

New York Tax Department Clarifies The Taxation of Nonresident Estates

To the Editor:

In a viewpoint (“Update on Changes to the Taxation of New York Nonresident Estates,” *State Tax Notes*, Oct. 26, 2015, p. 319), we wrote about recent changes in the way New York state taxes the estates of nonresident decedents. In that article, we discussed allowable deductions for the estate of a nonresident decedent and noted that the law was amended in April 2015 to clarify that a nonresident decedent’s estate may not claim any federal deductions related to real property located outside of New York, tangible personal property located outside of New York, and intangible personal property. We said, at the time the article went to print, there was ambiguity regarding whether a particular deduction was “related to” a particular asset. For example, are legal fees containing conversations about both New York and Florida real property fully deductible on a decedent’s New York state nonresident return?

On October 27, the day after our article went to print, the New York State Department of Taxation and Finance issued Technical Memorandum TSB-M-15(4)M, which clarifies that issue. The TSB creates the concept of whether a deduction is *directly* or *indirectly* related to a specific asset, which determination must be made before deciding which deductions (or how much of them) are allowed on the New York State estate tax return of a nonresident decedent.

In making that threshold determination, the TSB classifies the federal deductions into three categories: (i) those *directly* related to real property or tangible personal property; (ii) those *directly* related to intangible personal property; and (iii) those *indirectly* related to real property, tangible personal property, or intangible personal property. According to the TSB, examples of deductions *directly* related to real and tangible personal property include charitable deductions for the donation of land included in the gross estate (Schedule O of Form 706), mortgages secured by real property (Schedule K), and real and tangible per-

sonal property included as part of the marital deduction (Schedule M). Examples of deductions *directly* related to intangible personal property include broker fees (schedules J or L), and stocks, bonds, or cash included as part of the marital deduction (Schedule M). Examples of deductions *indirectly* related to real property, tangible personal property, or intangible personal property include executor’s commissions (Schedule J), accounting fees (Schedule J), attorney fees (Schedule J), funeral expenses (Schedule J), and unsecured debts of the decedent (Schedule K).

Those deductions *directly* related to real and tangible personal property located *outside* of New York and *directly* related to intangible personal property are disallowed. Deductions *directly* related to real and tangible personal property located *inside* New York are allowed. The nonresident decedent’s estate receives a New York state estate tax deduction for those deductions *indirectly* related to real property, tangible personal property, or intangible personal property (that is, those expenses that are not clearly New York related or not New York related) in an amount equal to the total amount of such indirect deductions multiplied by a fraction, the numerator of which is the total value of real and tangible personal property located in New York and the denominator of which is the total value of the federal gross estate.

The TSB’s guidance on the treatment of deductions applies to estates of individuals who died on or after April 1, 2014. If a return has already been filed, and the calculation of allowable federal deductions for New York purposes is affected by the new TSB guidance, the return must now be amended.

Catherine B. Eberl and
Nathan W.G. Berti
Hodgson Russ LLP
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