



# Instructions for Form ET-706

## New York State Estate Tax Return

# ET-706-I

(4/17)

For an estate of an individual who died on or after April 1, 2017, and on or before December 31, 2018

### General information

Chapter 60 of the Laws of 2016 (Part Y) amended the New York Estate Tax to provide that charitable contributions and charitable activities may not be used in any manner to determine where an individual was domiciled at the time of his or her death.

Chapter 80 of the Laws of 2016 extended the relief provisions for the disposition of an estate when the surviving spouse is not a United States citizen. These provisions were set to expire on July 1, 2016, but now expire on June 30, 2019. See *Marital deduction for surviving spouses who are not United States citizens* below.

### Discovery of abandoned property held by the Office of the State Comptroller (OSC)

For dates of death on or after June 1, 1944, a reduced interest rate will be applied to any late paid estate tax due on an original or amended return that was required to be filed because of the discovery of certain abandoned property held by OSC. The reduced interest rate will apply to the period of time the property was held by OSC.

### Marital deduction for surviving spouses who are not United States citizens

For dates of death on or after January 1, 2010, an estate that is not required to file a federal estate tax return may take the marital deduction for a surviving spouse who is not a United States citizen without setting up a Qualified Domestic Trust (QDOT).

For further information on abandoned property and this marital deduction, refer to TSB-M-14(5)M, *2013 Legislation Amending the New York State Estate Tax*, and TSB-M-16(8)M, *Summary of Estate Tax Legislation Enacted in 2016*.

### New York State Marriage Equality Act

For New York estate tax purposes, equal treatment has been given to estates of individuals legally married to different-sex spouses and same-sex spouses since the enactment of the Marriage Equality Act, applicable to estates of individuals dying on or after July 24, 2011. As a result of the Supreme Court's decision in the matter of the *United States v. Windsor*, this treatment now also applies to estates of individuals legally married to same-sex spouses who died prior to July 24, 2011. For more information, see TSB-M-13(9)M, *New York Estate Tax Information for Estates of Individuals Married to Same-Sex Spouses*, and TSB-M-13(10)M, *Information for Same-Sex Married Couples*.

### Preparer information

If you prepared Form ET-706 for the estate and you are not the executor, fill in the information requested in the preparer section on page 1 of the return and sign where indicated. Include your federal preparer tax identification number (PTIN) or your social security number (SSN), and your New York tax preparer registration identification number (NYTPRIN) if you are required to have one. Paid preparers can be subject to a penalty for failure to conform to certain requirements. See TSB-M-09(10)M, *Tax Preparer Registration Program*, and TSB-M-10(8)M, *Enrolled Agents Excluded from the Definition of Tax Return Preparer for the Tax Preparer Registration Program*, for more information.

### Conformity with the federal Internal Revenue Code (IRC)

New York State (NYS) Estate Tax Law Article 26 generally conforms to the IRC of 1986, with all amendments enacted on or before January 1, 2014 (NYS Tax Law section 951).

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

#### New York State residents

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 taxable gifts made while the individual was a resident of New York State exceeds the New York State basic exclusion amount (\$5,250,000) applicable for dates of death on or after April 1, 2017, and on or before December 31, 2018. Taxable gifts are any gifts taxable under IRC section 2503 made on or after April 1, 2014, that are not otherwise included in the federal gross estate of the individual. Gifts of real or tangible personal property having a location outside of NYS should not be included. Also, gifts made during any period the individual was a nonresident of NYS should not be included.

#### New York State nonresidents

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 taxable gifts made while the individual was a resident of NYS exceeds the New York State basic exclusion amount (\$5,250,000) applicable for dates of death on or after April 1, 2017, and on or before December 31, 2018. Taxable gifts are any gifts taxable under IRC section 2503 made on or after April 1, 2014, that are not otherwise included in the federal gross estate of the individual. Gifts should only be included if the gift is of real or tangible personal property located in NYS or intangible personal property employed in a business, trade, or profession carried on in NYS. Gifts of real or tangible personal property having a location outside NYS should not be included. Also, gifts made during any period the individual was a nonresident of NYS should not be included.

The estate must also submit a completed Form ET-141, *New York State Estate Tax Domicile Affidavit*.

### General requirements for filing a federal estate tax return

#### U.S. citizens and residents

The executor must file federal Form 706 for the estate of every U.S. citizen or resident:

- whose executor elects to transfer the deceased spousal unused exclusion (DSUE) amount to the surviving spouse, regardless of the size of the estate, or
- whose gross estate, plus adjusted taxable gifts and specific exemption is more than the federal basic exclusion amount applicable to the decedent's date of death.

#### Nonresidents of the United States who were not U.S. citizens

The executor must file federal Form 706-NA if the date of death value of the decedent's gross estate located in the United States (under federal IRC situs rules) exceeds the filing limit of \$60,000, reduced by the sum of the gift tax specific exemption applicable to certain gifts made in 1976, and the total taxable gifts made after 1976 that are not included in the gross estate.

## When to file Form ET-706 for New York State

You must file Form ET-706 within nine months after the decedent's date of death, unless you receive an extension of time to file the return.

An extension of time to file the estate tax return may not exceed six months, unless the executor is out of the country.

The Tax Department may grant an extension of time to pay the estate tax for up to four years from the date of death, if it is established that payment of any part of the tax within nine months from the date of death would result in undue hardship to the estate. Annual installments may be required (NYS Tax Law section 976(a)).

If you need an extension of time to file the estate tax return, pay the estate tax, or both, file Form ET-133, *Application for Extension of Time to File and/or Pay Estate Tax, For an estate of an individual who died on or after April 1, 2014*.

Also see *Election of installment payments of tax for closely held business* on page 3 for information on an extension of time to pay the tax when a large part of the estate consists of an interest in a closely held business.

## Where to file

Mail Form ET-706 to:

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

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

## Interest and penalties

### Interest

**Underpayment of tax** – To avoid the assessment of interest, you must pay the total tax as finally determined within nine months of the date of death, even if you received an extension of time to file the return. Interest is compounded daily, and the rate is adjusted quarterly.

**Overpayment of tax** – If the estate is due a refund, you may also be entitled to receive interest on your overpayment. Interest is compounded daily, and the rate is adjusted quarterly. If the refund is made within 45 days after the due date of the return, the extended due date, or the date the return is filed, whichever is later, no interest will be paid. If the refund is not made within this 45-day period, interest will be paid from the due date of the return or the date the return is filed, whichever is later.

### Penalties

**Late filing penalty** – If you file late, you will be charged a penalty of 5% on the amount of tax required to be shown on the return (reduced by any tax paid by the prescribed due date of the return and by any allowable credits) for each month or part of a month the return is late, up to a maximum of 25%, unless you extend the time to file and file within the extended period, or attach to your return an explanation showing reasonable cause for the delay. If your return is more than 60 days late, this penalty will not be less than the lesser of \$100 or 100% of the tax required to be shown (reduced by any tax paid timely and by any allowable credit) (NYS Tax Law sections 990 and 685(a)(1)). For information on requesting an extension of time to file your return, see *When to file Form ET-706 for New York State* above.

**Late payment penalty** – If you do not pay the tax when due, you will be charged a penalty of ½% of the unpaid portion of the total tax shown on the return for each month or part of a month the tax remains unpaid. It will be computed from the due date to the date of payment, up to a maximum of 25% (NYS Tax Law sections 990 and 685(a)(2)). This penalty is in addition to the interest charged for late payments.

This penalty may be waived if you attach an explanation to your return showing reasonable cause for paying late.

**Note:** When late filing and late payment penalties are imposed at the same time, the amount of the late filing penalty computed for each month is reduced by the amount of the late payment penalty computed for the same monthly periods.

**If you compute your tax incorrectly** – You may have to pay a penalty if the tax you report on your return is less than your correct tax. If you reported an amount that is off by more than 10% of the tax required to be shown on the return, or by \$2,000, whichever is more, you may have to pay this penalty. The penalty is 10% of the difference between the tax you reported and the tax you actually owe (NYS Tax Law sections 990 and 685(p)).

**Negligence penalty** – If you do not show all of the tax imposed on your return (under the NYS Tax Law, its rules or regulations) due to negligence or intentional disregard (but not with intent to defraud), you will be charged a penalty of 5% of any deficient amount.

In addition, 50% of the interest due on any underpayment resulting from negligence will be added to your tax (NYS Tax Law sections 990 and 685(b)).

**Fraudulent returns** – If any part of a deficiency is due to fraud, you will be charged a penalty of 50% of the deficiency. In general, a deficiency is the difference between the correct tax and the tax shown on your return. If you file your return late, the deficiency is the entire tax. In addition, 50% of the interest due on any deficiency resulting from a fraudulent act will be added to your tax (NYS Tax Law sections 990 and 685(e)).

**Frivolous returns** – The Tax Department will impose a penalty of up to \$500 on any person who files a frivolous tax return. A return is considered frivolous when it does not contain information needed to judge the correctness of the tax return or reports information that is obviously and substantially incorrect, intended to delay or impede the administration of Article 26 of the Tax Law or the processing of the return (NYS Tax Law sections 990 and 685(q)).

## Supplemental documents

A completed copy of either federal Form 706 or 706-NA (also see *Which estates must file Form ET-706 for New York State*, on page 1), with all schedules and supporting documents, must be submitted with your NYS estate tax return. When applicable, you must submit the following documents with the estate tax return (if they were not previously submitted):

- a copy of the death certificate
- a copy of the decedent's last will (if one exists)
- letters of appointment (if obtained from the surrogate's court)
- a power of attorney (see *Attorney/representative information* below)

For the estate of an individual who was not a resident of NYS at the time of his or her death, complete Form ET-141, and attach it to the return.

## Amended returns

To amend your NYS estate tax return, mark an **X** in the box at the top of the front page of Form ET-706, complete the return, and mail it to the NYS Estate Tax Processing Center address. Include your remittance for additional tax, if applicable. If you also amended the federal estate tax return, attach a copy of the amended federal estate tax return, Form 706 or Form 706-NA.

## Federal audit changes

If you are amending Form ET-706 as a result of a federal audit change, mark an **X** in the box at the top of the front page of Form ET-706. Attach to the estate's amended Form ET-706, a complete copy of the federal audit changes, including adjustments and supporting schedules. If you fail to attach all necessary forms and schedules, the estate's amended Form ET-706 will be returned to you, delaying processing.

## Completing the return

**Note:** If the decedent was:

- a victim of the September 11, 2001, terrorist attack(s) who died as a result of wounds or injuries incurred as a result of the attacks; or
- a United States astronaut who died in the line of duty

the estate is exempt from New York State estate tax. However, the estate is required to file a New York State estate tax return if a federal estate tax return is required.

The preparer should write either *KITA-9/11* or *U.S. astronaut*, as applicable, at the top of the front page of Form ET-706. The estate is **not required to complete Schedules A, B, C, D, or E**. However, the preparer should enter **0** on lines 2 and 4 of Form ET-706.

## Federal return required

**A copy of the federal return must be submitted** – The starting point for the NYS estate tax return is the federal estate tax return. A completed federal estate tax return must be submitted with the NYS estate tax return, even if the estate is below the federal filing threshold.

## Decedent information

Enter the name of the decedent (last name first), home address at the time of death, social security number, date of death (month, date, and year), and county of residence.

If you have not previously submitted a copy of the death certificate, mark an **X** in the box and attach a copy to the return being filed.

Indicate if the decedent was a nonresident of NYS at the time of death. If the decedent was not a resident of NYS at the time of death, complete and attach Form ET-141 if one was not submitted previously.

In the area provided, enter the federal employer identification number (EIN), if any, for the estate. The EIN, also known as a federal tax identification number, can be obtained by contacting the IRS. Also enter the name(s) and EIN for any trusts created. If additional room is needed, attach a sheet listing the names and identification numbers of the trusts.

## Attorney/representative information

If you, as the executor of the estate, have authorized a person to represent you regarding the estate, and you would like the department to contact him or her regarding the estate, enter the name (last name first) of the attorney, accountant, or enrolled agent who is representing you. Also enter the firm's name, address, and telephone number in the areas provided, and have the representative sign the return in the area provided on the front page of the return.

**Note:** If you are giving a person power of attorney to represent you, attach a completed Form ET-14, *Estate Tax Power of Attorney*, if one was not submitted previously. Refer to the instructions on Form ET-14 for additional information.

## Executor information

Enter the name (last name first) and other information for the executor of the estate. The term *executor* includes executrix, administrator, administratrix, or personal representative of the decedent's estate; if no executor, executrix, administrator, administratrix, or personal representative is appointed, qualified, and acting within the United States, *executor* means any person in actual or constructive possession of any property of the decedent.

If an executor has not been appointed, this form may be signed and filed by a person having knowledge of all the assets in the decedent's estate. This person must also enter his or her name, address, and social security number in the area provided for the executor on the front page of the return.

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. It is sufficient to have one of the coexecutors sign the return.

## Election of installment payments of tax for closely held business

In the area provided on the front page of the return, indicate if the estate is electing to pay the estate tax in installments as provided under NYS Tax Law section 997. When a large part of an estate consists of an interest in a closely held business, the estate representative may elect, under NYS Tax Law section 997, to apply for deferred payment of estate tax. This extension is based upon IRC section 6166, as incorporated in NYS Tax Law.

An estate will not be allowed to defer payment of the NYS estate tax under NYS Tax Law section 997 if the estate is required to file a federal estate tax return and either does not elect or is not allowed to pay the federal estate tax in installments under IRC section 6166.

The time limit for making this election for NYS estate tax is nine months from the date of death (15 months if an extension of time to file is granted). Form ET-415, *Application for Deferred Payment of Estate Tax, For the estate of a decedent whose date of death is on or after April 1, 2014*, must be completed and attached to Form ET-706.

**Note:** If you are electing to pay the NYS estate tax in installments, you must file Form ET-415 in the time allowed or it will be denied, even when the federal election is made on time.

If you need an extension of time to file the return or to pay the non-deferred tax, refer to Form ET-133, *Application for Extension of Time to File and/or Pay Estate Tax, For an estate of an individual who died on or after April 1, 2014*.

## Releases of lien

In the area provided on the front page of the return, enter the number of counties for which you are requesting releases of lien, and submit a completed Form ET-117, *Release of Lien of Estate Tax*, for each county in which real property is located. After Form ET-117 has been validated and returned to you, file the validated Form ET-117 with the county clerk or commissioner of deeds for the county in which the real property is located.

If a release of lien is needed for one or more cooperative apartments, complete a separate Form ET-117 for each cooperative corporation and purchaser. After Form ET-117 has been validated and returned to you, give the validated Form ET-117 to the purchaser of the cooperative apartment(s) as proof that the lien has been released.

**Do not** submit real property and cooperative apartments on the same Form ET-117, even when they are located in the same county.

A release of lien is not required if the property was held jointly by the decedent and the surviving spouse as the only joint tenants with the right of survivorship (tenants by the entirety).

**Note:** If you are not yet ready or are not required to file Form ET-706, refer to Form ET-30, *Application for Release(s) of Estate Tax Lien*. If Form ET-30 does not apply, refer to Form ET-85, *New York State Estate Tax Certification*. Attach your completed Form(s) ET-117 to whichever form you are filing.

## Line instructions

**Note:** Federal form line references are to Form 706, August 2013, and Form 706-NA, August 2013, unless otherwise noted.

### Item a

**Is a federal estate tax return required to be filed with the IRS?** – In the area provided above line 1 on the front page of NYS Form ET-706, indicate if the estate is required to file a federal estate tax return, either federal Form 706 or 706-NA (see *General requirements for filing a federal estate tax return* on page 1 of these instructions). Since the federal estate tax return is the starting point for the NYS estate tax return, a completed copy of the federal return must be submitted, even when the estate is below the federal filing threshold.

**Alternate valuation** – When the estate is not required to file a federal estate tax return with the IRS, the estate may elect, if otherwise eligible, to use the alternate valuation on the pro forma federal estate tax return filed with Form ET-706. This may result in a reduced estate tax liability.

The election must decrease both the value of the gross estate and the amount of New York estate taxes due after application of all allowable credits. The calculation on the pro forma federal return must use the tax rates and other provisions for the IRC, with all amendments through January 1, 2014.

To elect alternate valuation, check **Yes** on page 2, Part 3, line 1, of federal Form 706, or page 2, Schedule A, of federal Form 706-NA, filed with NYS Form ET-706. If the estate elects to use the alternate valuation, the election may not be revoked. However, the estate may elect to use the alternate valuation after Form ET-706 is filed, provided the return was not filed later than one year after the due date (including extensions). Refer to the federal instructions and regulations for information on the date that property is to be valued, determining if the estate qualifies, making an election after the return is filed, and how to make a protective election.

### Item b

If there was any qualified terminable interest property (QTIP) listed on federal Form 706, Schedule M, section A1, mark an **X** in the Yes box and provide the social security number of the surviving spouse.

### Line 3 – Applicable credit

Compute the amount of the applicable credit on Form ET-706, line 3 as follows:

- If the taxable estate is not more than \$5,250,000, enter the amount from Form ET-706, line 2 on Form ET-706, line 3.
- If the taxable estate is more than \$5,250,000 but not more than \$5,512,500, complete the worksheet below.
- If the taxable estate is more than \$5,512,500, enter **0** on Form ET-706, line 3.

#### Worksheet

(see example below)

1. New York Taxable estate .....	1. _____
2. New York Basic exclusion .....	2. <u>5,250,000</u>
3. Subtract line 2 from line 1 .....	3. _____
4. 5% of basic exclusion .....	4. <u>262,500</u>
5. Divide line 3 by line 4 (carry to four decimals) .....	5. _____
6. Subtract line 5 from 1.0 .....	6. _____
7. Multiply line 2 by line 6.....	7. _____
8. Applicable credit (tax amount for line 7 from tax table on Form ET-706, page 4). Enter here and on Form ET-706, line 3. ....	8. _____

### Example for Worksheet

1. Taxable estate .....	1. <u>5,400,000</u>
2. Basic exclusion .....	2. <u>5,250,000</u>
3. Subtract line 2 from line 1 .....	3. <u>150,000</u>
4. 5% of basic exclusion .....	4. <u>262,500</u>
5. Divide line 3 by line 4 (carry to four decimals) .....	5. <u>.5714</u>
6. Subtract line 5 from 1.0.....	6. <u>.4286</u>
7. Multiply line 2 by line 6.....	7. <u>2,250,150</u>
8. Applicable credit (tax amount for line 7 from tax table on Form ET-706, page 6). Enter here and on Form ET-706, line 3. ....	8. <u>118,812</u>

### Line 5

Enter the net amount of prior tax payment(s) you made to New York State. If you previously filed a return(s) and received a refund(s), you must reduce the amount of payment(s) by the amount of refund(s) and report this net amount on line 5. If you did not make any prior payments, enter **0**.

### Line 6

If an amount is due, make check or money order payable in U.S. funds to the **Commissioner of Taxation and Finance**.

**Fee for payments returned by banks** – The law allows the Tax Department to charge a \$50 fee when a check, money order, or electronic payment is returned by a bank for nonpayment. However, if an electronic payment is returned as a result of an error by the bank or the department, the department will not charge the fee.

If your payment is returned, we will send a separate bill for \$50 for each return or other tax document associated with the returned payment.

### Schedule A

Unless exempt, all estates are required to complete either Part 1 or Part 2 of Schedule A. Part 1 is required if the decedent was a NYS resident at the time of death. Part 2 is required if the decedent was a nonresident of NYS at the time of death.

### Lines 11 and 23

**Limited power of appointment created prior to September 1, 1930** – This particular power and the property covered by the power applies to property conveyed before September 1, 1930, that was subject to NYS estate or death taxes in the estate of the grantor of such power, by virtue of the law then in effect, with the expectation that a deferred tax would be paid by the grantee (donee) of the power upon the exercise of the power. The value of the property passing under such limited power of appointment must be added to the federal gross estate of a deceased resident, if the limited power of appointment is exercised by the decedent by will or by a disposition, such that if it were a transfer of property owned by the decedent, such property would be includable in the NYS gross estate as a transfer under IRC section 2035, 2036, 2037, or 2038.

### Lines 15 and 27

Enter the amount of federal deductions not allowed for New York State purposes. Residents transfer from Schedule E, Part 1, line 48. Nonresidents transfer from Schedule E, Part 2, line 65.

**Residents:** If you do not have any amount reported on Schedule A, line 9, enter **0** on line 15. You do not need to complete Schedule E.

### Line 30

If at the time of death, the decedent's federal gross estate included any works of art loaned to a public gallery or museum located in New York State solely for exhibition purposes (including any that are

in transit to or from a public gallery or museum in New York State), and no part of the gallery's or museum's net earnings benefit any private stockholders or individuals, enter the value of the works of art on this line.

## Schedule B

**Property located outside New York State – Complete this schedule**, if there is real and tangible personal property located outside NYS that is included in the federal gross estate. If additional space is needed, attach a separate piece of paper; include the taxpayer name and identification number, and label it *Schedule B*.

## Schedule C

**Nonresident estates (property located within New York State) –** List all property located in New York State. If additional space is needed, attach a separate piece of paper; include the taxpayer name and identification number, and label it *Schedule C*.

## Schedule D

### Taxable gifts

**Residents –** Include any gifts taxable under IRC section 2503 made on or after April 1, 2014, that are not otherwise included in the federal gross estate of the individual. Gifts of real or tangible personal property having a location outside of NYS should not be included. Also, gifts made during any period the individual was a nonresident of NYS should not be included.

**Nonresidents –** Include any gifts taxable under IRC section 2503 made on or after April 1, 2014, during any period the decedent was a resident of NYS, that are not otherwise included in the federal gross estate of the individual. Gifts should only be included if the gift is of real or tangible personal property located in NYS or intangible personal property employed in a business, trade, or profession carried on in NYS. Gifts of real or tangible personal property having a location outside NYS should not be included. Do not include any gifts made during any period the individual was a nonresident of NYS.

Include a copy of any federal Form 709 on which the taxable gift was reported. If additional space is needed, attach a separate piece of paper; include the taxpayer name and identification number, and label it *Schedule D*.

## Schedule E

Residents complete Part 1 if your New York gross estate contains property located outside New York State. If there is no property located outside New York State, you can skip Schedule E, and enter **0** on Schedule A, Part 1, line 15. Nonresidents complete Part 2.

### Part 1 – Residents

**Column A –** For lines 32 through 40 enter the corresponding amounts from federal Form 706, Part 5 Recapitulation, lines 14 through 22.

**Column B –** Enter the portion of column A that is directly related to property inside New York State (property taxes, maintenance, etc.); include any deductions directly related to intangible property in this column.

**Column C –** Enter the portion of column A that is directly related to property outside New York State (property taxes, maintenance, etc.).

**Column D –** Enter the portion of column A that cannot be directly tied to property either inside or outside New York State or to intangible property. Some examples would be funeral expenses, executor commissions, attorney fees, accounting fees, and deductions for unsecured debts of the decedent.

### Part 2 – Nonresidents

**Column A –** If you filed federal Form 706, for lines 49 through 57, enter the corresponding amounts from federal Form 706, Part 5 - Recapitulation, lines 14 through 22. If you filed federal

Form 706-NA, enter the corresponding amount from Part III, Schedule B, line 4 on line 52, and the corresponding amount from line 6 on line 57.

**Column B –** Enter the portion of column A that is directly related to property inside New York State (property taxes, maintenance, etc.).

**Column C –** Enter the portion of column A that is directly related to property outside New York State (property taxes, maintenance, etc.); include any deductions directly related to intangible property in this column.

**Column D –** Enter the portion of column A that cannot be directly tied to property either inside or outside New York State or to intangible property. Some examples would be funeral expenses, executor commissions, attorney fees, accounting fees, and deductions for unsecured debts of the decedent.

**Note:** Since New York State Estate Tax Law does not conform with the federal portability rule, any amounts that are subject to the special rule of Regulation section 20.2010-2T(a)(7)(ii) that is reported on line 23 of Part 5 - Recapitulation, federal Form 706 do not apply for New York State. See TSB-M-15(4)M for more details.

## Schedule F

**Litigation information –** 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, describe the litigation in the area provided. Include the fair market value of the decedent's interest in the cause of action as of the date of death.

The department will waive the penalty and interest that applies to the estate tax attributable to the value of a cause of action that is includable in the taxable estate of the decedent. Penalty and interest on this amount will be waived from the date an estate tax return is filed that discloses the cause of action, to the date of payment, but not more than one year after the date of settlement or final judgment. Damages for wrongful death are not includable in the gross estate, but damages for personal injury and pain and suffering are.

## 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

## 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.