



Client Alert

August 10, 2011

IRS Issues Draft Form 706 for 2010 Estates September 19, 2011 Due Date for Many Estates

Last week, the IRS released drafts of Form 706 (United States Estate and Generation-Skipping Transfer Tax Return) and Instructions for estates of persons who died during 2010. The draft reflects changes made by the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (2010 Tax Relief Act), as well as indexing and other changes.

This is the draft of the Form that will be used only for decedents dying in calendar year 2010. This Form will not be used for 2011 and 2012 decedents' estates because it does not incorporate certain changes made in the 2010 Tax Relief Act that apply to those years.

New Rules

The following are some of the changes incorporated in the draft Form and Instructions:

For decedents dying between Jan. 1, 2010 and Dec. 16, 2010, the due date for Form 706 is Sept. 19, 2011. For decedents dying after December 16, 2010, the due date is still nine months after death.

The applicable exclusion amount is \$5 million.

The maximum estate tax rate is 35 percent.

The applicable rate for generation-skipping transfers is zero.

Prior gifts must be calculated at the rate in effect at the decedent's date of death.

An Alternative

The new form is for estates of decedents dying in 2010 that elect to be subject to the estate tax and receive a full step up in basis on the assets included in the estate.

As an alternative, such an estate may elect to apply modified carryover basis treatment (within the meaning of Code Sec. 1014) to property acquired or passing from the decedent and have a zero estate tax.

The draft instructions of this Form 706 do not explain how to make the modified carryover basis/zero estate tax election. We now know that the election will be made on Form 8939, Allocation of Increase in Basis for Property Acquired From a Decedent, because on August 5, 2011, the IRS issued Notice 2011-66, Revenue Procedure 2011-41, which provides the time and manner in which the executor of an estate can make the election.

IRS Circular 230 Notice

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