

Qualified Terminal Interest Property (QTIP) Election for New York State Purposes When No Federal Return is Required

In certain cases, an estate is required to file a return for New York State estate tax but is not required to file a federal return. This may occur if there is no federal estate tax in effect on the decedent's date of death or if the decedent died while the federal estate tax was in effect but the value of his or her gross estate was too low to require the filing of a federal estate tax return. In either instance, and if applicable, the estate may still elect to take a marital deduction for Qualified Terminal Interest Property (QTIP) on a pro-forma federal estate tax return that is attached to the New York State estate tax return.

For dates of death on or after February 1, 2000, the New York State estate tax conforms to the federal Internal Revenue Code of 1986 (IRC) including all amendments enacted on or before July 22, 1998. Because the IRC in effect on July 22, 1998, permitted a QTIP election to be made for qualifying life estates for a surviving spouse (see IRC § 2056(b)(7)), that election may be made for purposes of a decedent's New York State estate tax return even if a federal return is not required to be filed. If no federal return is required, the election must be made on the pro-forma federal estate tax return attached to the New York State return. As provided in IRC § 2056(b)(7), once made, this election is irrevocable. In addition, the value of the QTIP property for which the election is made must be included in the estate of the surviving spouse. See: IRC § 2044 and New York Tax Law § 954.

How to make the election

The QTIP election is made for New York State estate tax purposes in the same manner as the election would have been made for federal estate tax purposes. Enter the amount of the deduction in Part A1 on Schedule M of federal Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, for the applicable date of death and complete the rest of the schedule.

Federal estate tax return for 2010 dates of death

If there is no federal estate tax for 2010 dates of death and an estate is required to file an estate tax return with New York State, use the federal return for 2009 dates of death, Form 706 (Rev. 9-2009) for the pro-forma federal estate tax return.

NOTE: A TSB-M is an informational statement of existing department policies or of changes to the law, regulations, or department policies. It is accurate on the date issued. Subsequent changes in the law or regulations, judicial decisions, Tax Appeals Tribunal decisions, or changes in department policies could affect the validity of the information presented in a TSB-M.