

Are You An Executor Needing To File An Estate Tax Return?

By Gary Altman

Tax issues are one of the many front-and-center issues when an individual dies. For most individuals who pass away, a final income tax return must be filed with the Internal Revenue Service (IRS) and the state (if the state also taxes income) to settle any income tax liability. A federal estate tax return and state estate tax returns (if the state has an estate tax, Maryland \$5 million) or the decedent held property in another state) may also be required. In federal estate tax returns, the federal government can assess the estate taxes (if any) due upon the death of a taxpayer. While these returns are not frequently filed today, there are still several reasons it may be beneficial to file such a return with the IRS, even if not necessarily required (though a state estate tax return may be needed in some states).

For Whom Must an Estate Tax Return Be Filed?

Only some people must have a federal estate tax return filed for them. According to the IRS, for those who passed away in 2022, an estate tax return (IRS Form 706) must be filed if the size of the deceased's gross estate, plus any taxable gifts made during the deceased's life, exceeds \$12 million. When calculating the size of an estate, these items should be included:

- All property in which the deceased had an interest
- Transfers of property for which the deceased did not receive total compensation or value
- Annuities
- The value of various types of jointly owned property
- Certain life insurance proceeds (depending on the policy)
- Community property
- Various other types of property interests

In addition to those with estates over \$12.06 million in 2022, an estate tax return must be filed for a deceased individual if the surviving spouse wants or needs to preserve the deceased spouse's unused exclusion amount. This is sometimes

called "portability" and lets a surviving spouse preserve, for the surviving spouse's later use, the unused part of the deceased spouse's estate tax exemption \$12,060. For example, if the deceased spouse's Will left \$2,000,000 to his or her children, an additional \$10,060,000 could be preserved and given to the surviving spouse's total estate tax exemption amount against the survivor's future estate tax liability, no matter what Congress does in the future.

Portability can be a valuable benefit to a surviving spouse who may have a large estate upon the surviving spouse's death that needs to be protected from future estate taxes. This is especially true if the current high estate tax exemption amounts are reduced. The high exemption amount is scheduled to sunset at the end of 2025. The federal estate tax exemption may return to \$5 million (adjusted for inflation), \$3.5 million, or some other amount determined by Congress.

Who Must File and When?

The person responsible for filing an estate tax return is referred to in the IRS regulations as the executor. The term "executor" includes the executor, personal representative, or administrator of the deceased's estate. These are roles to which someone is typically appointed in a state probate court proceeding. However, if a local court does not appoint an executor for the estate, the IRS considers anyone "in actual or constructive possession of any property of the decedent" to be an executor and requires that individual to file the estate tax return if filing one is necessary. This is often the case when the deceased's property is held in a trust, and no probate is required. There, the then-acting trustee of the trust would be considered the executor for estate tax return purposes.

Any estate tax return must be filed within nine months of death. If you need more time, you can request an extension from the IRS by filing Form 4768, which will typically provide you with an

Annapolis, MD
839 Bestgate Road,
Suite 400
Annapolis, MD 21401

Rockville, MD
11300 Rockville Pike,
Suite 708
Rockville, MD 20852

Washington, D.C.
Suite 500
1050 Connecticut Ave NW,
Washington, DC 20036

Northern VA
8000 Towers Crescent Drive.
13th Floor
Vienna, VA 222182

automatic six-month extension to file. If you are filing a Form 706 purely for portability reasons, there are exceptions to these requirements that should be reviewed if you fail to file within the initial nine-month period after death.

Just because you are the executor of the deceased's estate does not mean you have to do this alone. Most individuals hire a professional tax preparer with experience preparing estate tax returns. Tax preparation professionals and estate attorneys will have the skills, experience, and tools to help the process go much more smoothly. Hiring an estate tax professional will help you miss no important details before filing and provide meaningful liability protection for you as the executor for possible mistakes made on the return.

How to Help Prepare for the Estate Tax Return Filing

The first step to preparing an estate tax return is to gather a complete inventory of the deceased individual's property. Bank and account statements, property records, life insurance policy statements, business appraisals, and similar records will be crucial for the tax preparer to review. Past income tax returns can also help the tax preparer identify other sources of income-generating property that may have a value for estate tax return preparation.

Once you have gathered this information for your tax preparer, let the IRS obtain tax information from your tax preparer. This is done through IRS Form 8821, Tax Information Authorization. If you wish to have the tax preparer represent you and the estate before the IRS, file IRS Form 2848 instead. Without this authorization, your tax preparer's ability to help you prepare and file the estate tax return will be severely limited. In addition, as the executor of the deceased's estate, you must file IRS Form 56, Notice of Fiduciary Relationship, so the IRS will know that you are the contact person and ultimately responsible for answering questions that arise during the tax preparation and filing process.

Valuing Specific Items of Property

Properly valuing certain items of property such as real estate, business interests, investments, collections of art, or other collectibles like firearms, coins, jewelry, and other high-value items will not only be required for showing the value of the gross estate for estate tax purposes but will also be necessary to the individuals who will ultimately inherit the property. Under current law, the most appreciated property owned by a deceased individual will receive a step-up in tax basis because of the owner's death. Inherited property receives a new tax basis on the date-of-death value of the property. This is important to document so that when the property is later sold, capital gains taxes due on the sale of that property can be reduced. Without adequate documentation of the date-of-death value, the IRS may claim more capital gains taxes are due on the sale of that property than would otherwise be justified.

Once you have determined the property's value through professional appraisals or other reliable methods, document how the valuations were calculated and provide that documentation (for example, appraisal reports) to the tax preparer to attach to the estate tax return. Be aware that with valuations of unique properties such as art, particular real estate, and business interests, using professional appraisers may be more expensive on the front end. However, using professional appraisers can also result in a significantly decreased risk of being challenged by the IRS, which may save you far more time and expense than you would have saved by not using a professional appraiser.

How Long Does This Process Take?

The IRS gives you nine months from death to file an estate tax return for the deceased. If you need more time, you can request an additional six-month extension automatically granted if the request is filed with the IRS before the nine-month estate tax return due date. If you need

Annapolis, MD
839 Bestgate Road,
Suite 400
Annapolis, MD 21401

Rockville, MD
11300 Rockville Pike,
Suite 708
Rockville, MD 20852

Washington, D.C.
Suite 500
1050 Connecticut Ave NW,
Washington, DC 20036

Northern VA
8000 Towers Crescent Drive.
13th Floor
Vienna, VA 222182

more time, you can request a time for “good cause shown” if you can convincingly explain to the IRS why it would be unreasonable or impractical to file the return before the fifteen months otherwise available through the automatic extension period. However, you need to give the IRS sufficient time to consider your reasons for requesting an additional extension, and that should be done well before the initial nine-month deadline for filing the return. Despite when the tax return is ultimately due, the tax payment (even if only estimated) is due nine months after death. Failure to pay the tax due by that date will cause the estate to incur penalties and interest. Still, there are separate procedures for requesting an extension to pay the taxes if the estate does not have the cash to pay the tax. Be aware that requests for extending tax filing deadlines and payment deadlines are independent of each other. You must request both if you need both.

For now, federal estate tax returns are still rare because of the historically high estate tax exemption amounts available to taxpayers. However, a surviving spouse may still file an estate tax return to preserve the DSUE, even if the estate’s value is well under the exemption amount, to account for changes in the law and future appreciation in the estate. Also, the Biden administration is looking closely at reducing the available estate tax exemption amount to fund many existing and future government programs. Soon, federal estate tax returns may become much more common than they have been over the last several years. Still, it can be done with professional help and a willingness to roll up your sleeves and gather the information for the tax return.

If you are an executor needing assistance or have questions regarding filing estate tax returns, call the office of Altman & Associates for a consultation at 301 468-3220.

Annapolis, MD
839 Bestgate Road,
Suite 400
Annapolis, MD 21401

Rockville, MD
11300 Rockville Pike,
Suite 708
Rockville, MD 20852

Washington, D.C.
Suite 500
1050 Connecticut Ave NW,
Washington, DC 20036

Northern VA
8000 Towers Crescent Drive.
13th Floor
Vienna, VA 222182

Follow our estate planning blog, Altman Speaks, available on our website: altmanassociates.net
Copyright 2019 by Gary Altman, Esq.
All Rights Reserved

CONNECT WITH US

 [/altmanassociates](https://www.facebook.com/altmanassociates)
 [@garyaltman](https://twitter.com/garyaltman)
 [/in/garyaltman](https://www.linkedin.com/in/garyaltman)