

WHAT'S NEW - ESTATE AND GIFT TAX

1. **CONSISTENT BASIS REPORTING BETWEEN ESTATE AND PERSON ACQUIRING PROPERTY FROM DECEDENT**

On March 23, 2016, the IRS issued Notice 2016-27, which provides that statements required under section 6035, regarding the basis of property distributed from the estate of a decedent, need not be filed or furnished until June 30, 2016. Other notices had previously delayed the filing of such statements. See Notice 2016-19 (PDF), Notice 2015-57 (PDF), and temporary regulations, T.D. 9757.

In addition, proposed regulations, REG-127923-15, provide guidance regarding the requirement that a recipient's basis in certain property acquired from a decedent be consistent with the value of the property as finally determined for Federal estate tax purposes.

The statements noted above are required by H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015, which was signed into law on July 31, 2015.

The law created Section 6035, which requires the executor of an estate required to file an estate tax return to also provide certain statements to the IRS and to beneficiaries receiving inherited property. This also applies to 6018(b) filers.

The law also adds Section 1014(f), which requires consistent basis reporting between an estate and the beneficiary receiving certain property from a decedent.

These changes apply to any estate tax return filed, and to property with respect to which an estate tax return is filed, after July 31, 2015.

2. **FORM 706 CHANGES**

The basic exclusion amount (or applicable exclusion amount in years prior to 2011) is

- \$1,500,000 (2004-2005)
- \$2,000,000 (2006-2008)
- \$3,500,000 (2009)
- \$5,000,000 (2010-2011)
- \$5,120,000 (2012)
- \$5,250,000 (2013)
- \$5,340,000 (2014)
- \$5,430,000 (2015)
- \$5,450,000 (2016).

For Estate Tax returns after 12/31/1976, Line 4 of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, (PDF) lists the cumulative amount of adjusted taxable gifts within the meaning of IRC section 2503. The computation of gift tax payable (Line 7 of Form 706) uses the IRC section 2001(c) rate schedule in effect as of the date of the decedent's death, rather than the actual amount of gift taxes paid with respect to the gifts.

With the top bracket tax rates decreasing from 55 percent (in 2001) to 35 percent (in 2010), and then increasing to 40 percent (in 2013), the IRS has encountered situations where gift taxes paid were greater than the tax calculated using the rate in effect at the date of death. It appears that some Form 706 software used by practitioners require a manual input of the gift tax payable line. Some preparers are reporting gift taxes actually paid rather than calculating the gift tax payable under date of death rates. These errors result in underpayment of estate tax due. Cases with this issue will involve estates where large gifts were made during life and at a time when tax rates were higher than at date of death. (Posted 6-5-06)

Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exclusion to the surviving spouse. This election is made on a timely filed estate tax return for the decedent with a surviving spouse. Note that simplified valuation provisions apply for those estates without a filing requirement absent the portability election. See the Instructions to Form 706 for additional information.

3. EXCLUSIONS

The annual exclusion for gifts is:

- \$11,000 (2004-2005)
- \$12,000 (2006-2008)
- \$13,000 (2009-2012)
- \$14,000 (2013-2016).

The basic exclusion amount (or applicable exclusion amount in years prior to 2011) for gifts is

- \$1,000,000 (2010)
- \$5,000,000 (2011),
- \$5,120,000 (2012)
- \$5,250,000 (2013)
- \$5,340,000 (2014)
- \$5,430,000 (2015)
- \$5,450,000 (2016).

4. FEDERAL TRANSFER CERTIFICATES (INTERNATIONAL)

For more information about securing a transfer certificate, please see:

Transfer Certificate Requirements for U.S. Citizens
Transfer Certificates for Non-U.S. Citizens

5. FORM 706 FILING INSTRUCTIONS

The instructions (which include rate schedules) may be found on the Forms and Publications - Estate and Gift Tax.

There are few significant changes to Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The one change that will impact all filers is the elimination of the allowable State Death Tax Credit; for decedents dying in 2005 and later years, it is a deduction.

If you are filing a request for an extension of time to file an estate or gift tax return, remember that the request must go to the Cincinnati Service Center, even if you file your income or other tax returns elsewhere.

The instructions to Form 706 contain detailed guidance on completing the form and the required documentation to include with estate tax returns being filed solely to elect portability.