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**Proper Preparation of Form 706: Practical Advice
and Considerations**

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I. Introduction

Thorough and accurate preparation of the Form 706 United States Estate (and Generation-Skipping Transfer) Tax Return is complex and time consuming, to say the least. There are many resources available to the preparer, varying from 2-page checklists to 300-plus page papers. Moreover, there are myriad related topics, from preparing the estate's and decedent's income tax returns to pre-death planning considerations, that are informed by the contents of Form 706. This article aims to provide a high-level overview of the Form 706 and act as a refresher and practical resource for attorneys preparing or reviewing the return. If nothing else, I hope the article flags issues for the preparer's consideration and directs the reader to statutes, regulations, and other resources that provide more in-depth analysis and advice.

II. Deadlines, Signatures, Mailing

1. Determining Whether a Form 706 is Required

An estate tax return must be filed if the gross estate of the decedent (who is a U.S. citizen or resident), increased by the decedent's adjusted taxable gifts and specific gift tax exemption, is valued at more than the filing threshold for the year of the decedent's death under IRC § 2010(c). IRC. § 6018. In 2024, that threshold is \$13.61 MM. To determine whether a return must be filed for an estate, the preparer should add: (i) adjusted taxable gifts (as defined in IRC § 2503) made by the decedent after December 31, 1976; (ii) total specific exemption allowed under IRC § 2521 (as in effect before its repeal by the Tax Reform Act of 1976 for gifts made by the decedent after September 8, 1976); and (iii) the decedent's gross estate (defined in IRC § 2031) valued as of the date of death. Even if, for example, all the decedent's assets are distributable to the surviving spouse and qualify for the marital deduction, if the decedent's gross estate (plus adjusted taxable gifts) exceeds the applicable exclusion amount, a Form 706 must be filed.

There are other reasons a Form 706 might be filed, but these are all dependent on post-death decisions made by the executor. For example, if the estate elects to transfer any deceased spousal unused exclusion (DSUE) amount to a surviving spouse, a 706 must be filed, regardless of the size of the gross estate or amount of adjusted taxable gifts. DSUE and filing for portability purposes is discussed below in this paper. The executor may determine that affirmative allocation of GST tax exemption or the QTIP election is necessary, both of which require filing a Form 706.

2. Who Must File

For Texas estates, in almost all cases the Independent Executor is responsible for filing the 706; however, "any person in actual or constructive possession of any property of the decedent" becomes responsible for filing the 706 if there is no executor or administrator appointed, qualified, and acting within the United States. IRC § 2203.

Form 706 is revised regularly, and the preparer should use the version and related Instructions that correspond to the decedent's date of death. The Instructions provide a table setting forth which version should be used based on date of death.

Only one original Form 706 must be filed; however, certain Schedules, if required, are meant to be provided in duplicate, and the preparer must take care to ensure that sufficient copies of all Schedules, statements, and attachments are included. *See* Rev. Rul. 56-471. The Instructions provide the appropriate mailing address to use when filing (based on the delivery provider and whether the filing is an amended Form 706). Tax may be paid by check (if less than \$100 million) or electronically through the Electronic Federal Tax Payment System (EFTPS).

3. Signatures

Pursuant to the Form 706 Instructions, all co-executors are responsible for the return, however, it is sufficient for only one of the co-executors to sign the 706. Based on informal polling, it seems that most practitioners prefer that all co-executors sign the 706. Since there is only room for one signature on page 1, the preparer might consider attaching a statement with the name and signature of each co-executor.

Note that the IRS recently indefinitely extended the use of digital signatures for certain estate and gift related forms, including Form 706 to the list of forms that may be digitally signed. *See* IRS webpages regarding the indefinite extension of allowing electronic signatures (IR-2023-199, Oct. 30, 2023) and the list of acceptable documents (IRM 10.10.1-2). Note, however, that Form 706 cannot be filed electronically, despite being eligible for electronic signature. Also, the Form 2848 is not included on the list of included forms and still requires wet signatures.

4. Deadlines and Extensions

With certain exceptions, the Form 706 is due nine months after the decedent's date of death, unless the preparer requests the automatic 6-month extension. The extension request, which is made by filing Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes, must be accompanied by payment of any estate and GST tax due, and must be mailed by the original due date (i.e., 9 months after death). Form 4768 must include an estimate of the full amount of tax due. If a Form 4768 is filed, the preparer should attach a copy to the Form 706.

If filing for portability only, (i.e., the estate does not meet the filing threshold in IRC § 6018(a)), preparers have 5 years from the decedent's date of death to file the Form 706. Rev. Proc. 2022-32. The 706 must include the following notation: "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(C)(5)(A)."

There are penalties for late filing and late payment (as well as penalties for erroneous or false returns) under IRC § 6651, and penalties under IRC § 6662 for underpayment of tax. Those are beyond the scope of this paper; however, depending on the composition of the gross estate and other facts and circumstances, the estate may be eligible for extended

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