

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

TSB-M-78 (3) Rev.  
Estate and Gift Tax  
September 14, 1979

This memorandum supersedes TSB-M-78 (3) Estate and Gift Tax issued November 30, 1978 which should be destroyed

Subject: Requirements and general information for Estate Tax Waivers in the case of decedents dying on or after July 1, 1978.

Section 249-cc of Article 10-C of the Tax Law provides the statutory rules concerning the delivery or transfer of intangible assets of a resident decedent subject to such rules and regulations as may be set by the State Tax Commission.

The purpose of this technical bulletin is to provide, in concise form, the specifics of Section 249-cc and Part 360 of the Official Compilation of Codes, Rules, and Regulations, as amended and promulgated effective August 10, 1979, as applicable to tax waivers. This material is also intended to assist the department's technical staff in handling inquiries from estate representatives, or, interested parties therein, regarding the reasons for and manner of obtaining estate tax waivers.

An estate tax "waiver" is notice, in written form, issued by this department which allows a bank, trust company, corporation or its transfer agent, or insurance company to release intangible assets of a decedent to his heirs or beneficiaries without liability to such transfer agent for any estate tax that may be due and owing.

An "intangible" asset is personal property having no physical characteristic or marketable value in itself, but is merely representative or evidence of value. Intangible assets would include bank accounts, shares of stock, bonds, mortgages. Conversely, a tangible asset is any item of personal property that has a value of its own, is moveable, and is capable of being possessed. A tangible asset may be an automobile, jewelry, clothing, household furniture, livestock.

In the case of decedent's dying on or after July 1, 1978, tax waivers are required to be issued before any transfer can be effected for the following types of intangible assets:

1. bank accounts, stocks and bonds, held either individually or with one or more other individuals jointly or held "in trust for" another person, if its value at the time of death is in excess of \$10,000.

2. proceeds of life insurance policies having a day of death value exceeding \$50,000 (in the case of a decedent dying on or after September 1, 1977).
3. payment of death benefits under an employees' pension or profit-sharing plan or trust if its value is in excess of \$50,000.
4. annuity or other payments under retirement plans or employees' trusts, based on employees' contributions, in excess of \$50,000.
5. annuity or other payments under an individual retirement account or annuity or a retirement bond, meeting the qualifications of Section 2039(c) and (e) of the Internal Revenue Code, if its value is in excess of \$50,000.

Waivers are required to be obtained on jointly held assets in excess of \$10,000 before delivery or transfer is made even though such jointly owned assets may prove not to be taxable by reason of inheritance, gift or proven contributions.

If Letters Testamentary or Letters of Administration have been issued by a Surrogate's Court appointing a responsible adult as executor or administrator of the estate and less than 18 months have elapsed since the date of death of the decedent, waivers may be issued without the payment of tax upon the filing of a completed form TT-30, Application for Waivers (a copy of the decedent's death certificate must also be submitted). Part 360.1(e) of the Commission's regulations provide for the deferring of the issuance of waivers in such amounts as may be required to secure the payment of estate tax and interest. If no executor or administrator has been or is to be appointed by the Court, or, if more than 18 months have elapsed since the date of death, waivers can not be issued until either a formal tax proceeding is instituted or a completed form TT-102, Resident Affidavit, is filed and any tax and interest which may be due is paid. If full payment is not received, a tax bill will be sent to the executor, administrator, or applicant. Upon payment of the tax bill, the necessary waivers will be issued and forwarded to the estate representative. It is then incumbent upon the estate representative to furnish these waivers to the proper transfer agent to facilitate the release or transfer of the assets involved.

The provisions of section 249-cc do not require waivers for the delivery, or transfer of intangible assets standing in the name of a non-resident decedent. The prohibitions of this section apply only to tangible personal property having an actual situs in New York State. However, if the domicile of the decedent is in doubt, the transfer agents, to protect themselves from possible tax liability, will usually require a tax waiver before they will make delivery or transfer the asset. In such situations, the estate tax representative should file with this department an "Estate Tax Domicile Affidavit", form TT-141-A, completed in its entirety and specifically listing thereon the intangible assets located in New York State for which waivers are requested. (No estate tax is imposed upon the transfer of intangible assets of a non-resident decedent. However, their value is taken into consideration in computing any tax due if the decedent's estate includes real property or tangible personal property located in New York State).