



# Instructions for Form ET-85

## New York State Estate Tax Certification

For an estate of an individual who died on or after January 1, 2019

# ET-85-I

(7/20)

### Recent changes

The addback of taxable gifts has been extended for estates of decedents dying on or after January 16, 2019, and before January 1, 2026. An includible gift is any taxable gift under Internal Revenue Code (IRC) §2503 that was made during the preceding three-year period ending on the decedent's date of death and that is not already included in the decedent's federal gross estate. However, taxable gifts do not include any gift made:

- when the decedent was not a resident of New York State; or
- before April 1, 2014; or
- between January 1, 2019, and January 15, 2019; or
- that is real or tangible personal property having an actual situs outside New York State at the time the gift was made.

**Note for New York State nonresidents:** Only include gifts if they were real or tangible personal property having an actual location in New York State, or were intangible personal property employed in a business, trade, or profession carried on in New York State.

For decedents dying on or after January 1, 2019, and before January 16, 2019, there is no addback of taxable gifts.

The Tax Law requires a New York qualified terminable interest property (QTIP) election to be made directly on a New York estate tax return for decedents dying on or after April 1, 2019. Any election made under this subsection is irrevocable.

Any QTIP from a previously allowed New York marital deduction must be included in the surviving spouse's New York gross estate, whether the QTIP election was made on the transferring spouse's New York estate tax return or on a federal proforma return if an actual federal return was not otherwise required.

### Use Form ET-85 when

- The estate **is not required** to file a New York State estate tax return (see filing requirements below), and either an executor or administrator has not been appointed, or if appointed, nine months have passed since the date of death.
- The estate **is required** to file a New York State estate tax return, and either:
  - less than nine months have passed since the date of death, and an executor or administrator has not been appointed, or
  - more than nine, but less than 15 months, have passed since the date of death, and an extension of time to file the estate tax return has been granted.

**Use Form ET-30, *Application for Release(s) of Estate Tax Lien***, if letters of appointment (either *Letters Testamentary* or *Letters of Administration*) have been obtained from Surrogate's Court and less than nine months have passed since the decedent's death.

### Who may file Form ET-85

Form ET-85 may be filed by an executor, administrator, a joint owner of property, the decedent's next of kin, or any person having an interest in the estate who has a thorough knowledge of the decedent's assets. The term *executor* includes executrix, administrator, administratrix, or personal representative of the decedent's estate. **Note:** If an executor has not been appointed, this application may be signed by a person acting as executor who has sufficient knowledge of the estate to file an accurate

return. The information (name, address, etc.) for the person acting as executor should be entered in the area provided for the executor. If the application is signed by the authorized representative of a person acting as executor, refer to the information above.

If an executor or administrator has been appointed, a beneficiary of the estate may not complete this form. The beneficiary should ask the executor or administrator to obtain the release of lien. If the executor refuses to obtain the release of lien, the beneficiary may petition the Surrogate's Court to require the executor to carry out his or her duties.

Be sure to use the Form ET-85 that is applicable to the decedent's date of death.

### Liability of applicant

If the estate is subject to tax, an estimated payment may be required when Form ET-85 is filed. The tax is due not later than nine months after the date of death. Refer to the instructions on Form ET-130, *Tentative Payment of Estate Tax For dates of death on or after January 1, 2019*, or the estate tax return for information on paying the estate tax and the due date for payment.

**Note:** The executor may be held personally liable for unpaid estate tax up to the value of the assets that were distributed before the New York State estate tax was paid in full. The surviving spouse, all beneficiaries, and any other person in possession of property included in the New York gross estate may be held personally liable for unpaid estate tax up to the value of property received from the estate (NYS Tax Law §975).

### Which estates must file Form ET-706 for New York State

The estate of an individual who was a NYS resident at the time of death must file a NYS estate tax return if the total of the federal gross estate plus any includible taxable gifts made while the individual was a resident of New York State exceeds the basic exclusion amount applicable for the date of death.

The estate of an individual who was **not** a resident of New York State at the time of death must file a NYS estate tax return if the estate includes real or tangible personal property having an actual location in NYS and the federal gross estate plus any includible taxable gifts made while the individual was a resident of NYS exceeds the basic exclusion amount applicable for the date of death.

For information on includible gifts, see *Recent Changes*.

See *Estate Tax Basic Exclusion Amounts* on our website, [www.tax.ny.gov](http://www.tax.ny.gov) (search: *Estate*) based on the date of death.

### Completing Form ET-85

This form may be prepared by an attorney or authorized representative, but **must be** signed by the applicant or executor and notarized.

### Decedent information

Complete the information requested about the decedent. Verify that the decedent's Social Security number is correctly entered on the application. Attach a photocopy of the death certificate to this application and mark an **X** in the appropriate box.

## Representative information

If the executor has authorized an attorney, accountant, etc., to represent him or her regarding the estate, complete that information. If the executor has signed Form ET-14, *Estate Tax Power of Attorney*, and it is being submitted with this application, attach it to the application and mark an **X** in the appropriate box. Validated releases of lien will be mailed to the authorized representative listed on the form, unless you direct the department differently.

**Note:** Unless a change in representation or authority is being made, Form ET-14 should only be submitted to the department once. You **do not** have to send Form ET-14 in with each estate tax form you file. If Form ET-14 was submitted previously, indicate the form it was sent in with, and the date that the form was submitted.

## Executor/applicant information

If an executor has not been appointed, the applicant should enter his or her information in the area provided for the executor.

If the estate has **more than one executor**, mark an **X** in the box, enter the name and other information for the primary executor (preferably a person residing in NYS) in the area provided, and attach a list of each of the other executors with their mailing address and Social Security number. Submit *Letters Testamentary* or *Letters of Administration* with the return if not previously submitted.

## Releases of lien

Complete and attach Form ET-117, *Release of Lien of Estate Tax*, if a release of lien is needed for real property or a cooperative apartment. Submit a separate Form ET-117 for each county in which real property is located, and a separate form for each cooperative housing corporation and/or purchaser.

## Specific instructions for estimating the net estate

**Lines 1 through 7** – On each line, enter the total value of all assets as of the date of death regardless of where the assets are located and whether held by the decedent alone or with someone else.

**Line 8** – For estates of decedents dying on or after January 16, 2019, and before January 1, 2026, enter the value of all taxable gifts under IRC §2503 made during a three-year period ending on the individual's date of death that would not otherwise be included in the federal gross estate.

However, taxable gifts do not include any gift made:

- when the decedent was not a resident of New York State; or
- before April 1, 2014; or
- between January 1, 2019, and January 15, 2019; or
- that is real or tangible personal property having an actual situs outside New York State at the time the gift was made.

**Note for New York State nonresidents:** Only include gifts if they were real or tangible personal property having an actual location in New York State, or were intangible personal property employed in a business, trade, or profession carried on in New York State.

**Line 9** – List the amount of any QTIP previously allowed on the predeceased spouse's New York State estate tax return, regardless of whether a federal estate tax return was required to be filed by the transferring spouse.

**Line 10** – If the decedent was a plaintiff in any litigation at the time of his or her death, or the estate has undertaken or is considering any litigation related to the decedent's death,

and any recovery from the cause of action (litigation) will bring into the estate an asset not otherwise in the estate, such as a recovery for the decedent's pain and suffering in a wrongful death action, list the fair market value of the decedent's interest in the cause of action as of the date of death.

## Supplemental documents

In addition to the completed release of lien (Form ET-117), submit a copy of the will (if one exists); the death certificate (if not previously submitted); and a power of attorney, if applicable.

**If the decedent was not domiciled in New York State**, complete Form ET-141, *New York State Estate Tax Domicile Affidavit*, and attach it to Form ET-85.

## Where to file Form ET-85

Mail this form to:

**NYS ESTATE TAX  
PROCESSING CENTER  
PO BOX 15167  
ALBANY NY 12212-5167**

If not using U.S. Mail, see Publication 55, *Designated Private Delivery Services*.

## Privacy notification

New York State Law requires all government agencies that maintain a system of records to provide notification of the legal authority for any request for personal information, the principal purpose(s) for which the information is to be collected, and where it will be maintained. To view this information, visit our website, or, if you do not have Internet access, call and request Publication 54, *Privacy Notification*. See *Need help?* for the Web address and telephone number.

## Need help?



Visit our website at [www.tax.ny.gov](http://www.tax.ny.gov)

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

## Telephone assistance

Estate Tax Information Center:	518-457-5387
To order forms and publications:	518-457-5431
Text Telephone (TTY) or TDD equipment users	Dial 7-1-1 for the New York Relay Service