

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

TSB-M-78 (4)  
Estate & Gift Tax  
November 30, 1978

Subject: Chapter 605 of the Laws of 1978  
Amendment to Estate Tax Law  
Article 26

The purpose of the new act is to add a secrecy provision to Section 962 of the Tax Law relating to estate tax administration.

This amendment prohibits the State Tax Commission or any person having access to departmental Estate Tax records to divulge any information or file concerning an estate to any unauthorized party. No officer charged with the custody of such records shall be required to produce any of them or evidence of anything contained in them except in any proceeding in the Surrogate's Court to fix or determine the tax or; in any court to review the order of the Surrogate's Court.

The persons authorized to receive information concerning tax department records are any person liable for the payment of the tax or his duly authorized representative.

The person liable for the payment of the tax is the executor. The executor as used in the Tax Law has a broader meaning than in any other law.

The term "executor" means the executor of the Will or administrator of the estate of the decedent, or if there be no such executor or administrator appointed, qualified and acting, then any person in actual or constructive possession of any property included in the gross estate of the decedent.

Based on this definition, if an executor is appointed by the Surrogate of the county where the decedent was a resident, he or she is the person who is permitted to inspect the Estate Tax return for which he is liable for the tax, or be given information regarding same.

The executor may select an authorized representative to act on his behalf but it would be necessary that such representative submit to the department evidence of authorization in the form of a power of attorney.

If there is no executor or administrator appointed, and none to be appointed, anyone who is in actual or constructive possession of property is liable for the tax and is not prohibited from examining the estate tax return for which he is liable for the tax. This applies to individuals who have possession of taxable assets due to joint tenancy, passing under a toten trust, a transfer made within three years of the date of death, or due to any other means not subject to Estate administration. Any person in this class may also authorize a representative to act on his behalf by submitting a power of attorney.

Any information submitted by the executor or his representative shall not be released in any action in any court except in the Surrogate's Court for a proceeding to fix the tax or any other court to review such Tax Proceeding. Information may also be released upon an order of the Surrogate in proceedings other than tax proceedings as provided for in the Surrogate's Court Procedure Act. The court may admit in evidence so much of the information that is pertinent to the action or proceeding and no more.

Section 249-bb of the Tax Law provides that any interested person may apply to the Tax Commission for a release of lien of the tax with respect to any parcel of real property.

Section 249-cc provides further that transfer agents can transfer assets upon the consent of the Tax Commission in writing.

It follows that nothing in this amendment prohibits the Tax Commission from issuing a release of lien to any interested party or consenting to transfer any asset held by a transfer agent.

Because a Title Company is an interested party with respect to insuring the title to real property, this section does not prohibit the Tax Commission from advising such Title Companies whether or not there is an order entered fixing tax on a particular estate.

If information is necessary on the estate of a transferor in order to compute a credit for prior transfers on the estate of the transferee, the tax law definition of an executor implies that it is permissible for the transferee's executor or authorized representative to receive information because he is in constructive possession of the assets of the decedent.

Paragraph (i) of this amendment provides that the Tax Commission may permit the Secretary of the Treasury of the United States or his delegates, or any authorized officer or employee of any state who has a similar provision in their law and who extend similar privileges to the commission or officer of this state to inspect any Estate Tax return that is filed. This information may be divulged for tax purposes only.