Estate and Gift Tax

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Capture a Great Idea

Estate and Gift Taxes

I. What is an Estate?

A. An **estate** is the net worth of a person at any point in time alive or dead.

B. It is the sum of a person's assets – legal rights, interests and entitlements to property of any kind – less all liabilities at that time.

C. All taxpayers have one although they may vary in size and wealth.

II. Inheritance and the Estate

A. In context of probate, the estate of a deceased person consists of all the property, whether real or personal, owned by the person at the time of death.

B. Assets that pass to somebody else by operation of law (for example, property held on a joint tenancy basis), do not form part of the deceased estate, even though the person had rights to that property during his or her lifetime.

C. If the deceased owned life insurance and nominated a beneficiary of the policy, the proceeds of that policy would not pass into the deceased's estate, but would go directly to the nominated beneficiary.

D. Some death benefits can go directly to a deceased's dependent, bypassing the deceased's estate.

E. The estate of a deceased person is administered by an executor (in the case of a will) or administrator (in the case of intestacy).

<u>Tax Professional's Alert</u>: The term "intestate" refers to the decedent dying without a Last Will and Testament. The title "Executor" is replaced by the term "Executrix" if a female.

F. The function of the executor and administrator is to protect the assets of the estate, pay out all expenses and the decedent's liabilities and distribute the balance in accordance with the directions in the will.

a. An estate (or decedent estate) is a legal entity created as a result of a person's death.

b. The estate consists of the real and/or personal property of the deceased person.

c. The estate pays any debts owed by the decedent and distributes the balance of the estate's assets to the beneficiaries of the estate.

d. An estate arises on a person's death whether the person died with or without a will.

III. What is the Estate Tax?

A. The Estate Tax is a tax on your right to transfer property at your death.

B. It consists of an accounting of everything you own or have certain interests in at the date of death.

C. The fair market value of these items is used, not necessarily what you paid for them or what their values were when you acquired them.

D. The total of all of these items is your "Gross Estate."

E. The includible property may consist of cash and securities, real estate, insurance, trusts, annuities, business interests and other assets.

F. Once you have accounted for the Gross Estate, certain deductions (and in special circumstances, reductions to value) are allowed in arriving at your "Taxable Estate."

a. These deductions may include mortgages and other debts, estate administration expenses, property that passes to surviving spouses and qualified charities.

b. The value of some operating business interests or farms may be reduced for estates that qualify.

c. After the net amount is computed, the value of lifetime taxable gifts (beginning with gifts made in 1977) is added to this number and the tax is computed.

d. The tax is then reduced by the available unified credit.

G. Most relatively simple estates (cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property) do not require the filing of an estate tax return.

H. A filing is required for estates with combined gross assets and prior taxable gifts exceeding the following:

$1,500,000 in 2004 - 2005

$2,000,000 in 2006 - 2008

$3,500,000 for decedents dying in 2009

$5,000,000 or more for decedent's dying in 2010 and 2011

<u>Tax Professional's Alert</u>: There are special rules for decedents dying in 2010.

$5,120,000 in 2012

$5,250,000 in 2013

$5,340,000 in 2014

$5,430,000 in 2015

$5,450,000 in 2016

$5,490,000 in 2017

$11,180,000 in 2018

$11,400,000 in 2019

$11,580,000 in 2020

$11,700,000 in 2021

$12,060,000 in 2022

$12,920,000 in 2023

$13,610,000 in 2024

$13,990,000 in 2025

<u>Tax Professional's Alert</u>: The federal estate tax exemption—that's the amount an individual can leave to heirs without having to pay federal estate tax—is $13.99 million in 2025, up from $13.61 million for 2024. That's another $380,000 that can be passed on tax-free. The top federal estate tax rate is 40%.

I. Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exemption to the surviving spouse.

a. This election is made on a timely filed estate tax return for the decedent with a surviving spouse.

b. Note that simplified valuation provisions apply for those estates without a filing requirement absent the portability election.

IV. Gifts and Taxes

A. The gift tax is tied to the estate tax, so inflation indexing helps the wealthy make the most of tax-free lifetime giving too.

B. Gifts can be made during your lifetime; you have to keep track of them as they count against the eventual estate tax exemption amount.

C. The lifetime gifting limit coincides with the annual estate exclusion. You cannot double dip.

a. A woman who set up a trust for her kids with $5 million a few years ago could make new gifts to add to the trust and bring it up to the $13.99 million amount.

b. A husband and wife each get their own exemption. So a couple will be able to give away $26.98 million tax-free in 2025, assuming they have not made prior lifetime gifts.

D. Separate from the lifetime gift exemption amount is the annual gift tax exclusion amount.

a. It is $19,000 for 2025, up from the $18,000 limit in 2024.

b. You can give away $19,000 to as many individuals as you would like.

c. A husband and wife can each make $19,000 gifts for a total of $38,000 in 2025.

d. A couple could make $19,000 gifts to each of their four grandchildren, for a total of $152,000.

e. The annual exclusion gifts do not count towards the lifetime gift exemption.

E. If you want to make gifts and not have to bother to keep track for gift tax purposes, you can make gifts for medical, dental, and tuition expenses for as many relatives or friends as you would like if you paid the provider directly. These gifts don't count towards any of the limits.

***<u>Example:</u>* Mary's daughter Marian has decided to go back to graduate school after an absence of several years. Mary has already given Marian $19,000 for the year in gifts. If Mary pays the tuition to the university for Marian's graduate study program directly, there is no deemed gift to Marian, however, if she gives the money to Marian to pay to the university there is a reportable gift. This is also true of medical "gifts".**

F. Another opportunity is to fund a 529 college savings plan for your children or grandchildren. There's a special rule, a 5-year election, that lets you put five years of annual exclusion gifts in a plan at once—so a widowed grandma could put $95,000 in an account for her grandson. Grandma would have to file a gift tax return, but there would be no gift tax, assuming no other gifts to that child over those years.

***<u>Tax Professional's Alert</u>:* Funding a 529 college savings play with five years of gifts does require an Estate adjustment if the taxpayer dies before the completion of the 5th year.**

***<u>Tax Professional's Alert 2</u>:* With the federal estate tax exemption rising, most people won't need to use the annual gift exclusion to whittle down their estates. But it's a tool you can use if you live in one of 12 states plus the District of Columbia that impose separate state death tax levies.**

***<u>Tax Professional's Alert 3</u>:* The State of Texas does NOT have an Estate Tax but residents may be subject to a Federal Estate Tax.**

G. One thing to watch out for if you are making gifts for younger members of the family is the federal kiddie tax.

a. The kiddie tax, which covers students through the age of 23, puts investment income, above small amounts, into the parents' tax bracket.

b. In 2018, the kiddie tax rules changed tremendously.

c. From 2018 through 2025 TCJA revises the kiddie tax rules to tax a portion of a child's net unearned income at the rates paid by trusts and estates. These rates can be as high as 37% for ordinary income or, for long-term capital gains and qualified dividends, as high as 20%.

d. The trust and estate tax rate structure is unfavorable because the rate brackets are compressed compared to the brackets for single individuals. In other words, the kiddie tax rules can override the lower rates that would otherwise apply to an affected child's unearned income.

e. By comparison, under prior law, the kiddie tax rules taxed a portion of an affected child's unearned income at the parent's marginal tax rate if that rate was higher than the child's rate. For 2025, the parent's rate could be as high as 37% for ordinary income or, for long-term capital gains and dividends, as high as 20%. Let us not forget the 3.8% Net Investment Income Tax as well.

<u>Tax professional's Alert</u>: For purposes of the kiddie tax rules, the term "unearned income" refers to income other than wages, salaries, professional fees and other amounts received as compensation for personal services rendered. Examples of unearned income include capital gains, dividends and interest. Earned income from a job or self-employment is not subject to the kiddie tax.

f. In calculating the federal income tax bill for a child who's subject to the kiddie tax, the child is allowed to deduct his or her standard deduction. For 2018, if the TCJA hadn't passed, the standard deduction for a child for whom a dependent exemption deduction would have been allowed under prior law is the greater of:

$1,050, or

Earned income plus $350, not to exceed $12,000.

G. For 2025, the kiddie tax potentially affected children who do not provide over half of their own support in 2025 and who live with their parents for more than half of the year.

V. 2018 Changes to Estate Tax, Gift Tax, and Generation-Skipping Transfer Tax Laws

A. The estate tax exemption

a. The estate tax already applied to a small percentage of households. Essentially, the 40% estate tax rate applied only to the portion of an estate that was valued at $5.6 million or more per individual, or $11.2 million per married couple.

b. However, the new tax law exempts even more households by more than doubling these exemptions.

c. Now, for 2025, individuals get a **$13.99 million lifetime exemption** and married couples get to exclude $26.98 million. As you can probably imagine, this will not leave too many families paying the estate tax.

d. **Heirs will continue to receive a "stepped-up date of death" basis for inherited assets for purposes of any subsequent sale.**

<u>Tax Professional's Alert:</u> The ACT retains the annual gift tax exclusion which for 2022 was $16,000 and $17,000 per recipient in 2023, $18,000 for recipients in 2024 and $19,000 for recipients in 2025.

7,000 estate tax returns were filed for people who died in 2023, or which only about 4,000 were taxable. Less than 021 percent of the 2.8 million people who died in 2023 paid estate tax.

B. "Portability" of the federal estate tax exemption between married couples has become permanent.

a. In 2009 and prior years, married couples could pass on up to two times the federal estate tax exemption by including "AB Trusts" in their estate plan.

b. ATRA , American Taxpayer Relief Act, 2010 eliminated the need for AB Trust planning for federal estate taxes in 2011 and 2012 by allowing married couples to add any unused portion of the estate tax exemption of the first spouse die to the surviving spouse's estate tax exemption, which is commonly referred to as "portability of the estate tax exemption."

c. ATRA makes the estate tax exemption between married couples permanent for 2013 and beyond, which means that **in 2025 a married couple can pass on $26.98 million to their heirs free from federal estate taxes** with absolutely no planning at all.

<u>Tax Professional's Alert:</u> Do note, even if the deceased spouse's estate will not be taxable (in other words, is valued less than $13.99 million in 2025), the surviving spouse must file IRS Form 706, **United States Estate and Generation-Skipping Transfer Tax Return,** ***in order to take advantage of the deceased spouse's unused estate tax exemption, otherwise the deceased spouse's exemption will be lost.***

<u>Tax Professional's Alert Two:</u> Be watchful for states that do not mirror image the portability election of the federal reporting.

C. The "pick up tax" was not resurrected.

a. In 2005 the "pick up tax" was phased out under federal law. The pick up tax was a state estate tax that was equal to a portion of the federal estate tax bill and was collected by state taxing authorities.

b. If the estate tax laws were allowed to revert back to the laws that were in effect in 2001, then the pick up tax would have suddenly reappeared in 2013, which would have meant that states such as California, Florida and Texas would have once again collected a state estate tax in the form of a pick up tax.

c. Unfortunately for states without a freestanding estate tax, ATRA did not resurrect the pick up tax, so it continues to remain dormant and will not reappear any time soon.

D. Special planning may be required for generation skipping trusts.

a. While as mentioned above the federal estate tax exemption has been made portable between married couples, the generation skipping transfer tax exemption is not.

b. Thus, in order for married couples to take advantage of both spouses' generations skipping transfer tax exemptions, special planning may be required in married couples' estate planning documents.

VI. Lifetime Exemption from Federal Gift Taxes: 1997 - 2025

A. Over the years the lifetime exemption from federal gift taxes has significantly increased while the gift tax rate has significantly decreased.

B. Below is a chart that shows the changes in the lifetime gift tax exemption and top gift tax rate from 1997 through 2025

Historical and Future Federal Gift Tax Exemptions and Rates

Year	Estate Tax Exclusion	Estate Tax Initial Rate (Above Exclusion)	Estate Tax Maximum Rate	Gift Tax Annual Exclusion
1977	$120,667	30%	70%	$3,000
1978	$134,000	30%	70%	$3,000

Year	Estate Tax Exclusion	Estate Tax Initial Rate (Above Exclusion)	Estate Tax Maximum Rate	Gift Tax Annual Exclusion
1979	$147,333	30%	70%	$3,000
1980	$161,563	32%	70%	$3,000
1981	$175,625	32%	70%	$3,000
1982	$225,000	32%	65%	$10,000
1983	$275,000	34%	60%	$10,000
1984	$325,000	34%	55%	$10,000
1985	$400,000	34%	55%	$10,000
1986	$500,000	37%	55%	$10,000
1987-1996	$600,000	37%	55%	$10,000
1997	$600,000	37%	60%[1]	$10,000
1998	$625,000	37%	60%[1]	$10,000
1999	$650,000	37%	60%[1]	$10,000
2000-2001	$675,000	37%	60%[1]	$10,000
2002	$1,000,000	41%	50%	$11,000

Year	Estate Tax Exclusion	Estate Tax Initial Rate (Above Exclusion)	Estate Tax Maximum Rate	Gift Tax Annual Exclusion
2003	$1,000,000	41%	49%	$11,000
2004	$1,500,000	45%	48%	$11,000
2005	$1,500,000	45%	47%	$11,000
2006	$2,000,000	46%	46%	$12,000
2007-2008	$2,000,000	45%	45%	$12,000
2009	$3,500,000	45%	45%	$13,000
2010[2]-2011	$5,000,000	35%	35%	$13,000
2012	$5,120,000	35%	35%	$13,000
2013	$5,250,000	40%	40%	$14,000
2014	$5,340,000	40%	40%	$14,000
2015	$5,430,000	40%	40%	$14,000
2016	$5,450,000	40%	40%	$14,000
2017	$5,490,000	40%	40%	$14,000
2018	$11,180,000 [3]	40%	40%	$15,000

Year	Estate Tax Exclusion	Estate Tax Initial Rate (Above Exclusion)	Estate Tax Maximum Rate	Gift Tax Annual Exclusion
2019	$11,400,000	40%	40%	$15,000
2020	$11,580,000	40%	40%	$15,000
2021	$11,700,000	40%	40%	$15,000
2022	$12,060,000	40%	40%	$16,000
2023	$12,920,000 [4]	40%	40%	$17,000 [4]
2024	$13,610,000	40%	40%	$18,000
2025	$13,990,000	40%	40%	$19,000

Notes to table:
[1 The 60% maximum tax rate actually represents an additional 5% that was added to estates of more than $10,000,000 from the years 1997 to 2001 in order to eliminate the benefit of the progressive tax table. The additional 5% ended at a taxable estate of $17,184,000, which is when the average tax rate reached 55%. So the top marginal tax rate during those years was 60%, but the top average tax rate was 55%.

[2] The federal estate tax in 2010 was actually optional, and estates could elect to pay no estate tax and instead accept a limit on the increase in the income tax basis on assets included in the estate.

[3] The basic exclusion amount was doubled in 2018, but that doubling ends after 2025.

[4] **Official figure published in Rev. Proc. Rev. Proc. 2022-38**.

VII. What Happens if an Estate is Taxable?

A. What happens if the gross estate exceeds the federal estate tax exemption for the year of the decedent's death?

B. The estate will have to file a federal estate tax return, called Form 706, United States Estate and Generation-Skipping Transfer Tax Return.

C. For 2023, Form 706 must be filed with the IRS within nine months of the decedent's date of death.

D. When is the estate tax payment due? At the same time the Form 706 is due, although an automatic extension can be applied for using Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate and Generation-Skipping Transfer Taxes, but the payment itself cannot be delayed without accruing interest.

VIII. Inheritance Taxes vs. Estate Taxes

A. What' is the difference between an inheritance tax and an estate tax?

a. While at first glance it may appear to just be semantics since both types of taxes are collected as the result of someone's death, an inheritance tax is definitely not the same as an estate tax.

b. An inheritance tax is based on who receives a deceased person's property and how the beneficiary is related to the deceased person, while an estate tax is based on the value of the deceased person's estate and not on who gets what.

B. States recognize the difference.

IX. How to Calculate Your Estate Tax Liability in 2025

A. If your death occurs during a year when the federal estate tax is in effect, then whether your estate will be liable for federal estate taxes will depend on the value of your gross estate, the amount of debt you owe at the time of your death, the total expenses that will be incurred while settling your estate, and any deductions that your estate can take.

B. Based upon current law, here is how to figure out an estimate of your estate tax liability if you die in 2025.

Tax Professional's Alert: ***This information is presented in a simplified format so that you can calculate a rough estimate of your estate tax liability.***

C. Determine the Value of Your Net Estate

a. The value of your **gross estate** is what is used as the starting point for determining your estate tax liability.

b. From your gross estate the following can then be subtracted to give you the value of your **net estate** for estate tax purposes:

1. **Debts and expenses**, including mortgages, lines of credit, personal loans, credit card debt, funeral expenses and medical bills; as well as administrative expenses to settle your estate or Revocable Living Trust, including attorney, accounting and appraisal fees, storage and shipping fees, insurances, and court fees.

<u>Tax Professional's Alert</u>: To get a rough estimate of the administrative expenses, multiply your gross estate by 5%.

2. **Charitable transfers**, including direct gifts and property set aside in a Charitable Remainder Trust or Charitable Lead Trust; and

3. **Transfers to a spouse who is a U.S. citizen**, including outright transfers by right of survivorship and transfers made to a trust that qualifies for the unlimited marital deduction, such as the "**A Trust**" established when using AB Trust planning.

D. Determine Your Federal Estate Tax Liability in 2023

a. From your net estate is then subtracted your available federal estate tax exemption to arrive at your taxable estate.

b. If you have made any taxable gifts during your lifetime, then your available estate tax exemption will be equal to the difference between the total exemption available and the value of the lifetime gifts made.

c. Some Examples Using the 2023 Estate Tax Exemption and Rate to illustrate how an estate tax bill is calculated:

1. **Death in 2025, no lifetime gifts, taxable estate** - If you die in 2025 and your gross estate is $14.59 million and your allowable debts, expenses and deductions are $300,000, then your net estate is $14.29 ,million. You then subtract from your net estate your available estate tax exemption to

arrive at your taxable estate. If you have not made any taxable gifts during your lifetime, then in this example your taxable estate will equal $300,000:

$14.29 million net estate - $13.99 million estate tax exemption $300,000 taxable estate

Your taxable estate is then multiplied by 40% to arrive at your federal estate tax liability, which in this example equals **$120,000**:

$300,000 taxable estate x 40% rate = **$120,000 tax liability**

2. **Death in 2025, no lifetime gifts, nontaxable estate** - Use the same facts above, except that your net estate is valued at $13.99 million. In this case, since your net estate is equal to the 2025 estate tax exemption, your taxable estate will be $0 and so your tax liability will be **$0**:

   $13.99 million net estate - $13.99 million lifetime tax exemption =**$0 taxable estate**

3. **Death in 2025, $3 million in lifetime gifts** - Use the same facts above in #1, except that your death occurs in 2025 and you made $3 million of taxable gifts during your lifetime. This means that the $3 million in taxable lifetime gifts will be subtracted from your available estate tax exemption, leaving you with a $10.99 estate tax exemption:

   $13.99 million exemption - $3 million lifetime gifts = Leaves $10.99 million exemption - net estate is $14.22 million.

   $14.22M – $10.99M =

   Taxable estate is $3.2M.

   Thus, your estate tax liability will be **$1,280,000**:

* Calculation of estate tax at 40% for simplicity.

X. Taxes that Affect an Estate

A. Gift Taxes

a. The gift tax is probably the most ignored tax that can affect an estate.

b. Currently the federal tax code exempts up to $19,000 per year in gifts made by any individual to any number of other individuals is referred to as the annual exclusion from gift taxes.

c. Once you make a gift over $19,000 in any given year to the same person, you will be making a taxable gift and you'll incur a gift tax.

d. Instead of paying the tax immediately, currently the federal tax code gives you a lifetime gift tax exemption of $13.99 million can be used to offset your taxable gifts.

<u>Example</u>: This year you decide to gift $119,000 to your son for a down payment on a house. For gift tax purposes, the first $19,000 will have no consequence, but the next $100,000 will be considered a taxable gift. Once the gift is made, instead of having a $13.99 million gift tax exclusion, you will have a $12.99 million exclusion remaining.

e. Taxable gifts made during the course of the year need to be reported on IRS Form 709, United States Gift and Generation-Skipping Transfer Tax Return, which must be filed on April 15 of the year following the year in which the gift was made unless an extension of time to file either the Form 1040 or the 709 is filed.

B. Estate Taxes - Federal Estate Taxes and State Estate Taxes

a. For decedents who die during 2025, the federal estate tax applies to estates that are valued at more than $13,990,000, which is referred to as the federal estate tax exemption.

b. Current law provides that the federal estate tax exemption will go back to the level of 2018 with inflation..

C. State Inheritance Taxes

a. The states with estate taxes as of 2025 were:

State	**Estate Tax Exemption**	**Inheritance Tax Exemption**	**Estate Tax Rate**	**Inheritance Tax Rate**
Connecticut	13,610,000.00 $		12%	
Hawaii	5,490,000.00 $		10.0% - 20.0%	

State	Estate Tax Exemption	Inheritance Tax Exemption	Estate Tax Rate	Inheritance Tax Rate
Illinois	4,000,000.00 $		0.8% - 16.0%	
Iowa				0 - 2%
Kentucky		1,000.00 $		0-16%
Maine	6,800,000.00 $		8.0% - 12.0%	
Maryland	5,000,000.00 $		0.8% - 16.0%	0-10%
Massachusetts	2,000,000.00 $		0.8% - 16.0%	
Minnesota	3,000,000.00 $		13.0% - 16.0%	
Nebraska		100,000.00 $		0-15%
New Jersey		25,000.00 $		0-16%
New York	6,940,000.00 $		3.06% - 16.0%	
Oregon	1,000,000.00 $		10.0%-16.0%	
Pennsylvania				0-15%
Rhode Island	1,774,583.00 $		0.8% - 16.0%	
Vermont	5,000,000.00 $		16%	
Washington	2,193,000.00 $		10.0% - 20.0%	
District of Columbia	4,715,600.00 $		11.2% - 16.0%	

Sources: Bloomberg Tax; state statutes.

b. A state estate tax or a state inheritance tax may apply.

c. State laws change frequently, so it is best to consult with a qualified estate planning attorney in your state to determine if your assets will be subject to a state estate tax or a state inheritance tax after you die.

d. If you own personal effects or real estate outside of your home state and the other state has an estate tax or an inheritance tax, then there may be an estate tax or an inheritance tax due on your out of state property after your death.

D. Generation Skipping Transfer Taxes

a. For decedents dying in 2023, the generation skipping transfer tax (GST) applies to transfers of more than $12.92 million that "skip" one or more generations. "Skip" refers to either a transfer that is made to a relative who is two or more generations below your generation (for example, a grandparent to a grandchild), or to a non-relative who is more than 37 ½ years younger than you.

b Although the TCJA does not address the GST exemption it does follow the estate exemption.

c. The majority of the states that still impose their own separate state estate tax also assess a separate generation skipping tax.

E. Income Taxes

a. For deaths occurring in any year, during the course of settling an estate or trust after someone dies, the estate or trust assets will undoubtedly earn interest until they can be distributed out of the estate or trust to the ultimate beneficiaries, and if certain types of assets are sold (such as stocks and bonds), the sale may result in a capital gain even after taking into consideration the step up in basis.

b. Certain types of accounts have built in income tax consequences referred to as "income in respect of a decedent" (or IRD) when the owner dies, such as non-Roth IRAs, 401(k)s, and annuities.

c. Explanation of IRD

1. In order to prevent the bunching of all income received after a decedent's death on the final income tax return, Congress enacted IRC section 691, which essentially provides for taxing the beneficiary on the postmortem income as it is received.

2. While there is no universal definition of IRD found in the IRC, Treasury Regulations section 1.691(a-b) provides a general guideline that IRD includes "those amounts to which a decedent was entitled as gross income but which were not properly includable in computing taxable income for the taxable year ending with the date of his death."

3. What constitutes IRD can vary depending on the type of income received, the method of accounting used by the decedent, and the date the income is actually received.

4. Tax issues arise when the recipient of the IRD is subject to the taxation on this income.

5. According to IRC section 691, the following parties may be subject to IRD from the following:

- the estate of the decedent, if the right to receive the income is acquired by the decedent's estate from the decedent;

- the person who acquires the right to receive the income by way of the decedent's death, if the right to the income is not acquired by the decedent's estate from the decedent; and
- the person who acquires the right to receive the income by bequest, devise, or inheritance, if the right to the income is received through a distribution from the decedent's estate.

6. No matter who the beneficiary is, the income, when received, will be taxed to the beneficiary as it would have been taxed to the decedent.

7. Whenever a taxpayer dies, the beneficiary of the property generally receives a step-up (or step-down) in basis in the property equal to the fair market value of the property ont the decedent's date of death (IRC section 1014).

8. Any increase in basis will help offset any gross sale proceeds.

9. As an exception, however, IRD is denied this IRC section 1014 basis to prevent realized but unrecognized income from evading its predetermined recognition by hiding behind a taxpayer's death.

10. IRD does not receive a step-up in basis, because the income has not been taxed on the decedent's individual income tax return, although it is includible as an asset on the decedent's estate tax return.

Example: **Ann, a decedent, was owed $500 in wages upon her death. The beneficiary of these wages, Bob, will have the same basis in the income as Ann did, in this case $0. Bob will recognize the same amount of income as would have been recognized by Ann, in this case all $500.**

11. Almost all IRD is included in the gross estate of a decedent, much like all other decedent property, but it is also included in the beneficiary's income tax return when received, to ensure proper taxation of the actual recipient.

12. The IRD beneficiary's deduction comes in the form of a miscellaneous itemized deduction not subject to the 2% of AGI floor equal to the estate tax attributable to the net IRD [IRC section 67(b)(8)].

c. While many estates and trusts may not be affected at all by gift, estate, inheritance, or generation skipping transfer taxes, the majority will be affected in some way or another by income taxes. Income earned by an estate or trust is reported on **IRS Form 1041, *U.S. Income Tax Return for Estates and Trusts***, for federal income tax purposes, and the estate or trust may also need to file a state income tax return for estates and trusts.

XI. What is Portability of the Estate Tax Exemption?

A. An Estate Tax Election for Surviving Spouses

a. On December 17, 2010, President Obama signed the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 ("TRUIRJCA" for short) into law.

b. As part of this law, significant modifications were made to the rules governing federal estate taxes, gift taxes and generation skipping transfer taxes.

c. In addition, TRUIRJCA introduced for the first time the concept of **"portability"** of the federal estate tax exemption between married couples for the 2011 and 2012 tax years.

d. Then, on January 2, 2013, President Obama signed the American Taxpayer Relief Act ("ATRA" for short) into law.

e. Under the provisions of ATRA, portability of the estate tax exemption between married couples has been made permanent for 2013 and future years.

B. Definition of Portability of the Estate Tax Exemption

a. Portability of the federal estate tax exemption between married couples means that if the first spouse dies and the value of the estate does not require the use all of the deceased spouse's federal exemption from estate taxes, then the amount of the exemption that was not used for the deceased spouse's estate may be transferred to the surviving spouse's exemption so that he or she can use the deceased spouse's unused exemption *plus* his or her own exemption when the surviving spouse later dies.

b. With regard to state estate taxes, currently only Hawaii and Maryland offer portability at the state level.

C. Examples of Portability of the Estate Tax Exemption

Some examples using numbers should help to illustrate the concept of portability of the federal estate tax exemption between spouses:

Result Without Portability

Tom and Sue are married and have all of their assets jointly titled and their net worth is $15 million, Tom dies first and the federal estate tax exemption is $12.92 million on the date of his death, and portability of the estate tax exemption between spouses **is not in effect**:

1. Under these facts, when Tom dies his estate will not need to use any of his $12.92 million estate tax exemption since all of the assets are jointly titled and the unlimited marital deduction will allow Tom's share of the joint assets to be automatically transferred to Sue by right of survivorship without incurring any federal estate taxes.

2. Assume that at the time of Sue's later death the federal estate tax exemption is still $12.92 million, the estate tax rate is 40%, and Sue's estate is still worth $15 million.

3. With Tom's $12.92 million tax exemption completely wasted, when Sue later dies she can only pass on $12.92 free from federal estate taxes. Thus, Sue's estate will owe about $1832,000 in estate taxes after her death:

   $15,000,000 estate - $12.920,000 exemption = $2,080,000 taxable estate

   $2,080,000 taxable estate x 40% estate tax rate = $832,000.

Result with Portability

Assume Tom and Sue are married and have all of their assets jointly titled and their net worth is $15,000,000, Tom dies first and the federal estate tax exemption is $12.920,000 on the date of Tom's death, and portability of the estate tax exemption between spouses **is in effect**:

$15,000,000 estate - $12,920,000 exemption = $0 taxable estate

1. As above, when Tom dies his estate will not need to use any of his $12,920,000 estate tax exemption since all of the assets are jointly titled and the unlimited marital deduction allows for the automatic transfer of Tom's share of the joint assets to Sue by right of survivorship and without incurring any federal estate taxes.

2. Assume that at the time of Sue's later death the federal estate tax exemption is still $12.920,000, the estate tax rate is 40%, and Sue's estate is still worth $15,000,000.

3. **Enter *portability* of the estate tax exemption** - Using the concept of portability of the estate tax exemption between spouses, under these facts Tom's unused $12,920,000 estate tax exemption will be added to Sue's $12,920,000 exemption, in turn giving Sue a $25,840,000 exemption.

4. Since Sue has "inherited" Tom's unused estate tax exemption and she can pass on $25,840,000 free from federal estate taxes at the time of her death, Sue's $15,000,000 estate will not owe any federal estate taxes at all:

5. ***Portability*** of the estate tax exemption will save the heirs of Tom and Sue potentially $832,000 in estate taxes.

<u>Tax Professional's Alert</u>: Sue will not automatically "inherit" Tom's unused exemption; instead, she must timely file IRS Form 706, **United States Estate and Generation** ***Skipping Transfer Tax Return, in order to make an affirmative election to add Tom's unused exemption to her exemption.***

See Rev. Proc. 2014-18 for special rules that apply to the estates of married decedents who died after December 31, 2010, and on or before December 31, 2013.

D. Which Estates Need to File Form 706?

<u>Decedent is Single, Gross Estate is Valued Less Than $13.990,000</u>

a. If the decedent was single at the time of death and the value of the estate does not exceed $13,990,000 in 2025, then the estate will *not* be required to file IRS Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return.*

b. Nonetheless, the heirs should consult with an estate planning attorney or tax attorney to determine if Form 706 should be filed for other reasons, such as locking in date of death values of the decedent's assets to establish their stepped up basis, or allocating the decedent's unused generation skipping transfer tax exemption to testamentary trusts created under the decedent's estate plan.

c. If it is determined that an estate tax return should be filed, then it will be due 9 months after the decedent's death. File IRS Form 4768, *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, on or before the due date for Form 706 to request an automatic 6-month extension of time to file the return.

Decedent is Single, Gross Estate is Valued Over $13,990,000

a. If the decedent was single at the time of death and the gross value of the estate exceeds $13,990,000, then the estate will be required to file IRS Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return.*

b. The return will be due 9 months after the decedent's death. File IRS Form 4768, *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, on or before the due date for Form 706 to request an automatic 6-month extension of time to file the return.

c. What is the anticipated turn around time for the IRS to review IRS Form 706? Expect it to take at least *6 months* from the date of filing before the IRS will look at the return.

Decedent is Married, Gross Estate is Valued Less Than $13,990,000

1. If the decedent was married at the time of death and the gross value of the estate does not exceed $13,990,000, then the estate will ***not*** be required to file IRS Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return.*

2. The surviving spouse should consult with an estate planning attorney or tax professional to determine if Form 706 should be filed to lock in date of death values of the decedent's assets to establish their stepped up basis or to elect portability of the estate tax exemption.

3. If the decedent included AB Trust planning or generation skipping trusts in the estate plan, then the surviving spouse should consult with an estate planning attorney or tax attorney to determine if Form 706 should be filed to report the assets used to fund the B Trust as well as their date of death values or to properly allocate the decedent's unused generation skipping transfer tax exemption.

4. If it is determined that an estate tax return should be filed, then it will be due 9 months after the decedent's death. File IRS Form 4768, *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, on or before the due date for Form 706 to request an automatic 6-month extension of time to file the return.

<u>Decedent is Married, Gross Estate is Valued Over $13,990,000</u>

1. If the decedent was married at the time of death and the gross value of the estate exceeds $13,990,000, then estate will be required to file IRS Form 706, *United States Estate and Generation-Skipping Transfer Tax Return.*

2. The return will be due 9 months after the decedent's death. File IRS Form 4768, *Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, on or before the due date for Form 706 to request an automatic 6-month extension of time to file the return.

XII. When will an IRS Estate Tax Closing Letter Be Received?

A. When the IRS has accepted a federal estate tax return, it used to issues an "Estate Tax Closing Letter."

B. For all estates tax returns filed on or after June 1, 2015, Estate Tax Closing Letters will be issued only upon request by the taxpayer.

C. Instructions are to wait at least 4 months after filing to make a closing letter request to the IRS to allow processing time.

D. Transcripts, which reflect transactions including the acceptance of Form 706 and the combination of an examination may be an acceptable substitute for an estate tax closing letter.

<u>Tax Professional's Alert</u>: Due to the 40 per cent tax rate, large estates are a concentrated effort for audit by the Internal Revenue Service. Highly trained and sophisticated Revenue Agents will be assigned these cases.

XIII. Summary of Estate Tax Filing Deadlines

9 months from date of death - Due date for Form 706 or Form 4768

15 months from date of death - Due date for Form 706 for estates that timely filed Form 4768

6 months from date Form 706 is filed - The anticipated amount of time it will take before the IRS reviews Form 706

XIV. What is the Future of the Federal Estate Tax?

A. While we know what the current federal estate tax rules are and that they are supposed to be "permanent" going forward, as the saying goes, "A law is only permanent until Congress decides to change it."

B. As the struggle in Washington continues to keep incoming revenues up to speed with the exorbitant amount of government spending that is occurring, Congress may very well be forced to close some of the "loopholes" that the wealthy have benefited from in the past in order to decrease the values of their estates for estate tax purposes.

Tax Professional's Alert: ***If only two things are certain—death and taxes make sure you are the tax professional that gets the taxes right!***

As the estate personal representative or Executor/Executrix is responsible for the filing of Form 706 for portability, for those not wishing to file the Form 706, it is advised the following disclosure be requested.

The beneficiary's potential loss of inheritance if the portability election not made may lead to law suits. Retain this document in your file.

Decline of Services

On (this date), (your name and or firm) carefully explained the issue of portability of the unused estate exemption.

I am the personal representative, executor or executrix of the Estate of (name of the estate) and while I understand all issues of the filing of the Form 706 to elect the unused portability be afforded the remaining spouse, I am expressly not requesting (your name and or your firm) to prepare for filing the Form 706 for the estate of (name of the estate).

---

name of personal representative, executor or executrix

Signature:

Signature date

your name and or firm

Signature date

XV. Miscellaneous Estate and Gift Issues of Note

A. Applications for Discharge of the Estate Tax Lien

As of June 2016, send all applications for discharge of any estate tax lien to the IRS's Advisory Estate Tax Lien Group for processing.

Submit the application and required documentation on Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien.

B. Send to:

Internal Revenue Service
Advisory Estate Tax Lien Group
55 South Market St.
Mail Code 5350
San Jose, CA 95113-2324
Attn: Group Manger

C. Submit your application at least 45 days before the transaction date that the certificate of discharge is needed.

A look at the mechanics of what happens when a taxpayer dies and the responsibilities of the Executor, Executrix or personal representative.

A general knowledge of estate management to assist the tax professional in their quest to assist their tax clients before and after death.

I. Initial Steps

A. One of the first steps is to locate the decedent's will, if there is one.

B. Intestate, when the decedent dies without a will.

1. A diligent search is required in order to search for petition letters of administration.

2. To fulfill the wishes of the decedent.

<u>Tax Professional's Alert</u>: If the decedent dies intestate, a court-appointed administrator administers his or her estate.

C. Testate, when the decedent dies with a will.

1. Once the will is located, the executor named in the will should present the will for probate and request authorization to serve as executor or administrator.

2. Letters Testamentary will be issued allowing the personal representative to proceed to collect the decedent's assets and provide for their protection.

D. Steps that must be taken during the initial phase of estate administration include but are not limited to the following, in their order of occurrence:

1. Notify banks where decedent had accounts; obtain information as to date of death balance, form of ownership, etc.

2. Arrange for the collection and custody of decedent's personal property,

3. Check insurance coverage on all of decedent's property,

4. Investigate all of decedent's brokerage accounts,

5. Make a preliminary estimate of the decedent's estate to determine the form of probate and/or administration.

6. Obtain values as of the date of death as quickly as possible.

7. Have additional copies of the will made for beneficiaries, tax authorities, personal representatives, etc.

Tax Professional's Alert: ***The Form 706 – will require a certified copy of the Will accompany the return when filed.***

8. List contents of decedent's safe deposit box.

9. Hold a preliminary conference with family members and others named in the will for the purpose of "reading the will" and determining whether there will be any objections or renunciations.

10. Hold conference with the decedent's personal representative(s) to obtain all the facts needed for the preparation of the petition for probate.

11. Make arrangements with the post office for custody of the decedent's mail.

12. File the will and petition for testamentary letters with probate court.

13. Make copies of the petition available to the executor and taxing authorities, accompanied by an affidavit as to the value of the property affected by the will, and the amounts going to the beneficiaries, together with their relationships to the decedent.

14. Obtain copies of the death certificate (as many as possible).

15. Assist beneficiaries in the collection of life insurance proceeds, obtaining necessary IRS forms from insurance companies.

Tax Professional's Alertt: ***Forms 712 from the Insurance Companies must accompany the filing of the Form 706 with the Internal Revenue Service.***

16. Collect unpaid wages, salary, or commissions owed to the decedent.

17. Inquire as to the exact benefits due from company pension and/or profit-sharing plans and other company programs, and from union or association benefit programs.

18. Change automobile registration, if in the decedent's name.

19. If decedent was a businessperson, check for business continuation agreements, etc.

20. Mail notice of hearing on petition together with order limiting time to file claims in accordance with local law requirements.

21. Arrange for continued collection of loans, rents, interest, dividends, royalties, etc., and attempt to collect delinquent obligations.

22. Arrange for publication of order for hearing in accordance with local law.

23. File affidavit of mailing of notice of hearing in accordance with local law requirements.

24. Send copies of the will and preliminary estimate of estate to the appropriate heirs.

25. Arrange for ancillary administration, if necessary.

26. Collect all pertinent information for income tax returns.

27. If the decedent was the sole proprietor of a business, determine if there is an outstanding obligation for employers' tax.

Tax Professional's Alert: ***Aside from the Executor (trix) what other party will be interested in outstanding payroll tax liabilities of the decedent?***

28. Collect all amounts due from retirement plans, etc.

29. File Social Security claims.

30. File VA claims, if necessary.

31. Arrange for witnesses to appear at hearing, obtaining written depositions, if necessary.

32. Send copy of the will to surviving spouse and minor children, if not already done, and notify them as to their rights and advise them as to tax considerations.

33. File affidavit of mailing of notice of surviving spouse and children's rights as required by local law.

34. Assemble data on all nonprobate property including:

    a. Joint tenancy property,

    b. Life insurance,

    c. Living trusts, and

    d. Property subject to a power in the decedent, etc.

35. Inquire into all substantial gifts made by the decedent within three years of his/her death and all transfers made in trust at any time.

36. Make inquiry as to requirements for fiduciary bond, discussing it with the named executor, and prepare application therefore, if necessary.

37. Prepare executor's form of acceptance.

38. Attend formal court hearing on petition for probate with witnesses and any required written testimony.

39. File acceptance by executor.

40. File fiduciary bond, if required.

41. Obtain certified copies of letters testamentary.

42. To limit appeal time, serve copy of order on petition to interested parties.

43. Have appraisers appointed, if necessary.

44. Executor (trix) should notify post-office, banks, creditors, IRS, and others of his/her appointment.

45. Documentation of all the items listed above should be obtained. Originals preferred or photocopies where appropriate.

<u>Tax Professional's Alert:</u> Copies of federal gift tax returns, Form 709 are imperative as they will be required as an attachment to the Form 706.

46. Complete Form 8971, **Information Regarding Beneficiaries Acquiring Property From a Decedent,** when necessary.

47. Prepare Form 706, **United States Estate (and Generation-Skipping Transfer) Tax Return** when appropriate.

48. File all appropriate tax returns for the deceased and estate.

FINAL INVENTORY PAGE

Item #	***Item***	***Cost Basis (if known)***	***Value DOD***
Totals		**$**	**$**

Part II.
Debts of the Deceased

I. Debt of Deceased

A 2025 study determined that most Americans – 75% to be exact – are going to die in debt.

A. The study was done by Experian, one of the three largest credit bureaus in the U.S., and said the average American dies owing $96,371. Throw mortgages out of that equation and the debt load shrinks to $12,875, which does not seem like much unless some debt collector starts calling you day and night trying to collect it.

B. The good news for relatives of the deceased is that while you can't take money with you, you can take debt to the grave. Relatives are not responsible for the deceased member's debt, unless they co-signed for a loan, credit card, have joint ownership of a property or business or live in one of the nine community property states: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, Washington and Wisconsin.

C. The rest of the debt obligations fall to the deceased person's estate (if ere is one), and that is where the situation can get a little muddy, especially for relatives who think they are in line for an inheritance. There can only be an inheritance if there are enough assets in the estate to pay off the deceased person's debts.

D. Although legal structures exist to help surviving family members handle these situations, many of us aren't well-read on the subject. When you encounter debt collectors who want you to pay a dead relative's debts, you may not know the facts on how the American legal system views this financial responsibility.

E. The Federal Trade Commission maintains a straightforward guide on its website regarding the rights and responsibilities of surviving family members. As the FTC points out, a general set of standards called the Fair Debt Collection Practices Act applies to this situation. What the FTC guide shows is that, apart from some specific instances involving co-ownership of assets and debt, surviving family members usually don't have to pay the debts of someone in their family who has died.

II. Estates and Executors

A. In most cases, existing debts are paid from the dead person's estate. An estate is the sum of the assets of an individual. Those could include things like a home, a car, a boat, a stamp collection, jewelry, a bank account –

just about anything that is money or could be turned into money by selling it.

B. If someone dies with outstanding debt owed, the assets in an estate are sold and the money is used to pay off those debts.

C. Requests for payment go to the person in charge of the estate, who is either an attorney or an executor specifically named in the deceased's will. The executor is responsible to pay the debts out of the estate.

III. Assets Protected from Creditors

A. Not every asset someone owns is up-for-grabs when they die. The law divides the deceased's assets into exempt and non-exempt categories, with the primary distinction being that exempt assets can't be liquidated to cover debts.

B. The list of exempt assets varies by state, but two major assets are exempt everywhere: retirement savings and life insurance policies. Those two assets can be distributed to beneficiaries without regard to debts owed by the deceased.

C. Some states designate other entities as exempt so it's wise to check the laws where you live. Florida, for example, says the surviving spouse or children has the right to exempt household furniture and appliances up to a value of $10,000 as well as two automobiles.

D. Assets that are non-exempt, meaning available to be liquidated and used to pay off debts, would include a house, car, boat, bank account, artwork, stamp or coin collection or anything that has enough value to be sold.

IV Timespan for Creditors to Make Claim

A. Creditors in search of payment must present their request in writing during a prescribed time frame, which varies from state-to-state.

B. For unsecured debts, the time limit ranges from 3-6 months in most states. State laws require executors to post notice of the death, either in a newspaper or directly to known creditors to give them a chance to file a claim.

C. No claims are accepted after the time frame has expired.

V. Do You Have to Speak to Debt Collectors?

A. Debt collectors know that the family members of a deceased person have no obligation to pay off debts that person may have accumulated, but that doesn't stop them from trying to collect anyway.

B. It is not unusual for debt collectors to use the same tactics they are infamous for – badgering, harassing and intimidating – on relatives of the deceased, hoping somebody caves in and pays the debts. All they care about is the money.

C. Executors and family members can block debt collectors from harassing them by sending them a cease and desist letter or hiring a lawyer and directing all calls to the law office.

D. However, the estate still owes the debt. If you are the executor, it's your responsibility to figure out how to pay creditors by drawing on the money and holdings in the estate when the owner died.

E. It is NOT your responsibility to use your own money to pay off those debts.

f. Some creditors don't even bother to file a claim, choosing instead to go directly at the most vulnerable members of the family. If creditors continue to harass you for payment as a family member, write a letter or contact your attorney to write one on your behalf to demand they stop all contact. Under the Fair Debt Collection Practices Act, creditors aren't allowed to discuss someone's debt with relatives, neighbors or friends.

VI.. What Happens If the Estate Is Insolvent?

A. It does not happen often, but there are times when the owner of an estate dies and with more debt than assets, meaning the estate is insolvent. When this happens, the deceased's family members will not receive any inheritance, but still aren't responsible to pay off any debts.

B. The process remains the same – any assets are sold with the money going to pay off debts – but a priority order is established. Claims filed within a six-month timeframe of the estate being opened are usually paid in order of priority. Typically, fees — such as fiduciary, attorney, executor and estate taxes — are paid first, followed by burial and funeral costs.

C. If the deceased member's family was dependent on him or her for living expenses, they will receive a "family allowance" to cover expenses. The next priority is federal taxes. Medical expenses not paid by insurance are then paid, as well as property taxes. Credit cards and personal loans are usually at the bottom of the list, and if no money remains, the debt may be written off.

D. Secured debts, such as a car loan or a mortgage, are also owed after the account holder's death. The lien holder will either reclaim the property or a relative can assume responsibility for the debt through refinancing. The same is true with most reverse mortgages; you can refinance the loan if the home has been left to you.

VII. Cases Where Family Members May Have to Pay

A. One of the clearest situations in which you may have to pay a dead relative's debt involves co-signing. If you have ever co-signed a loan or other credit for that person, you may have financial responsibility.

B. Other situations involve people who live in states that have more far-reaching rules on debt collection for assets, known as "community property states."

C. In addition to the above, you may have to assume a dead relative's loan if you also are receiving the asset attached to the loan — for example, a car or property.

VIII. Working Through Estate Debt

A. The general rule of thumb is to go through an estate process with legal representation, carefully identifying any debts that must be paid and figuring out how much, if anything, will be left in the estate after all debts are satisfied.

B. If there are multiple executors, they will need to work closely to resolve all debt issues as the estate is settled. It's relatively rare for family members to be asked to pay money out of their own pockets to cover a relative's old debts.

C. If this happens, make sure to document efforts by debt collectors. If you're unsure about these debts, seek legal representation to figure out whether you are being targeted inappropriately by a debt collector.

D. Remember, regardless of what debt collectors tell you, they are bound by specific rules on how to go about collecting unpaid debts, especially when a death has occurred. Stand up for your rights and let creditors know that you will be vigilant in pursuing your best interests, even while grieving for a lost family member.

Part III

IRS and the Executor (trix)

I. Can the IRS Come Back for Taxes After the Estate is Closed?

A. Most people do not owe estate taxes when they die, so they should not be a critical part of your estate planning unless you believe the total value of your estate will exceed the federal estate-tax exclusion amount.

B. If the value of your assets is more than this the burden of filing and paying estate taxes falls to the executor of your will during the probate process.

C If he or she doesn't do the job properly, the IRS can look to them for payment after your estate is closed.

II. Closing the Estate

A. The executor cannot, or should not, settle your estate until they have filed all required tax returns.

B. These include your personal returns, as well as an estate tax return if it is required.

C. The executor has nine months from your date of death to do so.

D. After they determine how much your estate owes in taxes, they are obligated to pay this debt first before other creditors receive money and before making distributions to your beneficiaries.

C. While IRS used to issue a closing letter in about six months after reviewing the return, allowing distributions to be made and the estate to be settled, the executor should now apply for and receive a transcript to note the closing of the estate.

<u>Tax Professional's Alert</u>: It is advisable that the Executor(trix) make no distributions to beneficiaries until all known debts of decedent are paid or resolved including and foremost debts owed to the Internal Revenue Service.

Final Thoughts

Timeline:

Life	Death	Trust
Social Security Number	**EIN**	**EIN**
Form 1040	**Form 1041**	**Form 1041**

1099's with decedent's Social Security Number and income after date of death.

Notes:

Documents Required:
Last Will and Testament -

Trust (in place and created at death)

Form 706 – Value of Estate (Lifetime Gifts) Own or Control at Death

All Form 709's must be attached.
Form 706 for Portability

Revenue Procedure 2022-32
File 706 up to 5 years after decedent's death.

Notes:

Step up in basis:
Community property states (Texas) get 100% step up if beneficiary is spouse of decedent.

Notes:

January 1, 2026 the TCJA Estate and Gift Tax Threshold goes to $5 million

Are you ready for the largest gift giving filings of your career?

If Lifetime gifts exceed the estate threshold, remainder is taxable.

Notes

Assistance – Instructions to Forms 706, 709 and 1041.

Power of Attorney

Form 2848

Form 56

Who do you work for?

Noates

What do you charge for your services?

Notes

Grandma and the 529 Plan

OR

How the 529 Plan can be an effective Estate Planning Tool and maintain a sense of financial assurance to Seniors.

Grandma Jones had done alright for herself. Raised 6 children, all on their own and doing reasonably well. She has 10 grandchildren. She also has an estate with a value of $14.940 million in 2025. Grandma's dilemma: Her Tax Professional recommends she begins to "gift" her estate, within limits, to reduce her estate for Federal Income Tax purposes. Grandma is concerned with the volatility of the stock market that she may need her money to maintain her lifestyle, either in her own home or in a care facility of her choice. BUT, Grandma doesn't like the idea of her estate paying estate tax, so she is willing to listen to her Tax Professional!

Her Tax Professional explains:

- **Anyone can make contributions to a 529 Plan, helping to pay for the education of, in Grandma's case, her grandchildren.**
- **The current annual gift limit is $19,000 ($38,000 for joint filers). However, under a special rule, 529 plan investors can contribute five times the annual gift amount all at once - $95,000 ($190,000 for joint filers) without incurring gift tax.**
- **The contributions and any future earnings are removed from the donors' gross estate. Contributions are deemed to be "completed gifts".**
- **This can enable owners to enjoy an immediate estate reduction. However, if the owner dies during the five-year period, the contributions are counted in his or her estate on a pro-rata basis, according to the number of remaining years, including the year in which the donor dies.**
- **Grandma continues as the owner of the 529 plan and Grandma's financial position is disregarded when the financial position of a student or their family is evaluated for student aid.**
- **<u>AND</u> – Grandma maintains control of the assets – taking back the money if they choose with the only tax consequence – paying taxes on the earnings and possibly a 10% tax penalty.**

Even Grandma can do the math: 10 Grandchildren @ $95,000 each is $950,000, eliminating estate tax. Her Tax Professional smiles when he/she tells her that all she has to do is live the next five years.

The moral of this story: Always listen to your Tax Professional!