



**Memorandum in Support**  
**TRUSTS AND ESTATES SECTION**

T&E #2

March 29, 2025

S.3009-B

Senate Committee: Finance

Assembly Committee: Ways and Means

Effective Date: Immediately

**AN ACT** to amend the tax law, in relation to making the estate tax three-year gift addback rule permanent (Part T)

**LAW AND SECTIONS REFERRED TO:** Section 1. Paragraph 3 of subsection (a) of section 954 of the tax law, as amended by section 1 of part F of chapter 59 of the laws of 2019

**TRUSTS AND ESTATES LAW SECTION TAXATION COMMITTEE**  
**SUPPORTS THIS LEGISLATION**

**SUMMARY**

The Trusts and Estates Law Section of the New York State Bar Association (the “Trusts and Estates Law Section” or the “Section”) supports the proposed amendment to Section 954(a)(3) of the New York State Tax Law (“NYTL 954(a)(3)”) that is contained in Part T of S.3009-B (the Senate “One-House Budget Bill” dated as of January 22, 2025), a copy of which is set forth in the exhibit to this memorandum (the “Senate Proposal”).<sup>1</sup>

**ANALYSIS**

***Background***

NYTL 954(a)(3) provides for the inclusion in a decedent’s New York gross estate of certain taxable gifts made within three years of the decedent’s death that are not part of the federal gross estate for federal estate tax purposes. This statutory provision was originally enacted in 2014 and is currently set to expire for decedents dying after December 31, 2025.

NYTL 954(a)(3) is very problematic from a deductibility standpoint for federal estate tax purposes. This is the case because the portion of the New York estate tax that is attributable to amounts added back for inclusion in the New York gross estate does not qualify for the deduction for state death taxes under Section 2058 of the Internal Revenue Code (IRC) -- which requires

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<sup>1</sup> S.3009-B is set forth at the following link, with Part T appearing on pages 78-79:  
<https://legislation.nysenate.gov/pdf/bills/2025/S3009B>.

that state death taxes pertain to property included in the federal gross estate in order to be deductible under IRC Section 2058.<sup>2</sup>

In contrast to the requisite language for deductibility under IRC Section 2058, NYTL 954(a)(3) only applies to certain taxable gifts that are made within three years of a decedent's death that are **“not otherwise included in the decedent's federal gross estate.”** (NYTL 954(a)(3) (emphasis added)) The portion of the New York estate tax that is attributable to NYTL 954(a)(3) therefore does not come within the scope of what is needed to obtain a federal estate tax deduction under IRC Section 2058. This result can be highly prejudicial to the estates of New York decedents for federal estate tax purposes, which must pay federal estate tax on such amounts without obtaining the benefit of an offsetting deduction on the federal estate tax return which can effectively reduce the 40% federal estate tax by as much as 6.4% on a 16% New York State estate tax (16% x 40% = 6.4%), and by an even greater percentage amount in certain other scenarios.

One solution to this problem (that would be entirely revenue neutral for New York estate tax purposes) would be to recharacterize the New York estate tax that is attributable to the application of NYTL 954(a)(3) **as an obligation of the decedent as of the decedent's death.** This would render the increase in New York estate tax that is attributable to NYTL 954(a)(3) eligible for deduction under a different Internal Revenue Code section – specifically, **under IRC Section 2053(a)(3) as a claim against the estate.** This characterization as an obligation of the decedent's estate is consistent with the notion that NYTL 954(a)(3) essentially functions as a contingent gift tax obligation that is imposed upon the donor's estate as of the donor's death. Support for this position follows under the United States Supreme Court's decision in *Commissioner v. Estate of Bosch*, 387 U.S. 456 (1967), which generally requires the courts and the Internal Revenue Service to respect characterizations that are directed pursuant to a state's statute.<sup>3</sup>

By treating the New York estate tax that is attributable to the application of NYTL 954(a)(3) **as an obligation of the decedent as of the decedent's death**, such amount would **not** be subject to estate tax apportionment under EPTL 2-1.8, but would instead be subject to debt obligation treatment under EPTL 13-1.3.

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<sup>2</sup> IRC Section 2058(a) provides that “[f]or purposes of the tax imposed by [IRC] section 2001, the value of the taxable estate shall be determined by deducting from the value of the gross estate the amount of any estate, inheritance, legacy, or succession taxes actually paid to any State or the District of Columbia **in respect of any property included in the gross estate** (not including any such taxes paid with respect to the estate of a person other than the decedent).” (emphasis added)

<sup>3</sup> As the Supreme Court explained in *Bosch*, “the State's highest court is the best authority on its own law. If there be no decision by that court **then federal authorities must apply what they find to be the state law** after giving ‘proper regard’ to relevant rulings of other courts of the State. In this respect, it may be said to be, in effect, sitting as a state court.” *Bosch*, 387 U.S. at 465 (emphasis added). There can be little doubt that federal authorities, applying this standard, should confer significant weight upon a state statute that speaks directly on the subject matter before it.

### ***The Senate Proposal***

The Senate Proposal would amend Section 954(a)(3) of the New York Tax Law (NYTL) in the following manner:

- (1) by making NYTL 954(a)(3) permanent by deleting the language that renders it inapplicable to the estates of decedents dying on or after January 1, 2026; and
- (2) by treating the addition of New York estate tax attributable to the application of NYTL 954(a)(3) “as an obligation of the decedent as of the decedent’s death that is subject to the provisions of this article [which is in reference to Article 26 of the NYTL titled “Estate Tax”] (but which shall not be deductible for purposes of this article)” (the “NYTL 954(a)(3) Debt Obligation Treatment”).

While the Trusts and Estates Law Section does not take a position concerning the making of NYTL 954(a)(3) permanent, the Section strongly supports the Senate Proposal’s NYTL 954(a)(3) Debt Obligation Treatment to prevent New Yorkers from being prejudiced for federal estate tax deduction purposes due to the unavailability of a federal estate tax deduction under IRC Section 2058 for property that is not included in a decedent’s federal gross estate. The NYTL 954(a)(3) Debt Obligation Treatment moreover would be entirely “revenue neutral” for New York State estate tax purposes due to its ending parenthetical language which specifies that such obligation “shall not be deductible for purposes of this article.”

For these reasons, the Trusts and Estates Law Section **SUPPORTS** the Senate Proposal and urges its inclusion in the final budget.

**Exhibit: Proposed Amendment to NYTL 954(a)(3) as set forth in S.3009-B**

**PART T**

*(as reflected in S.3009-B)*

Section 1. Paragraph 3 of subsection (a) of section 954 of the tax law, as amended by section 1 of part F of chapter 59 of the laws of 2019, is amended to read as follows:

(3) Increased by the amount of any taxable gift under section 2503 of the internal revenue code not otherwise included in the decedent's federal gross estate, made during the three year period ending on the decedent's date of death, but not including any gift made: (A) when the decedent was not a resident of New York state; or (B) before April first, two thousand fourteen; or (C) between January first, two thousand nineteen and January fifteenth, two thousand nineteen; or (D) that is real or tangible personal property having an actual situs outside New York state at the time the gift was made. ~~[Provided, however that this paragraph shall not apply to the estate of a decedent dying on or after January first, two thousand twenty-six.]~~ The amount by which the total tax imposed under this article exceeds the total tax that would have been imposed under this article if this paragraph did not apply shall be treated as an obligation of the decedent as of the decedent's death that is subject to the provisions of this article (but which shall not be deductible for purposes of this article).

§ 2. This act shall take effect immediately.