
**LOOK WHAT YOU MADE ME DO:
A CHECKLIST FOR POST-MORTEM TAX PLANNING
(TAYLOR'S VERSION)**

Ashley L. Case, Esq., LL.M., ACTEC, AEP

**Shareholder
Tiffany & Bosco, P.A.
2525 East Camelback Road, Seventh Floor
Phoenix, Arizona 85016
(602) 255-6063
alc@tblaw.com**

I. Introduction

Following a decedent's death there are a number of tax planning options to consider. This handout provides a checklist for the various tax issues (income tax, estate tax, and gift tax) and disclaimer planning strategies that should be explored post-mortem. This checklist discusses only federal tax planning and does not opine on issues that may be unique to state law.

II. Gather Information

☐ **Asset Titling**

Determine how all assets are titled. Review beneficiary forms for accounts (e.g., life insurance policies), estate planning documents (including wills and trusts), premarital and post-marital agreements, and entity agreements (e.g., buy-sell). Locate statements, valuations, and deeds related to assets and property.

☐ **Collect Decedent Data**

Obtain decedent's death certificate. Identify family members and devisees and determine their current contact information. Obtain social security number of decedent and executor (for use with tax filings).

☐ **Copies of Prior Returns**

Obtain copies of returns that have been filed with the IRS by the decedent by filing Form 4506, Request for Copy of Tax Form. The current cost is \$30 per return and it may take up to 75 days for the IRS to process the request. This practice helps to ensure there are no surprises, particularly in light of the fiduciary's personal liability with respect to decedent's taxes. Form 4506-T, Request for Transcript of Tax Return may be filed to order a transcript free of charge.

☐ **Valuations**

Identify real property, business interests, or other assets which may require appraisal. Hire a certified appraiser to provide valuations for such assets.

III. Income Tax Planning

☐ **Obtain Employer Identification Number (EIN)**

Use the Form SS-4 to apply by mail, online, or by fax. Obtain one tax identification number for the estate and one for any trust that is now irrevocable as a result of the decedent's death. Use the EIN to open accounts for the estate and each trust. Note that there may be limits to the number of EINs you can obtain in one day and the ability to obtain EINs in the last few days of the year is often restricted.

☐ **Fiduciary Files Form 56, Notice Concerning Fiduciary Relationship**

The Form 56 should be filed shortly after the fiduciary's appointment. Form 56 notifies the Service that one person is now acting for another in a fiduciary capacity and provides the Service with an address to send correspondence related to the estate and to the decedent. The Form 56 can also be filed at the termination of a fiduciary relationship (either at the conclusion of the administration or, perhaps more importantly, when a new fiduciary will be stepping in). Form 56 created under IRC 6903. If the decedent did not have a will, the administrator will complete the Form 56; if the decedent had a will, the executor/personal representative will complete it; if there is a trust, the trustee will complete it.

More information:

<https://www.forbes.com/sites/ashleycase/2024/06/11/understanding-irs-form-56-a-guide-for-taxpayers-and-fiduciaries/>

☐ **Request Extension to File Income Tax Return**

For a 6-month extension to file, file Form 4868 or make an electronic payment by April 15 then file Form 1040 by October 15. (Note that late payment penalty and interest charges may apply). *“An extension of time to file your 2024 calendar year income tax return also extends the time to file Form 709 or 709-NA for 2024. However, it doesn't extend the time to pay any gift and GST tax you may owe for 2024.”*

☐ **Request for Prompt Assessment of Income Tax**

In general, filing the Form 4810 will result in reducing the statute of limitations on a future assessment to 18 months from the filing date (IRC §6501(d)). It does not protect against claims of fraudulent or unfiled returns (IRC §6501(c)), or returns with “substantial omissions” (IRC §6501(e)). The tax assessment should be complete before the fiduciary begins making distributions to creditors and beneficiaries.

More information:

<https://www.forbes.com/sites/ashleycase/2024/10/09/fast-tracking-tax-assessments-in-estate-administration-with-form-4810/>

☐ **Elect a Fiscal Year for the Estate**

The taxable year is the 12-month period during which income is calculated and reported. Most taxpayers default to a calendar year (January 1 to December 31), however, an estate can choose a fiscal year—any 12-month period that ends on the last day of any month except December (IRC §441(e)). Electing a fiscal year can permit the executor to align the estate's administrative expenses and income and possibly reduce taxable income. It can also potentially provide the executor with additional time to prepare the records related to the estate. Having a fiscal year for the estate can complicate the administration for beneficiaries who must use the estate's information for their individual tax reporting. Additionally, the difference may

be confusing when there is also a trust of the decedent (which would use a calendar year for its reporting requirements).

More information:

<https://www.forbes.com/sites/ashleycase/2024/11/30/picking-the-perfect-taxable-year-for-an-estate-timing-is-everything/>

☐ **Consider 645 Election**

Consider pros and cons of the 645 election [Rev. Proc. 98-13]. The executor of the estate and the trustee of a “qualified revocable trust” are permitted to treat the trust as part of the estate (and not as a separate trust) for income tax purposes for all taxable years of the estate ending after the date of the decedent’s death and before the “applicable date.” The applicable date is two years after the decedent’s date of death (if no estate tax return is required to be filed), and six months after the date of the final determination of the estate tax liability (if an estate tax return is required to be filed). If making the 645 election, file Form 8855, Election to Treat a Qualified Revocable Trust as Part of an Estate before the estate’s first income tax return is due.

More information:

<https://www.forbes.com/sites/ashleycase/2024/09/30/planes-trains--automobiles-a-guide-to-the-section-645-election/>

☐ **Make a Request for Innocent Spouse Relief**

If the IRS is seeking payment from a joint return filed by the decedent while alive, consider making a request for innocent spouse relief by completing Form 8857 [§6015; Rev. Rul. 2003-36]. The spouse must be able to prove they did not have knowledge of the error on a joint return and it would be unfair to hold the spouse responsible.

More information:

<https://www.forbes.com/sites/ashleycase/2024/11/27/innocent-spouse-relief-can-you-escape-your-partners-tax-troubles/>

☐ **File Decedent’s Final Income Tax Return**

The decedent’s final income tax return Form 1040 contains all of the income recognized (and deductions paid or incurred) in the year of the decedent’s death for the period during which the decedent was still alive. In general, all income received and gains recognized for the remainder of the year will be included on the estate’s federal income tax return. In general, the final income tax return will be due April 15 of the following year.

IRC §6012(b)(1): *“If an individual is deceased, the return of such individual required under subsection (a) shall be made by his executor, administrator, or other person charged with the property of such decedent.”*

More information:

<https://www.forbes.com/sites/ashleycase/2024/08/27/not-even-death-can-stop-the-irs-tax-duties-under-irc--6012/>

☐ **File Joint Return with Surviving Spouse**

If the decedent was married at the time of death, the surviving spouse may file a joint return for both of them for the year of death if no executor has been appointed [§6013(a)(3)]. The return should note that the decedent died and the surviving spouse if filing the return.

☐ **Medical Expense Deductions**

Medical expenses that are not paid before death are a liability of the estate. If medical expenses are paid within one year after the date of death, the expenses can be reported on the decedent's Form 1040 according to the date the expense was incurred [§213(c)].

☐ **Recognize Treasury U.S. Savings Bond Interest in Year of Death**

The executor can elect to recognize obligations issued at discount (OID) for Series EE or Series I Treasury U.S. Savings Bonds on the decedent's final income tax return rather than at redemption [§454(a)].

☐ **Partnership Income and Deductions**

The tax year of the partnership closes for a partner upon their date of death (§706(c)(2)). The determination of income in respect of a decedent (IRD) can have significant estate tax and income tax implications for the decedent's estate and successor in interest. In general, IRD is income that was earned by the decedent but was not subject to income tax prior to the decedent's death (§691). Items constituting IRD are included in the estate of the decedent as assets and are subject to income tax when received by the estate or other successor in interest.

Section 754 provides an election to adjust the inside basis of partnership assets pursuant to §743(b) upon the transfer of a partnership interest caused by a partner's death. A basis adjustment is made to eliminate the discrepancy between the outside basis of the partnership interest after its step-up (or step-down) to fair market value and the successor in interest's share of the partnership's inside basis in its assets. The adjustment benefits only the deceased partner's successor in interest. To adjust the basis of the underlying assets under §743(b), the partnership must have a §754 election in effect or must make the election for the year that includes the deceased partner's date of death.

☐ **S-Corporation Income and Deductions**

Any income and deductions related to the decedent's share of an S-corporation are reported on the final Form 1040 for the short year ending at death [§1377(a)].

☐ **Waiver of Executor-Beneficiary Commissions**

Fees incurred after death include executor fees, professional fees, and court costs. Determine whether executor-beneficiary should waive commissions. Many family members will opt to waive their fees. If they do choose to take a fee, they must act as a fiduciary in making such payments and therefore act in good faith.

☐ **Possibly Elect Out of Installment Sale Reporting**

In an installment sale, as payments are received each year, a portion of the gain will be reported for tax purposes. Installment sale reporting stops upon the decedent's death, causing an immediate recognition of the gain. However, the estate can elect out of this rule and instead allow the installment sale reporting to continue as if the decedent were still alive. This can permit a deferral of tax liability and potentially minimize the immediate tax burden on the estate.

☐ **Pay Estimated Income Tax Liabilities for Estate**

Estates which elect to be taxed as estates are not required to pay estimated income tax liabilities for two years. Pay estimated income tax liabilities of the estate, beginning in the estate's third taxable year [§6654(l)].

☐ **File Income Tax Return for the Estate**

Income attributable to the estate must be filed on the Form 1041. Trusts and estates are separate taxable entities and will have separate filing requirements.

☐ **Allocate Expenses Between Estate's Income Tax Return and Federal Estate Tax Return**

The Code and Regulations provide flexibility in allocating deductions between the estate's income tax return and the federal estate tax return, which, by extension, presents an opportunity for tax planning.

The federal estate tax spans only four brackets that reach the top marginal rate of 37% after only \$15,650 of taxable income in 2025. The marginal rate of 37% is not met for income tax purposes until \$375,800 of taxable income (for married individuals filing separate returns), \$626,350 of taxable income (in the case of single individuals and heads of households), or \$751,600 of taxable income (for married individuals filing joint returns and surviving spouses) Rev. Proc. 2024-40. Thus, deductions may be more helpful for estate tax purposes than income tax purposes because the estate tax rates are typically higher

than the income tax rates. Of course, where an estate is not liable for federal estate taxes, the deductions should be claimed on the income tax return, where possible.

Treas. Reg. §1.212-1(i) permits deductions for expenses “which are ordinary and necessary in connection with the performance of the duties of administration.” Examples of these expenses are enumerated in Treas. Reg. §20.2053-3 and include executor’s commissions, attorney’s fees, and “miscellaneous administration expenses” which include court costs, accountant’s fees, appraiser’s fees, costs of storing or maintaining property of the estate, expenses of selling property of the estate, and costs incurred in defending the estate against claims. Common personal expenses that are not allocable include funeral expenses, federal income and gift taxes owed by the decedent but paid after death, expenses allocable to tax-exempt income, and personal expenses of the decedent paid after death.

Formerly, IRC §67 permitted an individual to claim “miscellaneous itemized deductions” to the extent those deductions exceeded two-percent of the taxpayer’s adjusted gross income. At the end of December 2017, subsection (g) was appended to IRC §67 suspending the allowance of miscellaneous itemized deductions through January 1, 2026. If the Tax Cuts and Jobs Act (TCJA) sunsets, the allowance of miscellaneous itemized deductions, as well as the overall limitation on itemized deductions (under the Pease limitation which reduces the total amount of itemized deductions for high-income taxpayers), are scheduled to return in 2026.

Despite the change caused by TCJA, however, estates and non-grantor trusts are still permitted to deduct administrative expenses that would not have been incurred if the property were not held in the estate or trust. Further, Notice 2018-61 (“Clarification Concerning the Effect of Section 679(g) on Trusts and Estates” and its subsequent update) allows estates and non-grantor trusts to continue to deduct the personal exemption for estates (\$600) or trusts (\$100) (IRC §642(b)), trust income that is required to be distributed currently (IRC §651), and the accumulation of income or distribution of corpus by the estate or trust (IRC §661).

Treas. Reg. §1.642(g)-2 permits the taxpayer to allocate expenses on an item-by-item basis or allocate a single expense between the income tax return and estate tax return. This allows the estate to allocate expenses to the estate’s greatest advantage. In this vein, it is worth noting the significance of a “bundled fee” (a single fee, such as a fiduciary’s commission, which is made up of costs that would be subject to the two-percent floor and costs that would not). In this case, the fee must be allocated between the two and only those not subject to the two-percent floor would be deductible.

When claiming allocable expenses on the income tax return, a statement must be attached to the return that (irrevocably) waives the right to claim the same expenses as deductions on the estate tax return. The statement may be filed at any time before the statute of limitations for the taxable year of the return has expired; therefore, a statement could be prepared after the return has already been filed. Treas. Reg. §1.642(g)-1.

☐ **Release from Personal Liability (Income Tax)**

After the executor has filed the income tax return, the executor may file Form 5495 requesting release from personal liability for the decedent's income taxes [IRC §6905(a)]. Rather than 3 years, the Service only has 9 months to notify the executor of any amount due. Do not file Form 5495 requesting a discharge from income tax liability until after you file the income tax return. You must submit a separate request for discharge from personal liability for any tax returns filed after this Form 5495.

IV. Estate Tax Planning

☐ **Gross Estate**

Using valuations prepared by certified appraiser in conjunction with readily-available values of decedent's assets, determine value of gross estate.

☐ **File Form 706, United States Estate Tax Return**

Must file estate tax return if gross estate exceeds basic exclusion amount reduced by any adjusted taxable gifts [§6018]. For 2024, the basic exclusion amount was \$13,610,000; for 2025, it is \$13,990,000; for 2026, it will be \$15,000,000 (indexed for inflation beginning in 2027). The estate tax return must be filed within nine months of death unless request for extension is filed and an extension is granted [§6075]. The form must be filed, even if estate tax will not be owed after the application of relevant expenses and deductions.

☐ **Elect for Portability of DSUE for Surviving Spouse on Form 706**

If the decedent did not use all of the basic exclusion amount (reduced by any adjusted taxable gifts), the executor may complete and timely file the Form 706 to make the election to permit the surviving spouse to port the Deceased Spousal Unused Exclusion (DSUE). The spouse now has until the fifth anniversary of the decedent's death to file the Form 706 to make the portability election. The executor must include at the top of the form, "FILED PURSUANT TO REV. PROC. 2022-32 TO ELECT PORTABILITY UNDER § 2010(c)(5)(A)." [Rev. Proc. 2022-32].

☐ **Request Extension to File Estate Tax Return**

For a 6-month extension to file, file Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes [§6081]. If you are applying for an automatic 6-month extension of time to file Form 706, 706-A, 706-NA, or 706-QDT, file Form 4768 by the original due date for the applicable return. If you haven't filed an application for an automatic extension for Form 706, and the time for filing such an application has passed, an extension of time to file may still be granted if good cause is shown. File Form 4768, along with explanations of why the automatic extension wasn't

requested and why a complete return wasn't filed by the due date, no later than 6 months after the original due date for the applicable return.

☐ **Consider Electing an Alternate Valuation Date**

The executor can elect to choose an alternate valuation date, rather than using the date of death as a valuation date [§2032]. To be eligible for the election, the election must result in a reduction in estate tax owed. The alternate valuation date will apply to all assets of the estate (but for assets disposed of between the date of death and the alternate valuation date, the date of disposition will be the applicable date).

More information:

<https://www.forbes.com/sites/ashleycase/2024/12/26/when-should-the-executor-of-an-estate-elect-an-alternate-valuation-date/>

☐ **Consider Making a Special Use Valuation Election**

If the decedent's family intends to maintain property used for farming or in a trade or business following the death of the decedent, the executor may be able to make an election for a special use valuation [§2032A]. The family will need to continue to run the farm or business for a ten-year period following the decedent's death, otherwise recapture may apply.

More information:

<https://www.forbes.com/sites/ashleycase/2024/12/27/special-use-valuation-under-2032a-the-treehouse-and-the-family-farm/>

☐ **Create a QDOT for Noncitizen Surviving Spouse**

If surviving spouse is not a United States citizen and the decedent passes property to a trust that does not qualify as a QDOT, have the surviving spouse create a QDOT and irrevocably assign assets to it before decedent's estate tax return is due [§2056(d)(2)(B); Reg. §20.2056A-4(b)(1)]

☐ **Reform Defective Charitable Lead Trusts or Charitable Remainder Trusts**

To the extent that any charitable lead trusts (CLTs) or charitable remainder trusts (CRTs) established by the decedent are defective at the decedent's death, the executor may be able to reform such defects, provided they are completed timely [§2055(e)(3)(c)].

☐ **Elect for Extension to Pay Estate Tax for Closely-Held Business Interest**

If the value of an interest in a closely held business which is included in determining the gross estate of a decedent who was (at the date of the decedent's death) a citizen or resident of the United States exceeds 35% of the adjusted gross estate, the executor may elect to pay part or all of the tax in 2 or more (but not exceeding 10) equal installments [§6166].

☐ **Allocate Expenses Between Estate's Income Tax Return and Federal Estate Tax Return**

See discussion regarding allocation of expenses in income tax section above.

☐ **Allocate Assets Between Credit Trust and Marital Trust**

The trust document will provide clarity as to how assets are to be allocated between the credit trust (also called the "credit shelter" trust, "bypass" trust, or "decedent's" trust) and the marital trust (also called the "marital share" trust or "marital deduction" trust). A typical trust will fund the credit trust with an amount equal to the basic exclusion amount, less lifetime gifts (in other words, the decedent's available estate tax exclusion) and will fund any remaining assets into the marital trust. Many trusts will permit the trustee the flexibility to choose which assets of the trust will fund each sub-trust.

☐ **Decide Whether to Make a QTIP Election**

In order to qualify for the qualifying terminable interest property (QTIP) election, (1) the property must pass from the decedent, (2) the surviving spouse must be entitled to all of the income from the property for life, payable annually or in more frequent intervals, and (3) no person may have the power, exercisable during the spouse's life, to appoint the property to any person other than the spouse [§2056(b)(7)(B)(ii)]. The QTIP treatment will only be allowed if the executor makes the election on the Form 706. Determine whether to make a QTIP election for assets passing to marital trust.

☐ **Release from Personal Liability (Estate Tax)**

After the fiduciary has filed the estate tax return, the fiduciary may file Form 5495 requesting release from personal liability for the decedent's estate taxes [IRC §6905(a)]. Rather than 3 years, the Service only has 6 months to notify the fiduciary of any amount due (§2204(b)). If you are requesting a discharge from personal liability for the estate tax, you may attach the Form 5495 to Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, or you may file the Form 5495 any time during the 3-year period following the date the Form 706 is filed. You must submit a separate request for discharge from personal liability for any tax returns filed after this Form 5495.

V. Gift Tax Planning

☐ **File Form 709 Gift Tax Return**

If the decedent made taxable gifts in the calendar year of death, the executor must file a gift tax return reporting the gift (and pay any required gift tax) no later than the due date for the estate tax return (or, if earlier, April 15 of the next calendar year) [§6075(b)(3)].

☐ **Consider Splitting Gifts with Surviving Spouse**

The executor may report a split gift with the surviving spouse on the gift tax return, if applicable [§2513(a)].

☐ **File Gift Tax Returns for Prior Years**

If the decedent failed to file gift tax return in any prior year, the executor must file gift tax returns for those years [Reg. §25.6019-1(c)].

☐ **Request for Prompt Assessment of Gift Tax**

In general, filing the Form 4810 will result in reducing the statute of limitations on a future assessment to 18 months from the filing date (IRC §6501(d)). It does not protect against claims of fraudulent or unfiled returns (IRC §6501(c)), or returns with “substantial omissions” (IRC §6501(e)). The tax assessment should be complete before the fiduciary begins making distributions to creditors and beneficiaries.

☐ **Release from Personal Liability (Gift Tax)**

After the executor has filed the gift tax return, the executor may file Form 5495 requesting release from personal liability for the decedent’s gift taxes [IRC §6905(a)]. Rather than 3 years, the Service only has 9 months to notify the executor of any amount due. Do not file Form 5495 requesting a discharge from gift tax liability until after you file the gift tax return. You must submit a separate request for discharge from personal liability for any tax returns filed after this Form 5495.

VI. Disclaimer Planning

☐ **Prevent Beneficiaries from Accepting Income or Assets Until Disclaimer Determination**

A qualified disclaimer is an irrevocable and unqualified refusal by a person to accept an interest in property if:

- (1) such refusal is in writing,
- (2) such writing must be delivered to the transferor of the interest, the transferor’s legal representative, or the holder of the legal title of the property to which the interest relates or the person in possession of the property,
- (3) such delivery is made no later than the date which is 9 months after the later of:
 - (a) the date on which the transfer creating the interest in such person is made, or
 - (b) the day on which such person attains age 21,
- (4) such person has not accepted the interest or any of its benefits
- (5) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer,
- (6) the interest passes either:
 - (a) to the spouse of the decedent, or
 - (b) to a person other than the person making the disclaimer.

☐ **Surviving Spouse to Disclaim Joint Tenancy Property to Fund Credit Trust**

If there are insufficient assets to fully fund the credit trust, the surviving spouse may disclaim property held in joint tenancy. The property subject to the disclaimer would pass, subject to state law, as if the surviving spouse had predeceased the decedent, potentially funding the credit trust through operation of the decedent's will. The nine-month window required for the disclaimer of joint property runs from the date of the death of the first joint tenant (Treas. Reg. §25-2518-2(c)(4)).

☐ **Have Beneficiaries Disclaim Interest to Permit QTIP Election**

If the marital trust does not qualify for the QTIP election due to ineligible principal beneficiaries, those beneficiaries may disclaim their interest in the marital trust in order to permit the surviving spouse to make a QTIP election. [*Lassiter v. Commissioner*, TC Memo, 2000-324]

☐ **Have Surviving Spouse Disclaim Interests in Insurance Policies on Decedent's Life**

Rather than augmenting the surviving spouse's gross estate with life insurance proceeds, the surviving spouse may choose to disclaim the surviving spouse's interests in insurance policies on the decedent's life in order to allow the proceeds to be included in the decedent's estate.

☐ **Consider Asking Non-Spouse Beneficiaries to Disclaim Assets Received by Intestate Succession**

Depending upon where assets may flow subject to the disclaimer, the executor may want to ask non-spouse beneficiaries to disclaim assets received by intestate succession.

☐ **Properly Time Any Consideration Given for Disclaimers**

Under Treas. Reg. 25.2518-2(d)(1), if a beneficiary disclaims, they cannot receive anything of value in return for making the disclaimer. In *Estate of Monroe*, the disclaimer was invalid because the beneficiary had received consideration for making the disclaimer *Estate of Monroe v. Commissioner*, 124 F.3d 699 (5th Cir. 1997). Thus, the beneficiary must not accept consideration until after the disclaimer is officially executed.

Appendix

- Form 4506, Request for Copy of Tax Form
- Form 4506-T, Request for Transcript of Tax Return
- Form SS-4, Application for Employer Identification Number
- Form 56, Notice Concerning Fiduciary Relationship
- Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return
- Form 4810, Request for Prompt Assessment Under Internal Revenue Code Section 6501(d)
- Form 8855, Election To Treat a Qualified Revocable Trust as Part of an Estate
- Form 8857, Request for Innocent Spouse Relief
- IRS 1040, U.S. Individual Income Tax Return
- Form 5495, Request for Discharge From Personal Liability Under Internal Revenue Code Section 2204 or 6905
- Form 1041, U.S. Income Tax Return for Estates and Trusts
- Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return
- Form 4768, Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes
- Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return