Common Estate Tax Audit Triggers and How to Avoid Them

Recognizing the issues in the preparation and filing of an estate tax return that are most problematic for the Service allows tax practitioners to take preventive measures to reduce the risk of audit selection, as this article explains.

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Delivering the news to your clients, the personal representatives of the estate, that the estate's federal estate tax return (hereafter, "Form 706" or the "706") has been selected for audit by the IRS can be a challenging conversation, especially when the issues of additional legal fees, potential additional estate tax, and the anticipated delay in closing the estate are discussed. In this case, the old adage by Benjamin Franklin still rings true: "An ounce of prevention is worth a pound of cure."

The purpose of this article is just that: to identify common audit issues in the preparation and filing of the 706 and to adjust the approach in handling such issues in order to reduce the likelihood of being selected for audit. Several suggestions to be considered in the planning phase that could reduce the risk of audit are also discussed. The end goal is to avoid an audit in the first place and, instead, to be in a position to make the more pleasant telephone call to the clients that their federal estate tax closing letter was received. The information for this article was compiled through informal interviews with estate tax attorneys employed by the IRS and the New York State Department of Taxation and Finance, discussions with seasoned colleagues, and years of personal experience in both preparing estate tax returns and defending those returns on audit.

Audit issue no. 1: A deficient appraisal

One of the most common issues that arises during an audit pertains to the valuation of an asset that does not have a definitive value. Assets such as real estate (commercial, residential, and vacant land), closely held businesses and, of course, family limited partnerships ("FLPs") and limited liability companies ("LLCs") holding mostly marketable securities, do not have a readily available market value and are instead valued by an
appraisal. Reg. 20.2031-1(b) describes the valuation of property in general for estate tax purposes, and the Service has also issued various valuation guidelines for appraisals.

Appraisals by their very nature are subjective and thus are prone to interpretation and overly favorable values for the taxpayer. The Service closely scrutinizes appraisals and has the ability to hire its own appraisers or use its own in-house appraisers to provide a different valuation—one that is likely to be less favorable to the taxpayer. Indeed, some of the appraisers for the Service have years of experience in valuing such assets and have a "feel" for a particular business, with an educated idea of what such assets would fetch in the marketplace. Consequently, submitting an appraisal that will withstand the closest scrutiny was strongly suggested by those interviewed by this author. Specifically, it was suggested that the appraisal should properly address the following:

First, the appraisal should be as specific as possible to the particular asset to be valued and, where applicable, to that particular decedent. Criticisms were raised by those interviewed where a substantial part of an appraisal consists of the valuation firm's standard boilerplate language or where the appraisal reads "like a fortune cookie," in that it could be used by many taxpayers. It was pointed out that the Service is quite familiar with the report formats and boilerplate for popular valuation firms, and can easily distinguish between those parts that support the particular asset to be valued and generalized statements.

When reviewing the draft appraisal, determine if the introductory and methodology statements recited in the appraisal appropriately match your particular situation. For example, if your appraisal is valuing works of art but it contains statements pertaining to general principles for valuing an operating business, such statements should be replaced with principles that focus on the valuation of art. Moreover, if the appraisal uses comparables to support the valuation of your particular asset, those comparables should closely match the asset at issue. One example that was given of a poorly chosen comparable involved an appraisal for an FLP that held only municipal bonds; the appraisal contained a comparison to a fully diversified mutual fund. The Service found the comparable to be inappropriate and therefore criticized the appraiser's conclusions. If the appraisal pertains to real estate, make sure that it includes comparable sales. Real estate appraisals without comparable sales to support the valuation can be subject to discredit by the Service.

Second, if the appraisal contains a discount rate (as most do), it should provide support as to why the discount figure is appropriate. The Service takes issue with an appraisal that quotes a range of potential discounts for an asset and then settles on a specific value within that range without explaining why such discount rate is appropriate. If your appraisal does not state a reason for the discount, the Service will not supply one for your benefit but could instead suggest its own lower figure and argue that such lower discount is more appropriate based on its own view of the facts.

Third, the appraisal should be easy to understand and, more importantly, the tax practitioner should fully understand it and be prepared to answer any question that the Service may raise with respect to its details. The practitioner should be able to communicate in clear and simple terms the methodology, analysis, and conclusions of the appraisal. If he is unable to explain clearly the specifics of the appraisal, this could give the appearance that he does not trust the appraisal or worse, that he is incompetent.

Appraisals that are straightforward, use recent studies, and do not use complicated computer models are preferred. It was pointed out that appraisals that contain complicated calculations and assumptions which require a mathematician to decipher
could work to the taxpayer’s disadvantage because the Service will want to understand the appraisal and will look to the tax practitioner to provide an adequate explanation. This can be challenging if the advisor does not have the advanced math, science, or business background to fully understand the appraisal and to address the Service’s inquiries properly. Where the IRS estate tax auditor does not understand the appraisal and the tax practitioner is unable to explain it fully to the auditor's satisfaction, the appraisal could be vulnerable to discredit by the Service. As the old saying goes, “lack of understanding breeds mistrust.”

Fourth, review and confirm the math of the appraisal. Math mistakes, no matter how trivial, can call into question the entire appraisal. It was reported that 25% of appraisals contain some math error. Many of the mistakes have been found in the report’s boilerplate which was not customized to the taxpayer’s case.

Fifth, the appraisal should discuss the different methodologies that are available to perform the appraisal and, where appropriate, explain why the chosen method is more appropriate than others. It was explained that this approach demonstrates a more thorough report and will be given more weight. One criticism that was raised by an estate tax attorney for the Service concerned the situation where an appraiser values the asset using different methods and purposely leaves out the less favorable one.

For example, suppose a decedent owned an old rental property in a prime New York City location. The income approach, which would value the asset based on the present value of the future rental stream, would be an inappropriate valuation method because a buyer could tear down the property and build a large, modern office building. Because the value of the underlying land is worth more than the rental stream, the appraisal should use an approach that considers the value of the underlying asset.

As a final point, the appraisal should make overall sense and reflect the business reality surrounding the subject asset. Although post-death events should not be considered in the determination of the fair market value (“FMV”) of an asset, noting how the value of the asset was in fact affected by the taxpayer’s death could provide some insights as to the soundness of the appraisal. Does the appraisal contain assumptions that were realized after the taxpayer's death or not? If such assumptions after the fact are supportive of your appraisal, they could be argued in audit as justification that the appraisal is determinative of the value of the asset. Alternatively, if the post-death facts do not support the appraisal, the tax practitioner should be prepared to explain how such facts were not known at the decedent’s death.

**Audit issue no. 2: Failure to include prior gift tax returns**

The federal tax laws changed with Congress's passage of the 1997 Taxpayer Relief Act, which included provisions pertaining to the finality of valuation for gifts. Specifically, with the amendment of Sections 2504(c) and 2001(f), the valuation of gifts is no longer finalized with the payment of tax on the gift. Instead, finality for the value of a gift will be achieved only when the Section 6501 statute of limitations period has expired and the value of the gift has been finally determined within the meaning of Section 2001(f).

The Section 6501 statute of limitations will not start running unless the transfer is adequately disclosed on a gift tax return or in a statement attached to the return. Reg. 301.6501(c)-1, which lists the requirements to adequately disclose a gift, provides that a “transfer will be adequately disclosed on the return only if it is reported in a manner adequate to apprise the Internal Revenue Service of the nature of the gift and the basis for the value so reported.” If a gift reported in a decedent’s gift tax return failed to meet
the adequate disclosure requirements, and therefore the statute of limitations has not expired, the value of the gift can be reassessed by the Service during the estate tax audit, which can, accordingly, affect the ultimate estate tax liability.

Thus, obtaining all the decedent's prior gift tax returns and assessing any potential exposure due to inadequate disclosure becomes an essential part of managing the client's expectations in an estate tax audit with respect to possible additional estate tax liability. In other words, if upon reviewing all the decedent's prior gift tax returns, it appears that the adequate disclosure requirements may not have been met on a return, the tax practitioner can inform the client as to the potential for additional estate tax that could be due if the Service reassesses the value of prior gifts in the IRS's favor. Furthermore, the tax practitioner could also obtain helpful information that could be used to defend those prior gift tax returns if the issue of lack of adequate disclosure is raised in audit by the Service.

A common mistake that can cause an estate tax return to be selected for audit is the failure to file all the decedent's prior gift tax returns (Form 709) with the estate tax return. Specifically, the “Supplemental Documents” section in the instructions to Form 706 and the “Checklist for Completing Form 706” (also in the instructions to Form 706) state that copies of any Forms 709 filed by the decedent are required to be attached to Form 706.

No matter what the reason was for the failure to include the decedent's Forms 709, whether due to the taxpayer's or the practitioner's oversight, it was suggested that, where appropriate, the practitioner should request from the Service copies of the decedent's prior 709s. Form 4506 is the proper form for making this request. Where the years of the Form 709 filing are unknown or uncertain, requesting a historical record of the decedent's gift tax returns from the Service is advisable. The Cincinnati Service Center, which can be reached at 1-866-699-4083, is the current location to direct such an inquiry.

The practitioner should first write a letter to the Service asking if any gift tax returns were filed and, if so, for which years. Upon receiving a reply, Form 4506 should be completed to request copies of the returns for the given years. While there is no fee for the letter requesting information on when the Forms 709 were filed, there is a $39 fee for each return requested (soon to be raised to $43 per return). It was reported that it can take 30 calendar days to process the letter request, and the instructions to Form 4506 state that it can take up to 60 calendar days for the Service to fulfill a request for a copy of a tax return.

As a side note, it was suggested that where the practitioner is filing the decedent's Form 709 for the year of death, such filing should be kept separate from the Form 706 filing to avoid a common problem where one of the returns is never processed by the Service because it is overlooked in the Service's tax return processing pipeline. It was explained that the tax return processing pipeline is a rapid process and consequently, if the Form 706 and the Form 709 are filed in a single package, such returns could get stuck together causing one and not the other to be processed.

**Audit issue no. 3: Incorrect tax allocation**

A common mistake picked up in audit is the tax practitioner's failure to follow the tax allocation clause (i.e., tax apportionment clause) in the decedent's will or revocable trust. Some poorly drafted tax allocation clauses can charge estate taxes to the marital or
charitable share, which in turn creates an interrelated circular calculation that reduces the marital or charitable deduction and thus causes an increase in estate taxes due.

It was reported that state case law generally favors the taxpayer in the interpretation of ambiguous tax allocation clauses, but where there is no ambiguity that the marital or charitable share of the estate is to bear its share of the estate tax, the Service will enforce the language of the decedent's testamentary document. This can be a costly problem indeed. Accordingly, it is suggested that in drafting a client's testamentary documents, the drafter should carefully review the tax allocation clause and confirm that the clause achieves the client's estate planning objectives and is also appropriate for the client's given situation. The practitioner may also consider having the tax allocation clause reviewed by a colleague, especially where an atypical provision is contemplated.

**Audit issue no. 4: Errors in reporting jointly held property**

Jointly held accounts between the decedent and a third party have become common in the management of an individual's financial affairs. Whether the accounts are held by the decedent and an adult child, a sibling or a domestic partner, the proper reporting of them on the Form 706 is rife with issues and has become one notable problem area that is often a focal point of an estate tax audit. The instructions to Schedule E of the Form 706 require listing all property in which the decedent at the time of death held an interest either as a joint tenant with right to survivorship or as a tenant by the entirety. In addition, the percentage of the property which represents the decedent's ownership in such joint property is to be listed in the "Percentage Includible" column in Part 2 of Schedule E. At least three mistakes are often made in completing this schedule and, in fact, can be reason alone to be selected for audit. Hence, avoiding these common oversights is advisable.

The first common mistake is the failure to complete the Percentage Includible column. Even if the entire amount of the property interest is included in the gross estate, if the Percentage Includible column fails to appropriately list the 100% inclusion percentage, it can give the appearance of sloppiness in the preparation of the return and can leave an impression with the examiner that there are more errors in the return to be discovered.

The second common mistake occurs when a portion of the jointly held asset is excluded from the gross estate without the submission of documentation to support such exclusion. Section 2040(a), in relevant part, provides that the value of the gross estate includes "the value of all property to the extent of the interest therein held as joint tenants with right of survivorship by the decedent and any other person, ... except such part thereof as may be shown to have originally belonged to such other person and never to have been received ... from the decedent for less than an adequate and full consideration in money or money's worth". In addition, Reg. 20.2040-1(a)(2) states that "[T]he entire value of jointly held property is included in a decedent's gross estate unless the executor submits facts sufficient to show that property was not acquired entirely with consideration furnished by the decedent, or was acquired by the decedent and the other joint owner or owners by gift, bequest, devise, or inheritance."

Proof of contribution will depend on the facts and circumstances surrounding the creation and holding of the joint property. Examples include, but are not limited to, bank or brokerage statements showing the contribution, deposit slips, cancelled checks, identifying the person who reported the income from the joint account on his or her income tax return, or written letters, memorandum or affidavits by the decedent or joint owner. Unfortunately, the taxpayer's ability to furnish proof of the joint owner's
contribution can be difficult (if not nearly impossible) where the jointly held property was established years ago and the financial records showing the contribution are lost and duplicate records cannot be obtained. It was pointed out that post-death written explanations by the surviving joint tenant or others are viewed as self-serving and are carefully scrutinized.

One suggestion at the planning stage is for the decedent and the joint owner to document their contributions and the purpose of the joint account or other property interest before the joint interest is established. Not only will it be preferred proof for the exclusion of part or all of a jointly held interest listed on Part 2 of Schedule E of Form 706, but it will also serve as supporting evidence in audit that the decedent did not intend to make a gift to the joint tenant in establishing the joint property. Where the jointly held property is a joint financial account, this documentation will make it easier to secure the return of any funds that might have been inappropriately withdrawn by the joint owner.

Convenience accounts in general are the third problem area in the proper reporting of jointly held property between the decedent and a non-spouse. Convenience accounts are typically established between the decedent and a third party without any intention to make a gift but rather to give access to the funds as a convenience to one or both parties. Common reasons for establishing such accounts include the ability to access funds by the taxpayer's family to pay for that person's medical care, household expenses where such person is disabled, and funeral expenses when such person dies.

It can be very difficult to support the proper exclusion of these accounts from the decedent's gross estate where the surviving joint tenant named the decedent on the account as a convenience to the survivor and the fiduciary does not have the documentation to support the exclusion. It was noted, however, that the relationship between the parties is a factor that influences the Service's view on whether the surviving joint tenant provided meaningful contribution toward the creation of the joint account so that the joint account may be excluded from the decedent's estate. Accounts established between domestic partners or siblings are viewed more favorably than accounts established between a parent and child or a grandparent and a grandchild.

Again, the best approach to avoid this issue is to properly document the establishment of the convenience account before it is set up. In many instances, this solution is not viable because the matter comes to the practitioner after the decedent died; nevertheless, for estate planning clients, the discussion of properly documenting convenience accounts can very well be value-added advice.

During the planning phase, identify and discuss the client's convenience and jointly held accounts, and thereafter, advise the client to document the contribution and the purpose for such accounts for the file. Exhibit 1 shows a sample Estate Planning Profile form on which the client provides a snapshot of his or her assets and family. This form includes a column in which the client identifies any joint owner of an account.

**Audit issue no. 5: Exclusion or undervaluation of personal property**

The exclusion or undervaluation of the decedent's tangible personal property is another popular estate tax audit issue. Schedule F to the 706, entitled “Miscellaneous Property,” is the proper schedule for listing the decedent’s tangible personal property. Returns can be selected for deficiencies in the proper reporting of such tangible personal property.
Errors in this area can be glaring, and it was even reported that they can offend the
examiner.

One IRS estate tax attorney's “pick list” placed the errors into two categories. The first is
where an item that is clearly expected to be listed is omitted from the return. Examples
here include the failure to list the decedent's wedding ring and the decedent's car where
the decedent lived in the suburbs. The second category is to obviously undervalue an
asset. One examiner suggested that practitioners should avoid transparent
undervaluation attempts, such as valuing a two-year-old Mercedes-Benz automobile at
$2,000.

Collections, art, and royalties are of particular concern. Appraisals are required to be
prepared and submitted to support the values listed on the return for the decedent's
tangible personal property. Moreover, there is some expectation from the Service that the
value of the decedent's personal property be somewhat commensurate with the overall
value of the decedent's gross estate. There is no precise guideline here, but the value
should "look right." For example, a $15 million estate is not expected to have only $2,000
worth of tangible personal property. Reviewing the decedent's homeowner's insurance
policy (especially any riders) and noting any collectibles, art, and jewelry should be part
of the process of gathering the necessary information in the preparation of the 706. (See
Exhibit 2, which shows an estate administration checklist of items for the client to bring to
the initial meeting.)

**Audit issue no. 6: Failure to include and/or value all of the decedent's assets (particularly hard-to-value assets)**

The failure to include and/or value all of the decedent's assets, particularly hard-to-value
assets, contributes to a broad range of audit issues in the preparation of the estate tax
return. Small details such as properly reporting the accrued interest on a certificate of
deposit, or stock dividends and stock splits, are searched for by the IRS examining estate
tax attorney and, where present, will give a positive impression that the return was
carefully and properly prepared. The omission of items that should have been reported on
Schedule B (Stocks and Bonds) and Schedule C (Mortgages, Notes, and Cash) of Form
706 is also a favorite audit item of the Service. The decedent's prior income tax returns
will supply information on the decedent's holdings. Cross-checking the estate tax return
with the income items reported on the decedent's Form 1040 will reduce the risk of
accidentally omitting assets of the decedent from the Form 706.

Unresolved litigation also poses a reporting issue and is raised in audit. Unresolved
litigation is reported on Schedule F if the decedent is the plaintiff and there is a potential
recovery for the estate. On the other hand, such litigation should be disclosed on
Schedule K as a debt if the decedent is the defendant and there is a potential judgment
against the estate. The valuation of these items is particularly difficult because there is no
marketplace for their exchange. It was suggested that as a general guideline, the present
value of the actual or anticipated settlement is a reasonable starting point. Post-death
events may affect the valuation of the unresolved litigation, especially if such events were
reasonably foreseeable on the date of the decedent's death. Making note of potential
post-death events that could be used to support or discredit the value stated in the estate
tax return is advisable. The tax practitioner should be prepared to make use of those facts
that are beneficial to the taxpayer's position and be ready to argue as to why such post-
death events should not affect the value of the unresolved litigation.
Private annuities are also problematic. Their valuation will be closely reviewed by the Service with particular attention given to cases where the annuities were between related parties and/or where the annuities were established close to the decedent's death. For hard-to-value assets, hiring an appraiser to perform the proper analysis is generally advisable.

Audit issue no. 7: Failure to provide an explanation of a lower-than-expected value

More than one estate tax attorney for the Service suggested being proactive by providing additional information to explain obvious discrepancies in values of assets where one can anticipate questioning by the Service. One IRS estate tax attorney looks for reporting discrepancies in securities by comparing the reported value of a security to an estimated value for such security. The estimated value of the security is determined by taking the reported interest or dividend for such security on the decedent's income tax return and dividing such number by 4%. If the estimated value does not approximate the value reported on the estate tax return, further inquiry into recent transactions involving such account may be made.

It was also reported that there may be legitimate reasons for an asset to be valued lower than the Service would otherwise expect. For example, if assets were sold from an account close to the decedent's death to pay for the decedent's nursing home expenses or large medical bills, these facts should be shared with the Service. The sharing of this information could head off an inquiry from the Service concerning any such account. Another example is where the valuation report for a securities account shows a noticeably different quantity of a particular security than the quantity stated on the date-of-death statement for the account. This discrepancy can be justified if it is due to a stock dividend or a stock split but would not be justified if it were due to an unreported gift.

The Service may also request additional information where a closely held business is valued for its asset holdings, with no value added for the business as a going concern. Providing an up-front explanation about the business and why it has no real value as a going concern can support a lower-than-expected value and reduce the possibility of further inquiry by the Service. For example, if the decedent was the key person in a service business, the substantial decrease in such business's value due to his or her death is an understandable result.

Audit issue no. 8: Failure to include supporting documentation

The Checklist for Completing Form 706 appears at the back of the instructions for Form 706 and lists certain documents that (where relevant) are required to be submitted with the 706. The failure to include required supporting documentation is a common error and was mentioned many times by different estate tax attorneys. Supporting documentation—such as prior gift tax returns and written evidence that justifies the taxpayer's exclusion of certain jointly held property from the decedent's gross estate—are some examples of required submissions. Other documents that are required to be included with the filing of the 706 include (but are not limited to) a copy of the death certificate (a photocopy of an original is sufficient), a certified copy of the will, Form 712 (Life Insurance Statement) for each life insurance policy that is listed on Schedule D, and copies of all trust documents where the decedent was a grantor or a beneficiary.
It was pointed out by one IRS estate tax attorney that an immediate adjustment will be made where the decedent established a grantor retained annuity trust (“GRAT”) but failed to take the required annual payouts. It was suggested that where a GRAT is reported on the 706, proof of the required payouts to the grantor should also be shown. The inclusion of other documents that are not specifically required to be submitted to the Service was recommended, because their inclusion could reduce the risk of inquiry on a particular issue. Some examples in this category are:

1. A copy of the financial statements for the month that contains the decedent’s date of death.
2. Written proof to support that there were no incidents of ownership for a life insurance policy that is excluded from the decedent’s gross estate. A copy of the policy’s declaration page or a copy of the insurance application was stated to be sufficient.
3. A copy of the invoices and billing statements that support large deductions on Schedule J (Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims). For example, provide the billing statement from the managing agent of the decedent’s residential property for the deduction of monthly maintenance charges. "If taking a deduction for a large repair to the decedent's residence where such repair began before the decedent died, provide the invoice stating this. If claiming a deduction for real estate taxes on the decedent’s property, include a copy of the tax bill that shows that the real estate lien was placed on the decedent’s residence before death.
4. If the decedent’s residence was sold, attach the contract of sale. Moreover, include a statement that the sale was to an unrelated third party if that is the case.
5. Documentation that shows that a bequest to a charitable organization meets the requirements of Section 2055(a) and that therefore such bequest is eligible for the charitable deduction.
6. A copy of the designated beneficiary forms for assets passing to the spouse where the marital deduction is claimed for those assets.

Although it was recommended to include information that is not required to be filed with the 706 so as to reduce the risk of inquiry by the Service, it is advisable for the tax practitioner to review carefully all such material before its submission to identify any potential risks to the client by such submission. A balance of the respective risks should be considered.

Audit issue no. 9: An unprofessional appearance

The saying "don't judge a book by its cover” is well-intended, but is not often followed in business, especially the tax return preparation business. Here, appearance does count. A return that has a professional appearance gives a positive first impression to the Service and conveys the message that the substance of the return, like its appearance, was carefully and meticulously prepared. Conversely, a return that has a sloppy or less-than-finished appearance is an invitation to the Service for a closer inspection. The Service will review the return more closely to find the errors it anticipates. The expectation is that the contents of the return will match its poor appearance. It is advised that just as one would not show up at a client meeting in sloppy attire, one should strive for a positive first impression with the Service by filing a return whose appearance and organization imply that all is in order. Some suggestions include:

- The return should be on clean, unbent pages and neatly stapled or bound.
• The return should be signed and dated by the fiduciaries and the preparer in the proper places.
• The attachments to the return should be labeled and properly referenced in the return.
• All pages in the return and the attachments should be present and in order.
• Copies should be clear and complete; all pages should face the same way and be in sequential order.

**Audit issue no. 10: Common proofreading errors**

Although common sense dictates to proofread the 706 carefully before it is filed, the Service reports that proofreading errors are common. The number one mistake, and perhaps the mistake that is the most problematic, is the transposing of digits in the decedent’s Social Security number, especially where the 706 and the payment of the estate tax list different Social Security numbers due to a transposition error. The proper processing of the estate tax return and the estate tax payments not only can be delayed, but there can also be resulting interest and penalties which can take hours of professional time to resolve—time for which clients will likely object to paying.

Carefully checking the math for the return was also mentioned. Common math errors include the calculation of (1) the state death tax deduction, (2) adjusted taxable gifts (line 4 on the first page of the 706), and (3) the credit for tax on prior transfers (Schedule Q). The Service does review and confirm the calculation for such items, and it was suggested that the practitioner do the same.

**Conclusion**

Recognizing the issues in the preparation and filing of an estate tax return that are most problematic for the Service allows the tax practitioner to take preventive measures to reduce the risk of audit selection. While many of the deficiencies described above can be cured by common sense, the necessary actions to avoid them are nonetheless not followed in the field, as many of these errors were mentioned by multiple estate tax attorneys for the Service.

Therefore, careful attention to the most obvious and basic tasks in preparing the estate tax return—even where such actions are felt to be unnecessary or repetitive—is value-added for the client. As Benjamin Franklin observed: “A little neglect may breed great mischief...for want of a nail the shoe was lost; for want of a shoe the horse was lost; and for want of a horse the rider was lost.” Sometimes minor errors and oversights can cause a disproportionately adverse result. Even if no additional estate tax is imposed after audit, the additional professional fees and delay in closing the estate could have been avoided, thereby benefiting the client. Paying proper attention to the details in preparing and filing the estate tax return is not only good practice but is essential.

**PRACTICE NOTES**

Even if no additional estate tax is imposed after audit, the additional professional fees and delay in closing the estate could have been avoided, thereby benefiting the client.

Exhibit 1. Estate Planning Profile
Exhibit 2. Estate Administration Checklist: Items for Client to Bring to Initial Meeting

1. Death certificates—ten to 15 copies.


3. Original will, if any.

4. Inventory of assets—a list of the decedent's assets and known liabilities.

5. Most recent (as well as date-of-death) bank, brokerage, IRA and /or 401(k) account statements (include statements for joint accounts and note if the joint owner made any contribution to the account), as well as the designated beneficiary forms for the IRA and 401(k) accounts.

6. Three years of the most recent income tax returns, and any gift tax returns filed at any time during the decedent's lifetime.

7. Life insurance policy information, including the original policies.

8. Information regarding safe deposit box(es) to which the decedent had access.

9. Bills for expenses incurred during the decedent's life and payable/paid after the decedent's death, including medical bills and funeral expenses.

10. Individual stock certificates and bonds held in the decedent's name or copies of these, including a copy of the stock certificate(s) for any cooperative apartment unit(s) owned by the decedent.

11. Copies of partnership agreements, if any, and information regarding any corporations in which the decedent had an interest.

12. Copies of deed(s) for any real estate owned.

13. Names and phone numbers of the decedent's accountant and insurance agent, if any.

14. Documents for trusts in which the decedent had an interest or for which the decedent was a trustee.

15. Family tree; please give a description of the family members and include their addresses and telephone numbers.

1 Ithaca Trust Co., 7 AFTR 8856, 279 US 151, 73 L Ed 647, 1 USTC ¶386 (S.Ct., 1929).

Reg. 301.6501(c)-1(f)(1) allows the Service to assess a gift tax at any time or to initiate a collection action without assessment at any time, unless the transfer is adequately disclosed on a gift tax return or in a statement to the return.

See Reg. 301.6501(c)-1(f)(2).

The 1-866-699-4083 phone number is also the number to call to inquire about the status of a 706.

Sections 2055(c) and 2056(b)(4)(A); Regs. 20.2055-3(a) and 20.2056(b)-4(c).


Joint interests between spouses where the surviving spouse is a U.S. citizen generally do not pose a reporting problem. Section 2040(b) provides that such accounts are considered qualified joint interests and one-half the value of such assets will be reported on Part 1 of Schedule E as part of the decedent’s gross estate regardless of the contribution between the spouses.

On 4/23/07, Proposed Regulations (REG-143316-03), addressing the amount deductible from a decedent’s gross estate for claims against the estate under Section 2053, were published in the Federal Register. Of particular note, new Prop. Reg. 20.2053-1(b)(4), dealing with estimated amounts, provides, in part, that “A deduction will be allowed for a claim that satisfies all applicable requirements even though its exact amount is not then known, provided that the amount is ascertainable with reasonable certainty, and will be paid. Under this exception to the rule set forth in paragraph (b)(1) of this section, no deduction may be taken upon the basis of a vague or uncertain estimate.”

With respect to the valuation of claims to be deducted from the gross estate, the Service is taking a position that events occurring after the date of a decedent’s death will be considered when determining the amount that is deductible. New Prop. Reg. 20.20534(a)(2) expressly states that post-death events will be considered when determining the amount deductible against a decedent’s estate.

A guideline of three to six months of monthly maintenance charges was reported as properly chargeable to the estate.

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Some of our clients wanted the author, Jill Miller, to delve deeper into the material. In response to this, we sponsored a luncheon at which Jill was the keynote speaker. If you want to view this one hour video segment, please click HERE.

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Thank you for considering Evaluation Services Inc. (ESI). We look forward to serving you.