions
20	1004(b)	Updates IRC cross-references

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<u>Chapter 67 Section</u>	<u>New York Law Section Amended</u>	<u>General Description of State Law Section</u>
21-30	1009	Updates IRC gift tax sections, as amended by the Tax Reform Act of 1976
31-44	Chapter 1013, Laws of 1962, §2	Updates IRC estate tax provisions as amended by the Tax Reform Act of 1976
45	<u>EPTL</u> 2-1.11	Requires that IRC provisions apply when determining validity of disclaimers
46	<u>Tax Law</u> 249-bb(c)	Requires payment for release of lien to accompany application therefor