

**New York State Department of Taxation and Finance**  
**Taxpayer Services Division**  
**Technical Services Bureau**

TSB-A-94 (1) M  
Gift Tax  
March 11, 1994

STATE OF NEW YORK  
COMMISSIONER OF TAXATION AND FINANCE

ADVISORY OPINION

PETITION NO. M940131A

On January 31, 1994, a Petition for Advisory Opinion was received from Richard A. Eisner & Company, 575 Madison Avenue, New York, New York 10022.

The issue raised by Petitioner, Richard A. Eisner & Company, is whether a New York resident who filed federal Form 709-A, United States Short Form Gift Tax Return, consenting to gift splitting is required to file Form TP-400, New York State Annual Gift Tax Return.

Petitioner's client, a New York State resident, made taxable gifts, none exceeding \$20,000, to several donees during the calendar year. Petitioner's client's spouse made no gifts during the year. Petitioner's client filed federal Form 709-A, United States Short Form Gift Tax Return so that he and his spouse could consent to gift splitting.

Article 26-A of the Tax Law imposes gift tax on the transfer of property by gift during a calendar year by any individual, resident or nonresident, to one donee, in an amount exceeding \$10,000, unless otherwise exempt.

Gifts made by a husband or a wife to a third party may be considered as made one-half by each if both spouses consent. This is known as gift splitting. Because of this gift splitting provision, the annual exclusion and the unified credit allowable to each spouse applies to the gift. Therefore, a husband and wife may transfer, as a gift, up to \$20,000 of a present interest to each donee during a calendar year without exceeding the annual exclusion. However, regardless of the amount of the gift, a husband or wife must file a gift tax return to split gifts with his or her spouse.

If both spouses split a gift for federal purposes, the gift must be split for New York State purposes and the consent indicated in the space provided on the face of the New York gift tax return.

Conversely, if the spouses do not consent to split gifts for federal purposes, it will not be permitted for New York State purposes.

To split the gift, the spouses (1) must be legally married to each other at the time of the gift, (2) must not become married to a different person before the close of the calendar year, (3) the spouse making the gift must not give to the other spouse a general power of appointment over the property transferred, and (4) consent must also be signified on the federal return.

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In the instant case, Petitioner's client and his spouse filed federal Form 709-A consenting to gift splitting for federal purposes. Accordingly, since Petitioner's client has consented to gift splitting for federal purposes, Petitioner's client must file Form TP-400, New York State Annual Gift Tax Return for New York State gift tax purposes in accordance with Section 1007(a) of the Tax Law.

DATED: March 11, 1994

/s/  
PAUL B. COBURN  
Deputy Director  
Taxpayer Services Division

NOTE: The opinions expressed in Advisory Opinions  
are limited to the facts set forth therein.