POST-MORTEM PLANNING: TAX PRIORITIES AFTER DEATH

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I. INTRODUCTION

Death is not the end of the planning process. The administration of an estate or trust is much more than just marshaling assets, paying debts and distributing assets to beneficiaries. In some cases, a decedent may die without an estate plan, or the decedent's estate plan may not maximize tax benefits. Post-mortem planning is a vital part of the administration process. Proper post-mortem planning may offer opportunities for tax savings and prevent unintended tax results. This outline reviews the basic post-mortem tax planning opportunities that should be considered following the death of a decedent. It is not intended to address all the potential income and estate tax issues that may arise in any given estate or trust.

II. ABBREVIATIONS & REFERENCES

A. "Executor" means a person defined as an executor under I.R.C. § 2203 and includes an executor or administrator of a decedent's estate, any person in possession of any of the decedent's property if no executor or administrator has been appointed, qualified, and acting in the United States.

B. "Form" refers to an official Internal Revenue Service form to be used for a tax filing.

C. "I.R.C." refers to the Internal Revenue Code of 1986 as amended. Sections of the Internal Revenue Code of 1986 are referred to by citing I.R.C. followed by the corresponding section number. For example: § I.R.C. 2031.

D. "IRS" refers to the Internal Revenue Service.

E. "OBBBA" refers to the One Big Beautiful Bill Act signed into law on July 4, 2025.

F. "Reg." refers to the Treasury Regulations promulgated by the Internal Revenue Service and the United States Department of Treasury. Sections of the Treasury Regulations are referred to by citing Reg. followed by the corresponding regulation number. For example: Reg. 20.2031-1.

G. "U.S.C." refers to Title 31 of the United States Code. Sections of Title 31 of the United States Code are referred to by citing U.S.C. followed by the corresponding section number. For example, § U.S.C. 3713.

III. NOTICES AND INFORMATIONAL REQUESTS

A. Form 56, Notice Concerning Fiduciary Relationship

1. Who is a Fiduciary for Tax Purposes

a. A fiduciary for tax purposes is defined as "any person in a position of confidence acting on behalf of any other person. A fiduciary assumes the powers, rights, duties, and privileges of the person or entity on whose behalf the fiduciary is acting." [1]

b. A fiduciary includes, but is not limited to, administrators, conservators, executors, trustees of a trust, personal representatives, and persons in possession of property of a decedent's estate.[2]

2. Purpose of Form 56: The Form 56 puts the IRS on notice of the creation or termination of a fiduciary relationship under I.R.C. § 6903 and notice of qualification under I.R.C. § 6036. Until the IRS is notified of the fiduciary relationship, tax notices will be sent to the last known address of the decedent. Relying on mail forwarding by the post office is an option but not recommended as it is not always dependable. Once filed the IRS must communicate directly with the fiduciary.

3. Failure to File: There is no penalty for not filing a Form 56. However, if you do not file a Form 56 you may miss important tax notices. Absent the filing a Form 56 if a tax notice is issued and sent to the decedent's last known address and the fiduciary does not receive it, the fiduciary may become personally liable for the decedent's tax burden.

4. Termination of Relationship: A Form 56 should also be filed when the fiduciary relationship ends in order to put the IRS on notice of the termination.

B. Form 2848, Power of Attorney and Declaration of Representative

A Form 2848 is used to authorize an individual to represent a taxpayer before the IRS. The representative named must be eligible to practice before the IRS. Generally, the executor will name the attorney or accountant as the individual to discuss and resolve tax matters and receive information from the IRS.

C. Form 4506, Request for Copy of Tax Return

A Form 4506 can be used to request a copy of the decedent's past tax returns. Unless the executor has copies of the decedent's past tax returns or is familiar with the decedent's assets and obligations it is recommended the executor obtain tax returns for the past seven years. The tax returns may help find unknown assets or obligations.

D. Form 4506-T, Request for Transcript of Tax Return

A Form 4506-T can be used to request an online transcript for the decedent. The transcript will provide most of the line items for a tax return as filed by the decedent with the IRS. If requested, the transcript will also provide income information from Forms W-2, 1099, or 1098 for the year or years requested. A Form 4506-T can also be used to provide verification for whether a return was filed for one or more years by the decedent.

[1] IRS, Instructions to Form 56: Notice Concerning Fiduciary Relationship (Rev. December 2024).
[2] Id.

E. (Form SS-4) Application of Employee Identification Number

A Form SS-4 is used to apply for an Employer Identification Number ("EIN") for the estate. An EIN will be needed to open accounts for the estate as well as for filing tax returns for the estate. If this form is completed online an EIN will be received immediately upon completing the application. If you apply by mail, it will generally take 4 weeks to get an EIN.

F. Form 8822, Change of Address

A Form 8822 is used to notify the IRS if there is a change of official mailing address for the estate. The Form 8822 should be filed in addition to the Form 56, *Notice Concerning Fiduciary Relationship*.

IV. DECEDENT'S FINAL INCOME TAX RETURN (FORM 1040)

A. Who Must File

The executor has the responsibility for filing the decedent's final Form 1040.[3] The term executor is broadly defined and if there is no court appointed executor it includes any person in possession of any of the decedent's property.[4]

B. Short Year

For the year of the decedent's death, a final personal income tax return must be filed for the period beginning with the first day of the decedent's tax year (January 1st) and ending on the day of the decedent's death.[5] Thus, unless the decedent died on December 31st the decedent's tax year for the year of death will be a "short year."

C. WARNING

It may be necessary for the executor to also file the tax return for the year prior to the year of the decedent's death. For example, if the decedent dies on April 1, 2025, and the decedent did not file their return for the tax year 2024 the executor will need to file both the 2024 return (which return must be filed by April 15, 2025, unless an extension is filed) and the decedent's final return for the period from January 1, 2025 – April 1, 2025 (which return will be due on April 15, 2026, unless an extension is filed). NOTE: The executor will also be responsible for filing any other income tax returns for the decedent for which the executor knows or should know need to be filed.

D. Joint Return Analysis

1. If the decedent is survived by a spouse, a decision will need to be made whether the decedent and the surviving spouse should file a joint return.

[3] I.R.C. § 6012(b)(1).
[4] I.R.C. § 2203.
[5] I.R.C. § 443(a)(2) and Reg. 1.6072-1(b).

2. For the year of death, the decedent and his or her surviving spouse may file a joint return provided the surviving spouse does not remarry before the end of year.[6]

3. If a joint return is filed, it will include the decedent's income from the beginning of the tax year through the date of the decedent's death and the surviving spouse's income for the entire taxable year.

4. The same tax rate and personal exemption will apply even though the final year is a short year (no proration is required).

5. If the executor is appointed prior to the due date of the final return both the executor and the surviving spouse must consent to the filing of a joint return. If an executor has not been appointed the surviving spouse may file a joint return on their own. If an executor is subsequently appointed, the executor may disaffirm the joint return within one year of the last day for filing the surviving spouse's return.[7]

6. The responsibility for the payment of the tax is divided proportionately between the estate and the surviving spouse based upon the income attributable to each.[8]

7. A primary disadvantage of filing a joint return is the joint and several tax liability of both the decedent's estate and the surviving spouse for the taxes, interest and penalties related to the return.[9]

8. PLANNING OPPORTUNITY: A joint return should be filed if the income tax liability of the estate for the joint return will be lower than if separate returns are filed. This determination will depend on how the tax lability is apportioned between the estate and the surviving spouse. If an estate tax return is required to be filed, the decedent's share of the tax liability for the year of death is deductible on the Form 706.

9. PLANNING OPPORTUNITY: If the surviving spouse is claiming a child, stepchild, or adopted child as a tax dependent and otherwise meets the requirements, the surviving spouse will be able to claim "qualifying surviving spouse" filing status for two years *following* the year of the decedent's death.[10] This status allows the surviving spouse to use the joint return tax rates and the married filing jointly standard deduction amount if they do not itemized deductions.

E. Deduction Considerations

1. As soon as possible following the decedent's death an analysis should be made as to whether there are any unused deductions that may be available to the decedent (i.e. medical expense, passive activity losses, charitable deductions and other itemized deductions). If there are unused deductions available, the decedent's accountant (or tax advisor) should be consulted to provide a complete income tax analysis. NOTE: After 2017, miscellaneous itemized deductions are no longer allowed. OBBBA made permanent the disallowance of miscellaneous itemized deductions. Miscellaneous itemized deductions would include investment advice, safe deposit box rental fees,

[6] I.R.C. § 6013(a)(2).
[7] I.R.C. § 6013(a)(3).
[8] Reg. § 20.2053-6(f).
[9] I.R.C. § 6013(d)(3).
[10] Qualifying spouse status cannot be claimed for the year of death.

service charges on dividend reinvestment plans, travel expenses, and appraisal fees not related to determining the fair market value of assets as of for estate tax purposes or for determining value for purposes of distributions.

2. PLANNING OPPORTUNITY: Some deductions that are not used to offset the decedent's income in the year of death are lost. For example, if the decedent has net capital losses in the year of death these losses will not carry over to the estate.[11] If, however, the surviving spouse has net capital gains in the year of death and a joint return is filed the decedent's losses can offset the surviving spouses gain. If the surviving spouse does not have enough capital gain, consider having the surviving spouse accelerate capital gain (i.e. sell appreciated stock) in the year of the decedent's death.

3. PLANNING OPPORTUNITY: If the decedent has excess deductions in the year of death and the surviving spouse does not have enough income to utilize the excess deductions, consider having the estate make a distribution to the surviving spouse. The distribution will carry out the estate's distributable net income (DNI) thereby increasing the surviving spouse's income. This planning opportunity will only work if the estate has a calendar year end, DNI to carry out, and the surviving spouse is a beneficiary of the estate.

4. Medical Expenses -- PLANNING OPPORTUNITY:

a. Unreimbursed medical expenses that are ***paid*** by the decedent's estate within 12 months after the decedent's death may be deducted on either (i) the decedent's income tax return for the year the expenses are incurred[12] or (ii) the estate tax return (Form 706) as a liability of the decedent. Medical expenses deductions cannot be taken on the estate's *income* tax return (Form 1041).

b. The executor will need to make an election to claim the deduction on the decedent's final income tax return. An election is not necessary for medical expenses paid prior to death.

c. To claim a medical expenses deduction on the decedent's income tax return, the decedent must itemize deductions, and the amount must be 7.5% above the decedent's adjusted gross income.

d. A surviving spouse who pays the decedent's medical expenses, either before or after the decedent's death, can claim a deduction on their own return for the year the expenses are paid.

e. PLANNING OPPORTUNITY: The executor's decision whether to make an election to take the deduction on the decedent's income tax return as opposed to the estate tax return (Form 706) will depend upon whether the estate is subject to estate tax and, if it is, a comparison of the decedent's personal income tax bracket and the estate tax bracket. In making this comparison remember that the decedent's income tax obligation is deductible on the estate tax return

[11] Rev. Rul. 74-175, 1974-1C.B. 52.
[12] An amended income tax return can be filed if the expense was incurred in a prior year.

(Form 706) as a debt.[13] As a rule of thumb, the deduction will be more valuable on the estate tax return if the estate will owe estate taxes.

F. Savings Bonds -- PLANNING OPPORTUNITY

1. If the decedent owned series EE or series I[14] savings bonds at death and the decedent did not choose to report interest each year, the executor can elect to report all the accrued interest as income on the decedent's final tax return or on the estate's income tax return.[15] If an election is made the transferee (estate or beneficiary receiving the bonds) must then recognize on their return each year, any interest earned after the date of the decedent's death.

2. The election used to be irrevocable. Rev. Proc. 2025-23 § 17, however, provides a process for a cash basis taxpayer to revoke the election. If the election is revoked, the transferee can defer recognizing the interest income that accrues after death until the bonds are cashed or reach the date of maturity whichever occurs first.

3. If an election is not made, the interest will be income in respect of a decedent (a stepped-up basis is not allowed) and the transferee can defer reporting the income earned, both before and after the decedent's death, until the bonds are either cashed or reach the date of maturity, whichever is earlier.[16]

4. If the decedent's estate was required to pay estate taxes, the transferee may be entitled to a "deduction in respect of a decedent" which will offset all or part of the income in respect to the decedent. [17]

G. Gift Tax Liability

1. The executor is responsible for reporting taxable gifts for which no return is filed.[18]

2. An executor is personally liable for a decedent's unpaid income and gift taxes if the executor: (1) knew the debt existed, and (2) distributed the estate without first paying the taxes.

3. Knowledge requires the executor to have "actual knowledge of the liability or notice of such facts as would put a reasonably prudent person on inquiry as to the existence of the unpaid claim of the United States." If the government makes a prima facie showing of the executor's knowledge of the decedent's unpaid income and gift taxes, the burden of proof is on the executor to establish that he or she was unaware of such unpaid income and gift taxes debts.

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[13] When comparing the income and estate tax consequences it is also important to consider the effect on the marital deduction if the deduction is taken on the estate tax return. A portion of the medical expenses deducted on the estate tax return will reduce the marital deduction, thus wasting part of the deduction.
[14] The last HH series savings bonds stopped earning interest in 2024.
[15] I.R.C. §454(a).
[16] If a beneficiary receives savings in satisfaction of a specific dollar amount and the decedent did not elect to report interest each year the estate must recognize accrued interest earned through the date of death plus and interest earned to the date of the distribution. The beneficiary will then have recognize any interest earned after receipt of the bonds.
[17] I.R.C. § 691(c).
[18] I.R.C. § 6901(a) and 31 U.S.C. § 3713(b).

4. The executor and the surviving spouse may agree to elect to split gifts made during the decedent's lifetime.[19] The gift must have been completed prior to the decedent's death. The gift must have been made while the spouses were married, both spouses must be US citizens or residents on the date the gift is made; and the surviving spouse cannot remarry prior to the end of the year the gift is made.[20] The election applies to all gifts made during the year (you cannot pick and choose).[21]

5. PLANNING OPPORTUNITY: In considering whether to split gifts, the executor should consider (i) the includability of the gifts in the decedent's estate, (ii) the relative sizes of the estates of the decedent and surviving spouse, and (iii) the available annual gift tax exclusion and unified credit.

V. ESTATE AND/OR TRUST INCOME TAX RETURN (FORM 1041)

A. Separate Taxpayers

For tax purposes, the decedent's estate and revocable trust (which becomes irrevocable at death) will each be treated as separate taxpayers as of the date of the decedent's death. Each will be required to obtain a separate employer identification number ("EIN").[22] An estate will exist until the final distribution of its assets.

B. Selection of a Taxable Year

1. An estate can elect either a calendar or fiscal tax year.[23] The first year can be any period that ends on the last day of a month and does not exceed 12 months.

2. A trust must use a calendar year end, unless a 645 election is made.

3. PLANNING OPPORTUNITY: The ability of an estate to use a fiscal year end affords the opportunity for deferral of income tax liability. For example, if the decedent dies on July 15, 2025, and the estate elects to use a June 30th year end. The estate's first fiscal year will run from July 15, 2025 – June 30, 2026. Any income distributed to the beneficiaries will be reported on the beneficiaries 2026 income tax return that is not due until April 15, 2027.

C. Estimated Tax Payments

1. Estates are exempt from making estimated tax payments for taxable years ending within two years of the decedent's death.[24]

[19] I.R.C. § 2513 and Reg. § 25.2513-2(c).
[20] I.R.C. § 2513(a).
[21] Reg. § 25.2513-1(b).
[22] A testamentary trust will not become a taxpayer for income tax purposes until the trust is funded.
[23] I.R.C. § 441(b)(1).
[24] I.R.C. § 6654(1).

2. PLANNING OPPRTUNITY: When an estate terminates, the executor can elect to transfer to the beneficiaries the credit for all or part of the estate's estimated tax payments for the last year.[25] The election must be filed by the 65th day after the close of the estate's tax year.[26]

3. Trusts treated as owned by a decedent are exempt from making estimated tax payments for taxable years ending within two years of the decedent's death if: (i) the residuary estate pours over to the trust, or (ii) the trust is primarily responsible for paying the debts, taxes and expenses of administration and no will has been admitted to probate.[27]

4. PLANNING OPPORTUNITY: If a trust makes estimated tax payments in excess of its tax lability the trustee may elect to treat any portion of the payment as made by the beneficiary.[28] The election must be made within 65 days of the close of the trust's year end.[29] A trust, unlike an estate, can elect to allocate excess estimated tax payment in any year not just the final year.

D. Election to Treat Qualified Revocable Trust as Part of Estate (§ 645 Election)

1. An executor of an estate and a trustee of a qualified revocable trust can elect to treat both entities as part of the decedent's estate for income tax purposes.

2. The election must be made no later than the due date of the estate's income tax return for the first taxable year of the estate.[30] The election cannot be made on a late filed return or an amended returned.

3. The election is made by filing a Form 8855 with the Form 1041. The executor, if one is appointed, and the trustee must join in the filing of the Form 8855. Once made the election is irrevocable.

4. The election is good for two years (or 6 months after the date of the final determination of estate tax liability if a Form 706 is required to be filed).[31]

5. Advantages:

a. Benefit of a single combined tax return.

b. Trusts are required to use a calendar year end. By making a 645 election, the trust can take advantage of the estate's fiscal year end for reporting purposes which can delay tax liability on income.

[25] I.R.C. § 643(g).
[26] See From 1041-T, Allocation of Estimated Tax Payments to Beneficiaries.
[27] I.R.C. § 6654(1)(2)(B).
[28] I.R.C. § 643(g)(1).
[29] I.R.C. § 643(g)(2). Form 1041-T, Allocation of Estimated Tax Payments to Beneficiaries is used to make the election.
[30] I.R.C. § 645(b)(2).
[31] I.R.C. § 645(b)(2).

c. An estate has a higher income tax exemption ($600) than a trust.[32] Thus, if the estate has very little income the trust may be able to take advantage of the higher exemption if a 645 election is made.[33]

d. A 645 election enables the trust to claim a charitable deduction for any amounts permanently set aside for a charitable purpose without the requirement that the amount actually be paid to the charity during the tax year.

e. If the trust holds S corporation stock, the trust can hold the stock for the duration of the election. The election lasts until the later of (i) two years from the decedent date of death and (ii) six months after the final determination of the estate tax liability.

f. If the estate is likely to have deductions in excess of its income by making the election the excess deductions can be used to offset the income of the trust. Similarly, if the trust has excess deductions the income of the estate can be offset.

6. PLANNING OPPORTUNITY: Example, if the decedent dies on June 1, 2023, and the estate elects a fiscal year end of May 31st then the first fiscal year of the estate will be for the period of June 1, 2023 – May 31, 2024, and the return will be due September 15, 2024. If the decedent also has a revocable trust and a 645 election is made, then the income of the trust will be reported on the estate return using the same fiscal year end (May 31st). Thus, deferring the reporting of the trust income for the period from June 1, 2023 – December 31, 2023, for an additional 5 months. If the estate and trust are able to be closed before May 31, 2024, the beneficiaries will report the income of the estate (which will include the trust income) on their 2024 tax return which is not due until April 15, 2025, thus, deferring the income earned by the trust from June 1, 2023 – December 31, 2023, an additional 7 months.

E. Deduction Considerations

1. Administration Expenses: Expenses of administration that would not have been incurred but for the administration may be deducted on the estate's income tax return (Form 1041) or estate tax return (Form 706), if the estate is taxable. These expenses include executor commissions, trustee fees, attorney's fees, accountant's fees, court costs, appraisal fees, costs of selling property, etc.[34] If taken on the income tax return these deductions are itemized deductions.

> WARNING: If a deduction is claimed on the estate income tax return the income beneficiaries will receive a benefit. If the deduction is claimed on the estate tax return the remainder beneficiaries will receive the benefit.
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> WARNING: The OBBBA places a limit on itemized deductions for taxpayers in the highest marginal income tax bracket. This limitation applies to estates and trusts. The limitation is 2/37th of the itemized deduction. This limitation takes effect for itemized deductions starting in 2026.

[32] I.R.C. § 151.
[33] The OBBBA did not change the $600 income tax exemption for estates.
[34] I.R.C. § 2053.

2. PLANNING OPPORTUNITY: Administrative expenses taken on the estate income tax return should be timed so they are taken when there is income to offset the expenses.

3. PLANNING OPPORTUNITY: If the estate or trust is in the highest tax bracket, consider paying administrative expenses in 2025 before the new 2/37th limitation comes into effect.

F. Managing Distributions

1. Bracket Considerations

a. Estate and trust income taxes reach the highest tax bracket of 37% at $15,650 of taxable income for 2025.

b. PLANNING OPPORTUNITY: If residual beneficiaries are in lower brackets, it will save taxes overall to distribute income out of the estate to the beneficiaries. The executor and trustee have until the 65th day after the end of the tax year to make distributions for that tax year. NOTE: Capital gains are not passed out. They stay at the Form 1041 level and are taxed there, except on a final return.

2. Accrual Basis

a. An estate or trust may choose either a cash or accrual method of accounting.[35] Once an accounting method (cash or accrual) is chosen, it ordinarily cannot be changed without IRS approval. Thus, the decision whether to use the accrual method of accounting will need to be made when the first income tax return is filed for the estate or trust.

b. PLANNING OPPORTUNITY: Excess deductions over income on an estate or trust Form 1041 do not carry over to the next year and therefore are lost (except on a final return). If the income of the estate or trust exceeds its expenses the executor or trustee may be able to prepare the Form 1041 on the accrual basis and accrue expenses. To accrue an expense, it must be both a fixed liability and the amount must be reasonably determinable (i.e. executor fees or trustee fees).

3. Final Year Excess Deductions:

a. If an estate or trust has excess deductions for the last tax year, they can be carried out to the beneficiaries who succeed to the property of the estate or trust.[36] The beneficiaries can then use those deductions on their own return for the year the estate or trust terminates. The excess deductions retain their separate character as an amount allowed in arriving at adjusted gross income, a non-miscellaneous itemized deduction or a miscellaneous itemized deduction. Under the OBBBA, excess miscellaneous deductions subject to the 2% adjusted gross income threshold can no longer be deducted (i.e. fees for investment advice, safe deposit box rental fees, service charges on dividend reinvestment plans, travel expenses, and appraisal fees unrelated to estate tax purposes).[37] Above-the-

[35] I.R.C. § 446(c)
[36] I.R.C. § 642(h)(2).
[37] The restriction for deductibility of miscellaneous itemized deductions was originally put in place by the Tax Cuts and Jobs Act but was set to sunset in 2025. The OBBBA permanently eliminated this category of deductions.

line administration expenses (expenses that would not have been incurred if the property were not in an estate such as executor fees, trustee fees, tax preparation fees, legal fees) can still be taken by beneficiaries. If the deduction is more than the beneficiary's income for that year, the excess deduction cannot be carried over by the beneficiary to future years.[38]

b. PLANNING OPPORTUNITY: If there is not enough income to offset deductions the estate or trust should consider delaying payment until the final tax year. Timing of executor and trustee commissions should be giving careful consideration.

4. Unused loss carryovers.

An unused net operating loss ("NOL") carryover or capital loss carryover existing upon termination of a trust or estate is allowed to be carried over to the beneficiaries succeeding to the property of the estate. The NOL carryover and the capital loss carryover are used in figuring the beneficiary's adjusted gross income and taxable income.

5. Election to Recognize Gain on Distribution of Appreciated Assets in Kind.

Generally, an estate or trust does not recognize either gain or loss on the distribution of appreciated property.[39] The beneficiary will receive the same basis in the property as the estate had in the property. The beneficiary will then recognize gain or loss when the property is sold.

a. An executor or trustee, however, can make an I.R.C. § 643(e)(3) election to recognize gain or loss on an in-kind distribution of appreciated (or depreciated) property to a beneficiary. The recognized gain or loss will then be reported on the tax return for the estate or trust (Note: the ability of a trust to report a loss is subject to the disallowance of loss rules).

b. A trustee making the I.R.C. § 643(e)(3) election, must be cognizant of the loss disallowance rules of I.R.C. § 267. While § 267(b)(13) does not disallow a loss in the case of a sale or exchange in satisfaction of a pecuniary bequest from an estate, a trust and its beneficiaries are considered related parties under § 267(b)(6) and the lost is disallowed. Thus, an I.R.C. § 643(e)(3) election by a trust to recognize loss is pointless.

c. If the election is made it applies to all in-kind distributions made during the year.

d. PLANNING OPPORTUNITY: The executor or trustee should consider this election to trigger gain if the income tax bracket of the estate or trust is less than that of the beneficiaries. The election should also be considered if the estate or trust has capital loss carryovers from prior years and the election would result in a capital gain that will absorb the losses. Finally, the election should be considered if one beneficiary is receiving cash, and the other is receiving

[38] Reg. § 1.642(h)-2(a).

[39] An estate or a trust will recognize gain, and an estate will recognize loss if it uses appreciated property to satisfy a pecuniary bequest. *Kenan v. Commissioner*, 114 F.2d 217 (2d Cir. 1940). An election is not required. The loss disallowances rules found in I.R.C. § 267 do not apply to distributions of appreciated property to satisfy a pecuniary bequest made by estate.

appreciated property, by making the election the burden of the built-in tax liability can be equalized between the beneficiaries.

6. Executor/Trustee Fee

a. Both an executor and trustee fee constitute taxable income.

b. PLANNING OPPORTUNITY: If the executor or trustee is also a beneficiary, it may be beneficial for them to waive the fee especially if the estate is not taxable. If the estate is taxable the estate tax savings may outweigh the income tax implications. If the executor or trustee is in a low-income tax bracket an estate income tax deduction may be beneficial if the estate is in a higher tax bracket or if the fee is taken in the final year and the deduction can be passed out to beneficiaries who are in a higher tax bracket. A parent or grandparent could also shift assets to someone else by allowing that person to be appointed as the executor or trustee and take a fee.

7. 65-Day Rule

a. Often an estate or trust is in a higher tax bracket than its beneficiaries. Thus, it may be beneficial to distribute all or part of the income to the beneficiaries to shift the income tax liability. The 65-day election gives the executor and trustee of a complex trust[40] an additional 65 days after the end of the fiscal year to make beneficiary distributions and still be able to report them on the prior year tax return.[41] Once made the election is irrevocable.

b. PLANNING OPPORTUNITY: The 65-day election allows the executor and trustee to distribute just the right amount of income to the beneficiaries to optimize tax planning. It can also avoid the estate or trust incurring the Medicare surtax.

G. Set Aside for Charitable Purposes from Gross Income

1. Unlike charitable deductions for individuals, there is no limitation on the charitable deduction for estates and trusts. For any amounts paid, during the tax year, to a charitable beneficiary pursuant to the terms of the governing instrument, the estate or trust is entitled to a charitable deduction.[42] NOTE: OBBBA introduces a 0.5% Adjusted Gross Income ("AGI") floor for itemized deductions which takes effect for tax years beginning after December 31, 2025. However, this floor only applies to individuals and does not apply to estates and trusts.

WARNING: Although the 0.5% AGI floor does not apply to estates and trusts, the charitable deduction may be capped under the new 2/37th rules for itemized. OBBBA replaces the Pease provisions (I.R.C. § 68) with a new 2/37th reduction rule. Under this new rule itemized deductions must be reduced by 2/37th of the amount by which the taxpayer's income exceeds the amount at which the 37% bracket begins. Estates and Trusts were exempt from the Pease provisions.[43] It does not however, appear that they are exempt from the 2/37th reduction rule. Thus, estates and

[40] A simple trust (one that is required to distribute all of its income) will be deemed to have distributed its income to the income beneficiary even if it is not actually paid. I.R.C. § 651.
[41] I.R.C. § 663(b).
[42] I.R.C. § 642(c).
[43] I.R.C. § 68(e).

trusts with income in excess of the 37% rate (about $16,000 in 2026) may have a cut-back on deductions under § 642(c).

2. PLANNING OPPORTUNITY: If all or part of a decedent's estate will pass to a qualified charitable recipient, a "charitable set-aside" can be used to avoid paying tax on the portion of gross income earned by the estate that passes to the charity by using a "charitable set-aside."[44]

3. PLANNING OPPORTUNITY: If a decedent's trust will ultimately go to charity, there is no set-aside for the income earned in the trust. However, a trust can take a charitable contribution deduction for the income going to the charity if the income is actually paid to the charity during the tax year or by the end of the following year and the fiduciary makes a timely election.[45] The 642(c) election must be made on a timely filed income tax return for the estate or trust.

VI. FEDERAL ESTATE TAX RETURNS (FORM 706)

A. Required to File

1. U.S. Citizen or Resident: A Form 706 must be filed if the gross estate of the decedent (who is a U.S. citizen or resident) plus adjusted taxable gifts of the decedent, exceeds the filing threshold for the year of death. The filing threshold for the tax year 2025 is $13,999,000. For the tax year 2026 the threshold is increased to $15,000,000. The filing requirement does not depend on whether estate tax is owed.

The OBBBA made the increased estate and gift exclusion amount permanent. The threshold amount beginning in 2026 is $15,000,000 indexed for inflation in future years.

2. Nonresident: An estate tax return may need to be filed for a decedent who was a nonresident and not a U.S. citizen if the decedent had U.S.-situated assets.

B. Deadline for Filing

The 706 is due 9 months after the date of the decedent's death.[46] However, a 6-month automatic extension can be filed.[47]

C. Portability (Optional)

1. The executor can elect to transfer the deceased spousal unused exclusion (DSUE) to the surviving spouse.[48] The election to transfer a DSUE amount to a surviving spouse is known as the portability election.

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[44] Form 1041-A, *U.S. Information Return, Trust Accumulation of Charitable Amounts*, should be filed to report the set-aside. This is an informational return and filed in addition to the Form 1041.
[45] If the trust makes the payment in the following year and wants to claim the deduction on the prior year return an election statement must be filed with the Form 1041.
[46] I.R.C. § 6075(a).
[47] Reg. § 20.6081-1(b).
[48] I.R.C. § 2010(c).

2. If the estate is required to file a Form 706 the election must be made on a timely filed estate tax return.[49] If the estate is not required to file a Form 706 the executor has up to five years from the date of the decedent's death to file, the return.[50]

3. If the surviving spouse remarries and then their new spouse dies, the DSUE from the first spouse is lost.

4. The regulations allow a relaxed reporting requirement for marital and charitable deduction property if an estate tax return is filed solely for the purpose of making the portability election.[51] If the relaxed reporting requirements apply, the Form 706 need not report the individual values of assets; it is sufficient that the return set forth a good faith determination of the total value of such assets.

WARNING: The Tax Court's decision in *Estate of Rowland v. Comm.*, T.C. Memo. 2025-76 (July 15, 2025), is a warning that a "complete and properly prepared" estate tax return is required for DSUE and the relaxed reporting requirement will not apply unless the decedent's entire estate is left outright to the surviving spouse, or in a qualified terminable interest property (QTIP) trust, a charitable trust or to a qualified charity.

5. PLANNING OPPORTUNITY: The GST tax exemption is not portable between spouses. If the first spouse to die does not utilize their GST exemption, it is lost forever. Thus, post death GST tax planning is important for wealthier couples. Qualified disclaimers should be considered.

6. PLANNING OPPORTUNITY: It may not always be beneficial to elect DSUE. I.R.C. § 2010(c)(5)(B) permits the IRS to examine the estate tax return of the first deceased spouse at any time, provided the examination is for the purposes of determining the DSUE amount available to the surviving spouse. Thus, the statute of limitations on review of the decedent's return remains open until the death of the surviving spouse.

D. Valuation Considerations if the Estate Depreciates in Value

1. Generally, property included in the gross estate is valued at its fair market value as of the date of death. If the total value of all the property included in the gross estate depreciates during the six-month period following the decedent's death the alternative valuation date should be considered.

2. The alternate valuation date can only be used if the election results in a decrease in both (i) the value of the gross estate and (ii) the amount of the federal estate and generation skipping tax liability.[52] If the alternate valuation date is elected the assets are valued as of the date six months after death however, any asset that is distributed, sold, exchanged, or otherwise disposed of within the six month period is valued as of the date of such distribution, sale, exchange or other disposition.

[49] I.R.C. § 2010(c)(5)(A).
[50] Rev. Proc. 2022-32. When filing, the Executor must print at the top of the return: "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)."
[51] Reg. § 20.2010-2(a)(7)(ii).
[52] I.R.C. § 2032(c).

3. PLANNING OPPORTUNITY: If the estate is required to file a federal estate tax return and the estate's value has significantly decreased within six months of death, an executor can elect to value the assets on the alternate valuation date. Although, this election reduces estate taxes, it will also result in a lower basis for beneficiaries. Thus, if the estate is in a lower tax bracket (i.e. the taxable amount is less than $1 Million so the 40% bracket has not been reached) the election may not be beneficial.

E. Statement Identifying Value of Property Interests Includible in Gross Estate (Form 8971).

1. A Form 8971 is required when an estate must file a Form 706.[53] It is not required if the Form 706 is filed only to election portability of DSUE.

2. The Form 8971 must be filed within the earlier of (i) thirty (30) days after the Form 706 is required to be filed (including extensions) or (ii) thirty (30) days after the estate tax return is actually filed with the IRS.

3. A copy of the Schedule A to the Form 8971 must be mailed to each beneficiary. A separate Schedule A must be prepared for each beneficiary. Schedule A lists each item of property that a given beneficiary receives from the estate, its estate tax value, and other information about that item of property.

F. Deduction for Income in Respect to a Decedent

Not all assets get a stepped-up in basis. A category of assets known as income in respect of a decedent (IRD) does not. The beneficiary of such an asset or its income will "step into the shoes" of the decedent and report the income in the same way the decedent would have if he or she had lived to collect it. Common examples include wages earned but not yet paid when death occurs, installment notes receivable, dividends declared before death but paid later, traditional IRA accounts, and investments in annuities. Because the value of these assets is included on the decedent's taxable estate and is taxed for federal estate tax purposes, these assets are in essence double taxed when the money is collected and reported for income tax. If federal estate tax is paid on these assets, the recipient that later reports the items for income tax is entitled to a deduction for the estate tax paid, known as the estate tax deduction for IRD. This may somewhat mitigate the double-taxation effect[54]

VII. STATE ESTATE TAX RETURNS:

As of 2025, Connecticut, Hawaii, Illinois, Maine, Maryland, Massachusetts, Minnesota, Oregon, New York, Rhode Island, Vermont, Washington and the District of Columbia all levy estate taxes. The estate of decedents who live in these states may face estate taxes at both the federal and state levels. Each state has varying thresholds requirements for when a return is required to be filed. The lowest threshold is Oregon with a $1,000,000 threshold.

[53] I.R.C. § 6035(a)(1).
[54] (Regs. Sec. 1.691(c)-2(a)(1)).

VIII. ADJUSTMENT TO BASIS

A. Benefit of Proper Basis Adjustment

An important post-mortem task is determining the proper basis adjustment for the decedent's property. Ensuring that the basis of assets is stepped-up to the date-of-death value will ensure the best possible income tax outcome for the beneficiaries.

B. Step-up/Step-down Basis

Generally, the basis of property acquired from a decedent is the fair market value of the property as of the date of death.[55] In most cases this adjustment will result in the basis of the property being "stepped-up" from the basis the decedent had in the property. Albeit the adjustment could result in a lower value or "step-down" in basis if the property declined in value.

C. The main benefit of the step-up basis is to reduce the capital gains taxes on the subsequent sale of the property by the beneficiary.

D. Only the decedent's interest in property that is includable in the decedent's estate for federal estate tax purposes is adjusted. For example, in the case of tenancies by the entirety property, only half of the property obtains a new basis under I.R.C. 1014.

E. PLANNING OPPORTUNITY: Determine if the decedent and the surviving spouse ever lived in a community property state or in a state that allows community property trusts. Community property receives a full step-up in basis.

F. Real property that passes to remainder beneficiaries by way of a lady bird deed or an enhanced life estate deed is entitled to a step-up in basis because the decedent retained a life estate in the property and full control.

G. Not all assets included in the decedent's estate for federal estate tax purposes are entitled to an adjustment. There is no adjustment to basis for property that constitutes an item of income in respect of a decedent.[56] For example, retirement accounts like IRAs and 401(k)s do not get a step-in in basis.

H. An appraisal will generally be necessary to determine the date of death value for assets that do not have a readily determinable value. Even if the decedent's estate is not taxable, documenting asset valuations accurately is essential. Without accurate appraisals beneficiaries may

[55] I.R.C. § 1014(a). The estate may be eligible to elect the alternate valuation date in which case the assets will be valued as of the date six months after the decedent's date of death (see I.R.C. § 2032), or sooner, if the an asset is sold, exchanged, or otherwise disposed of before the six month period. Certain property may be eligible for special use valuation (see § 2032A).

[56] I.R.C. § 691.

encounter problems documenting the basis and ultimately pay higher capital gains when the property is sold.

I. PLANNING OPPORTUNITY: Consider funding the marital trust with assets that are anticipated to continue to appreciate in value after the decedent's death in order to take advantage of a second step-up in basis on the death of the surviving spouse.

IX. S CORPORATION CONSIDERATIONS

A. Busting the S-Election

If an estate or trust owns stock in a S corporation, the executor or trustee must carefully review the tax laws as to who can be a shareholder of the S corporation stock so as not to cause the S corporation to lose its S corporation status. Generally, an estate may own S corporation stock for as long as the estate properly remains open. An estate may remain open for the period needed to perform the ordinary duties of administration.[57] A testamentary trust and a revocable trust can be qualified S corporation shareholders, but only for a period of two years following the decedent's death.[58]

B. PLANNING OPPORTUNITY

If a trust is going to hold S corporation stock for more than two years, determine whether the trust meets the requirements for being a Qualified Subchapter S Trust (QSST)[59] or Electing Small Business Trust (ESBT).[60] If the requirements are not met consider modifying the terms of the trust to meet the QSST or ESBT requirements.

X. Partnership CONSIDERATIONS

A. Outside v. Inside Basis

A decedent's interest in a partnership is entitled to a stepped-up basis at the time of the decedent's death. The step-up basis is equal to the fair market value of the property either as of the date of death or alternate valuation date.[61] The stepped-up basis is the value the person receiving the partnership interest will have in the interest. This value is referred to as the "outside" basis. The outside basis will be used to determine gain or loss on the sale or liquidation of the partnership interest. The outside basis is not the same as the basis the partnership has in the property held in the partnership. The partnership's basis in the property is referred to as the "inside" basis. The inside basis is used for determining such things as depreciation, amortization, and gain or loss on the sale of assets.

B. PLANNING OPPORTUNITY

The executor or trustee should consider asking the partnership to make a 754 election to adjust the inside basis to reflect the stepped-up basis of the decedent's partnership interest. The election will allow the beneficiary receiving the interest to be able to claim larger depreciation deductions. If the partnership sells an asset, the beneficiary's taxable gain will be reduced by the increased basis from

[57] Reg. § 1.641(b)-3(a).
[58] I.R.C. § 1361(c)(2)(A)(iii)
[59] I.R.C. § 1361(d)
[60] I.R.C. § 1361(e).
[61] I.R.C. § 014.

the adjustment. If the election is made it will require an accurate valuation of the decedent's partnership interest. NOTE: if the partnership assets have depreciated below their basis the election could result in a basis step-down. [62]

XI. DISCLAIMERS

A. Requirements

In order to constitute a qualified disclaimer:

1. The disclaimer must be irrevocable and unqualified:

2. The disclaimer must be in writing;

3. The writing must be properly delivered within the requisite time limitations;

4. The disclaimant must not have accepted the interest disclaimed or any of its benefits; and

5. The interest disclaimed must pass either to the spouse of the decedent or to a person other than the disclaimant without any direction on the part of the person making the disclaimer.

B. Time limitation

The time limitation for making a disclaimer is not later than the date which is 9 months after the later of:

1. The date which the transfer creating the interest in the disclaimant is made, or

2. The day on which the disclaimant attains age 21.

C. PLANNING OPPORTUNITY

A disclaimer can be a useful tool to shift property from an older generation to a younger generation without the transfer being considered a gift and to prevent the property from being included in the estate of the disclaimant. The disclaimer can also be a useful tool to take advantage of the unused generation skipping tax exclusion of the first spouse to die, as unused generation skipping tax exemption is not portable. However, if a disclaimer is not carefully planned it could cause a potential generation-skipping transfer tax problem. A disclaimer can also be used to shift income from a parent to children in a lower income tax bracket. This can be particularly beneficial for an IRA.

D. WARNING

For Medicaid purposes a disclaimer may be considered a disqualifying transfer.

[62] A basis adjustment is mandatory (a 754 election is not required) if the partnership has a "substantial built-in loss" over $250,000.

XII. INDIVIDUAL RETIREMENT ACCOUNTS (IRA)

A. Three Categories of IRA Beneficiaries

1. Designated Beneficiaries

a. Non-spouse individuals (including children over the age of 21);

b. Individual beneficiaries who are more than 10 years younger than the original account owner; and

c. Certain trusts.

2. Eligible Designated Beneficiary ("EDB")[63]

a. Surviving spouse of the IRA owner;

b. Minor children of the IRA owner, but only up to age 21;

c. Disabled individuals (those who are unable to engage in substantial gainful activity due to a long-term impairment);[64]

d. Chronically ill individuals (those who cannot perform at least two activities of daily living without assistance or require supervision due to severe cognitive impairment);[65] and

e. Individuals not more than 10 years younger than the IRA owner (generally siblings, friends, or other individual beneficiaries close in age to the account owner).

3. Non-Designated Beneficiaries

a. Charities;

b. Original account owner's estate; and

c. Certain trusts.

B. Distributions Post-SECURE Act

1. All beneficiaries will always have the option to receive a lump-sum distribution. For beneficiaries that do not wish to take a lump-sum distribution, the rules governing when distributions must be made depend on two factors. The first factor is which of the three categories does the beneficiary fall under: (i) Designated Beneficiary, (ii) EDB, or (iii) Non-Designated Beneficiary. The second factor to be determined is if the decedent died prior to or after

[63] Section 401(a)(9)(E)(ii).
[64] Treas. Reg. 1.401(a)(9)-4(e)(4).
[65] Treas. Reg. 1.401(a)(9)-4(e)(5).

the Required Beginning Date (RBD).[66] The RBD is the date the decedent was required to begin taking RMDs from his or her IRA.

2. Distributions for Designated Beneficiaries

a. Before RBD

(i) Ten-Year Rule – allows the beneficiary to postpone distributions up until the end of the year in which the 10th anniversary of the original account owner's death occurs. Amounts must be fully depleted by December 31st of the year containing the 10th anniversary of the original account holder's death.[67]

(ii) Under pre-SECURE Act rules, beneficiaries were allowed to "stretch" the inherited IRA and continue to take distributions across their lifespan versus under the SECURE Act, beneficiaries must liquidate the account within 10 years.

b. On or After RBD

The beneficiary may continue taking annual distributions based on the longer of either the original account owner's or the beneficiary's remaining life expectancy; however, in either case, the amounts must be fully depleted by December 31st of the year containing the 10th anniversary of the original account holder's death.

3. Distributions for EDBs: An Exception to the General Rule (*i.e.*, the Ten-Year Rule)

a. Spouses, chronically ill, disabled, and individuals not more than 10 years younger than IRA account owner

(i) Before RBD

(a) Take annual distributions from the IRA over your life expectancy (necessitating smaller RMDs each year if you are younger than the original account owner). Distributions must begin by December 31st of the year following the original account owner's death. The spouse may delay RMDs until December 31st of the year the decedent would have attained their RMD age.[68]

(b) Adopt the Ten-Year Rule (as described above in Section XII., B. 2. A. (i)).

(ii) On or After RBD

Continue taking annual distributions based on the longer of either the original account owner's or the beneficiary's remaining life expectancy. The beneficiary

[66] RBD is April 1 following the year the original IRA owner turned age 72 for those born in 1950 or earlier. The RBD is April 1 following the year the original IRA owner turned age 73 for those born in 1951 or later.
[67] Treas. Reg. 1.401(a)(9)-5(e)(2).
[68] Section 401(a)(9)(H)(ii); Treas. Reg. 1.401(a)(9)-3(c)(4).

must begin taking RMDs by December 31st of the year following the year in which the original account owner died.

b. Minor Children

(i) Before RBD

(a) Take distributions over the minor's life expectancy. Take RMDs based on the child's single life expectancy. Distributions must start by December 31st of the year following the year of the original account owner's death. Continue RMDs until the minor reaches 31, depleting the account by December 31st of the year the beneficiary turns age 31.[69]

(b) Adopt the Ten-Year Rule (as described in Section XII., B. 2. A. (i)).

(ii) On or After RBD

Take distribution over the EDB's remaining life expectancy. Distributions must start by December 31st of the year following the year of the original account owner's death. The account must be fully distributed by December 31st of the year the minor turns age 31.

4. Distributions for Non-Designated Beneficiaries

a. Before RBD

Five-Year Rule – allows the beneficiary to postpone required distributions (if preferred), until the end of the year containing the 5th anniversary of the original account owner's death; however, the beneficiary must fully deplete the account by December 31st of the 5th anniversary year.[70]

b. On or After RBD

Continue to take annual RMDs over the original account owner's remaining life expectancy with no other cap on the distribution period.

5. PLANNING OPPORTUNITY

The IRS recently concluded in Private Letter Ruling 202519010 that a decedent's IRA payable to the decedent's estate (a Non-Designated Beneficiary) could be distributed out of the IRA to the decedent's spouse and the decedent's spouse could roll over the distribution into an IRA established and maintained in the spouse's name. The IRS reasoned that because the surviving spouse is the sole administrator of the decedent's estate, is treated as the sole beneficiary of the decedent's estate during the surviving spouse's lifetime and has the authority to all of the estate's assets, then the surviving spouse is the individual for whose benefit the decedent's IRA is maintained. Therefore, when the proceeds of the IRA are distributed out of the IRA to the estate and then to the surviving spouse, the surviving spouse will be eligible to roll over the proceeds from the decedent's IRA to an IRA set up

[69] Treas. Reg. 1.401(a)(9)-5(e)(4), 1.401(a)(9)-4(e)(3).
[70] Section 401(a)(9)(B)(ii); Treas. Reg. § 1.401(a)(9)-3(c)(2).

and maintained in the surviving spouses name provided that the rollover occurs no later than the 60th day after the date the proceeds are paid to the decedent's estate. This ruling allows a surviving spouse to roll over IRA proceeds that were payable to their spouse's estate to an IRA in their name that will be treated as their own IRA and not have to be subject to the distribution rules applicable when a non-designated beneficiary is listed as an IRA beneficiary. PLRs may only be relied on by the party that received the ruling, but if there are similar facts then it could be possible to request a ruling from the IRS to allow a surviving spouse to roll over IRA proceeds even if the named beneficiary is the decedent's estate, which would allow RMDs to be determined based on the surviving spouses life expectancy and would allow the surviving spouse to name a Designated Beneficiary or EDB to receive the IRA upon the surviving spouse's death.

C. Considerations for Special Needs Beneficiaries

1. A special needs beneficiary that is an EDB (disabled or chronically ill), has the ability to "stretch" IRA distributions over their life expectancy (*i.e.*, they are not required to liquidate the IRA within 10 years).

2. Outright Beneficiary vs Beneficiary in Trust

a. If a special needs beneficiary receives an IRA directly, RMDs may prevent a child with special needs from receiving government benefits that he or she may need such as Medicaid and/or Supplemental Security Income.

b. If a special needs beneficiary receives an IRA through a special needs trust, the trust will receive the RMDs, and the trustee will have the ability to control the distributions to the beneficiary.

3. PLANNING OPPORTUNITY: Set up a Special Needs Trust as an "accumulation" trust, which permits RMDs to be held by the trust, rather than requiring their immediate distribution. The trustee will have the ability to decide when to make distributions to the child, but if the child would meet the criteria as an EDB then the RMDs could be stretched out over the child's life expectancy to potentially minimize the tax impact from the RMDs.

XIII. RELEASE FROM LIABILITY FOR TAXES

A. Request for Prompt Assessment of Gift, Income and GST Taxes

1. The IRS ordinarily has 3 years from the date an income tax return is filed, or its due date, whichever is later, to assess any additional tax due.

2. PLANNING OPPORTUNITY: The executor may request a prompt assessment of the tax after the return has been filed. This reduces the time for making the assessment to 18 months from the date the written request for prompt assessment was received. Prompt assessment may be requested for Forms 1041 and 1040.[71]

[71] I.R.C. § 6501(d).

3. Form 4810 is used for making this request. It must be filed separately after the return is filed.

4. **WARNING:** A request for prompt assessment will not shorten the period for which the IRS may assess additional tax if (i) there is a substantial understatement of gross income (more than 25% of the gross income reported on the return); or (ii) a false or fraudulent return is filed.[72] However, if the executor did not have knowledge of the unreported gross income or the false return the executor may be relieved of personal liability for the tax.

B. Request for Prompt Determination of Estate Tax

1. Ordinarily the IRS has 3 years from the date the Form 706 is filed to assess any estate tax liability.[73]

2. PLANNING OPPORTUNITY: The executor may request a prompt determination. The IRS will then have 18 months to fix the estate tax liability of the estate.[74]

3. The request is made in a letter that is filed with the estate tax return.

C. Application for Discharge for Personal Liability of Estate, Gift and Income Tax

1. The executor is personally liable for any unpaid taxes of the decedent to the extent of the value of other debts paid by the executor over the outstanding priority claims of the United States.[75]

2. A debt includes a distribution of a bequest or a portion of the residuary estate to the named beneficiaries under the decedent's will or under the law of intestate distribution.

3. PLANNING OPPORTUNITY: An executor can make a request for discharge from personal liability for a decedent's income, gift, and estate taxes.[76] The request may be made any time after the return is filed. Form 5495 is used to make the request.

4. If the IRS does not notify the executor of a deficiency within 9 months after receipt of the request, the executor will be discharged from personal liability. If the IRS notifies the executor of a deficiency within the 9 months the executor will be discharged upon payment of the deficiency. Although the executor will be discharged from personal lability the IRS will still be able to assess the tax deficiency against the estate which can bring into play the insolvent estate rules.

D. Insolvent Estate

1. Even if the executor is discharged from personal liability, the executor[77] can still be personally liable for both the decedent's and estate's federal income tax liability if the estate

[72] I.R.C. § 6501(d).
[73] I.R.C. § 6501(a).
[74] I.R.C. § 2204.
[75] I.R.C. § 3713(b).
[76] I.R.C. § 2204 (estate tax); I.R.C. § 6905 (income and gift tax).
[77] For purposes of this provision executor means the executor or administrator of the decedent appointed, qualified and acting with the United States. Reg. § 301.6905-1(b)

is insolvent and the executor had notice of such tax obligations or failed to exercise due care in determining if such obligations existed before distribution of the estate's assets and before being discharged from their duties.[78] In Private Letter Ruling 8341018, the IRS identified funeral and administrative expenses, exempt property allowances, and family allowances as costs that can be paid before federal tax liens. Administrators, however, cannot pay state and local taxes before paying federal taxes owed by the decedent.

2. The extent of such personal responsibility is the amount of any other payments made before paying the debts due to the United States, except where such other debt paid has priority over the debts due to the United States.

3. Income tax liabilities need not be formally assessed for the personal representative to be liable if he or she was aware or should have been aware of their existence.

[78] Reg. § 301.6905-1(a).

Checklist of Post-Mortem Tax and Administration Issues

1. Initial Notices and Information Gathering

- ☐ File Form 56 (Notice Concerning Fiduciary Relationship) with the IRS to notify of the fiduciary relationship.
- ☐ File Form 8822 if there is a change of address for the estate.
- ☐ Obtain an Employer Identification Number (EIN) for the estate and any trust that become irrevocable on decedent's death (Form SS-4).
- ☐ Obtain copies or transcripts of the decedent's prior tax returns (Form 4506 or 4506-T).
- ☐ Secure all relevant financial records and identify all assets and liabilities.

2. Decedent's Final Income Tax Return (Form 1040)

- ☐ File the decedent's final Form 1040 for the short year ending on the date of death. **Deadline:** April 15 of the year following death (unless extended).
- ☐ File any prior year returns not yet filed.
- ☐ Decide whether to file a joint return with a surviving spouse (requires both parties' consent if executor appointed).
- ☐ Analyze and utilize any unused deductions (medical, capital losses, etc.).
- ☐ Consider election for unreimbursed medical expenses paid within 12 months after death (deduct on final 1040 or estate tax return).
- ☐ Consider election to report any accrued interest on U.S. savings bonds.
- ☐ Address any outstanding gift tax liabilities and consider gift-splitting elections.

3. Estate and/or Trust Income Tax Return (Form 1041)

- ☐ File Form 1041 for the estate and any trusts (each is a separate taxpayer unless a 645 election is made).
- ☐ Select a fiscal or calendar year for the estate (first year can end on last day of any month within 12 months).
- ☐ Estates are exempt from estimated tax payments for two years after death.
- ☐ Consider a Section 645 election to treat a qualified revocable trust as part of the estate (Form 8855; must be filed with first 1041).
- ☐ Allocate estimated tax payments to beneficiaries if appropriate (Form 1041-T; within 65 days after year-end).
- ☐ Decide whether to deduct administration expenses on Form 1041 or Form 706.
- ☐ Plan distributions to beneficiaries to optimize tax brackets (65-day rule for distributions after year-end).
- ☐ On final return, pass through excess deductions and loss carryovers to beneficiaries.

4. Federal Estate Tax Return (Form 706)

- ☐ Determine if a Form 706 is required (gross estate plus adjusted taxable gifts exceeds threshold: $13,999,000 in 2025; $15,000,000 in 2026). **Deadline:** 9 months after date of death (6-month extension available).
- ☐ Consider portability election for unused exclusion to surviving spouse (if not required to file a Form 706 have up to 5 years following death to file for portability).
- ☐ If required to file a Form 706 consider alternate valuation date if estate value has declined (6 months after death).
- ☐ If required to file a Form 706, must file Form 8971 to report basis of inherited property to IRS and beneficiaries (within 30 days of filing Form 706 or its due date).

☐ Identify and report all assets, including those with special valuation rules (e.g., closely held businesses, real estate).
☐ Consider deduction for income in respect of a decedent (IRD) assets.

5. State Estate Tax Returns

☐ Determine if a state estate tax return is required (varies by state; check decedent's domicile and property locations).

6. Basis Adjustment and Valuation

☐ Obtain appraisals for all assets without readily ascertainable value.
☐ Ensure proper step-up (or step-down) in basis for all includable property.
☐ For community property, confirm full step-up in basis if applicable.
☐ Document basis for all assets for future beneficiary use.

7. Entity and Asset-Specific Issues

☐ For S corporation stock, ensure estate/trust remains a qualified shareholder; consider QSST or ESBT elections if trust will hold stock beyond two years.
☐ For partnership interests, consider requesting a Section 754 election for inside basis adjustment.
☐ For IRAs and retirement accounts, identify beneficiary category and required minimum distribution (RMD) rules; consider special needs trust planning if applicable.

8. Disclaimers

☐ Consider use of qualified disclaimers to achieve tax or non-tax objectives. **Deadline:** 9 months after decedent's death (or if earlier 9 months from the date of transfer) or beneficiary's 21st birthday, whichever is later.

9. Releases and Liability

☐ Request prompt assessment of income, gift, and GST taxes (Form 4810; reduces IRS assessment period to 18 months).
☐ Request prompt determination of estate tax (letter with Form 706; IRS has 18 months to assess).
☐ Apply for discharge from personal liability for taxes (Form 5495; IRS has 9 months to respond).

10. Other Administrative Issues

☐ Pay debts and expenses in proper order of priority (federal taxes have priority over most other debts).
☐ Coordinate with state law requirements for probate and administration.
☐ Maintain detailed records of all actions, communications, and filings.

Note: Deadlines are critical for tax filings, elections, and disclaimers. Missing a deadline can result in loss of tax benefits or personal liability for the fiduciary. Always confirm current IRS forms and requirements, as laws and thresholds may change. This checklist is not intended to be all inclusive.