



## Recent Developments in Estate & Gift Tax

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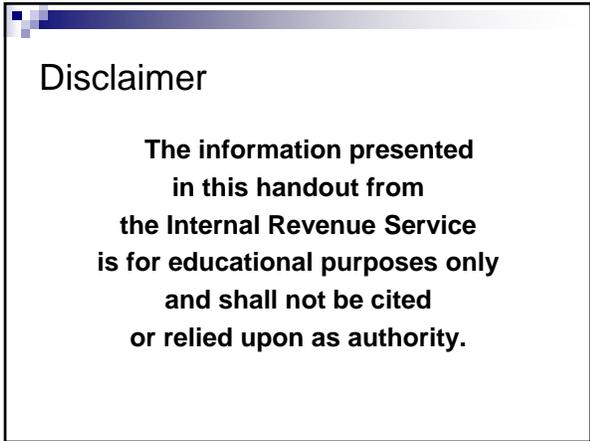
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### Disclaimer

**The information presented in this handout from the Internal Revenue Service is for educational purposes only and shall not be cited or relied upon as authority.**

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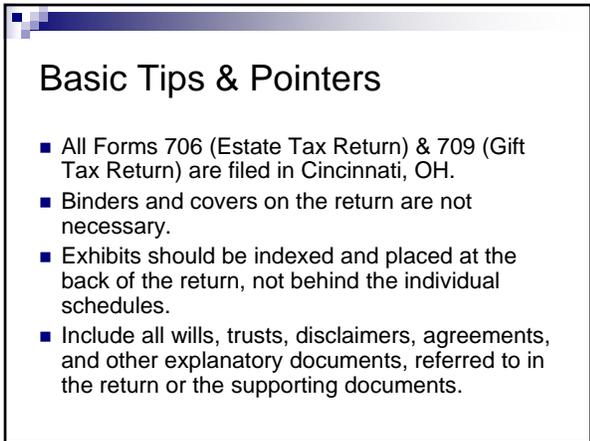
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### Basic Tips & Pointers

- All Forms 706 (Estate Tax Return) & 709 (Gift Tax Return) are filed in Cincinnati, OH.
- Binders and covers on the return are not necessary.
- Exhibits should be indexed and placed at the back of the return, not behind the individual schedules.
- Include all wills, trusts, disclaimers, agreements, and other explanatory documents, referred to in the return or the supporting documents.

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### Payment of Tax by Check

- Make the check payable to the "United States Treasury".
- Write the decedent's name, social security number (SSN), and "Form 706" on the check.
- Write the taxpayer's name, social security number (SSN), and "Form 709" on the check to assist in posting to the proper account.

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### Payment of Tax Electronically

- May be submitted electronically through the Electronic Federal Tax Payment System (EFTPS).
- EFTPS is a free service of the Department of Treasury.
- To be considered timely, payments must be completed no later than 8 p.m. Eastern Time the day before the due date.
- All EFTPS payments must be scheduled in advance of the due date.
- Payments may be changed or cancelled up to two business days before the scheduled payment date.

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### Form 706 for Decedents dying after 12/31/2014

- Most recently revised Form 706 was released in August 2013
- 2015 Exclusion Amount = \$5,430,000
- 2016 Exclusion Amount = \$5,450,000
- 2017 Exclusion Amount = \$5,490,000
- Basic Exclusion Amount is indexed for inflation
- Maximum Tax Rate is 40%

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### Page 2, Part 4-Authorization

**Part 4—General Information**  
 Note. Please attach the necessary supplemental documents. You must attach the death certificate. (See instructions)  
 Authorization to receive confidential tax information under Reg. section 601.504(b)(2)(ii), to act as the estate's representative before the IRS, and to make written or oral presentations on behalf of the estate.

Name of representative (print or type) \_\_\_\_\_ State \_\_\_\_\_ Address (number, street, and room or suite no., city, state, and ZIP code) \_\_\_\_\_

I declare that I am the  attorney  certified public accountant  enrolled agent (check the applicable box) for the executor. I am not under suspension or disbarment from practice before the Internal Revenue Service and am qualified to practice in the state shown above.

Signature \_\_\_\_\_ CAF number \_\_\_\_\_ Date \_\_\_\_\_ Telephone number \_\_\_\_\_

- The authorization on page 2 of the Form 706 is not as expansive as the Form 2848.
- Form 2848 (Power of Attorney) is a more flexible document.

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### Page 2, Part 4-Marital Information

1 Death certificate number and issuing authority (attach a copy of the death certificate to this return).

2 Decedent's business or occupation, if retired, check here  and state decedent's former business or occupation.

3a Marital status of the decedent at time of death:  
 Married  Widow/widower  Single  Legally separated  Divorced

3b For all prior marriages, list the name and SSN of the former spouse, the date the marriage ended, and whether the marriage ended by annulment, divorce, or death. Attach additional statements of the same size if necessary.

4a Surviving spouse's name \_\_\_\_\_ 4b Social security number \_\_\_\_\_ 4c Amount received (see instructions) \_\_\_\_\_

- Information on prior marriages is relevant to:
  - Portability elections
  - Marital trusts
  - IRC §2519

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### Page 2, Part 4-Protective Claims

If you answer "Yes" to any of the following questions, you must attach additional information as described.

	Yes	No
6 Is the estate filing a protective claim for refund? If "yes," complete and attach two copies of Schedule PC for each claim.	<input type="checkbox"/>	<input type="checkbox"/>
7 Does the gross estate contain any section 2044 property (qualified terminable interest property (QTIP) from a prior gift or estate)? (see instructions)	<input type="checkbox"/>	<input type="checkbox"/>
8a Have federal gift tax returns ever been filed? If "yes," attach copies of the returns, if available, and furnish the following information:	<input type="checkbox"/>	<input type="checkbox"/>
b Period(s) covered	c Internal Revenue office(s) where filed	
9a Was there any insurance on the decedent's life that is not included on the return as part of the gross estate?	<input type="checkbox"/>	<input type="checkbox"/>
b Did the decedent own any insurance on the life of another that is not included in the gross estate?	<input type="checkbox"/>	<input type="checkbox"/>

Page 2

- A protective claim can be filed for:
- Unresolved claims
  - Partially resolved or paid claims
  - Full and final resolved or paid claims

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### Revenue Procedure 2016-49: Relief for an Unnecessary QTIP Election

- If the requirements are met, Rev. Proc. 2016-49 treats as void the QTIP election made to treat property as QTIP
- Changes procedures from request for PLR to a return filed pursuant to the revenue procedure
- Excludes from its scope estate in which the executor made a portability election
- In estates in which the executor made the portability election, QTIP elections will not be treated as void
- Other specific exemptions and procedural requirements are indicated in the revenue procedure
- Effective September 27, 2016
  - Modifies and supersedes Rev. Proc. 2001-38

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### Revenue Procedure 2016-42: Charitable Annuity Remainder Trusts (CRAT)

- Provides procedures (including sample provisions) to establish a qualified contingency (early termination) as an alternative to satisfying the CRAT probability of exhaustion test
- Issued and made effective for trusts created on or after August 8, 2016
- See the revenue procedure for details

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### Marital Deduction for Same-Sex Married Couples

- **Windsor:** Supreme Court held Section 3 of DOMA unconstitutional
- **Obergefell:** State-level bans on same-sex marriage are unconstitutional
- Federal government recognizes same-sex marriages for all federal tax purposes

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### Consistency of Basis Requirement

On July 31, 2015, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Public Law 114-41) was enacted. Section 2004 of the Act requires:

- Estates must report, both to the IRS and beneficiaries receiving property from the estate, the estate tax value of property included in the gross estate within 30 days of the due date or actual filing date of Form 706, whichever is earlier.

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### Consistency of Basis Requirement

The new basis consistency rules also require:

- That the basis of certain property, when sold or otherwise disposed of, must be consistent with the basis (the estate tax value reported on Form 706 or as finally determined by the IRS or court) of the property when the beneficiary received it from the estate.

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### Consistency of Basis Requirement

- Form 8971 is a separate filing requirement from the estate's Form 706 or 706-NA. It should not be attached to the estate tax return.
- Estates must file Form 8971 if the estate is required to file Form 706 or Form 706-NA after July 2015.
- Schedule A must be provided to each beneficiary listed on Form 8971. Copies of each Schedule A an estate gives to a beneficiary must accompany the filing of Form 8971.

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## Form 8971

**Form 8971**  
January 2016  
Department of the Treasury  
Internal Revenue Service

**Information Regarding Beneficiaries  
Acquiring Property From a Decedent**

OMB No. 1545-2064

▶ Information about Form 8971 and its separate instructions is at [www.irs.gov/form8971](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

**Part I Decedent and Executor Information**

1 Decedent's name \_\_\_\_\_ 2 Decedent's date of death \_\_\_\_\_ 3 Decedent's SSN \_\_\_\_\_

4 Executor's name (see instructions) \_\_\_\_\_ 5 Executor's phone no. \_\_\_\_\_ 6 Executor's TIN \_\_\_\_\_

7 Executor's address (number and street including apartment or suite no.; city, town, or post office; state or province; country; and ZIP or foreign postal code) \_\_\_\_\_

8 If there are multiple executors, check here  and attach a statement showing the names, addresses, telephone numbers, and TINs of the additional executors.

9 If the estate elected alternate valuation, indicate the alternate valuation date: \_\_\_\_\_

**Part II Beneficiary Information**

How many beneficiaries received or are expected to receive property from the estate? \_\_\_\_\_ For each beneficiary, provide the information requested below. If more space is needed, attach a statement showing the requested information for the additional beneficiaries.

A Name of Beneficiary	B TIN	C Address, City, State, ZIP	D Date Provided

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## Form 8971, Schedule A

**SCHEDULE A—Information Regarding Beneficiaries Acquiring Property From a Decedent**

▶ Information about Form 8971 (including Schedule A) and its separate instructions is at [www.irs.gov/form8971](http://www.irs.gov/form8971).

Check box if this is a supplemental filing

**Part 1. General Information**

1 Decedent's name \_\_\_\_\_ 2 Decedent's SSN \_\_\_\_\_ 3 Beneficiary's name \_\_\_\_\_ 4 Beneficiary's TIN \_\_\_\_\_

5 Executor's name \_\_\_\_\_ 6 Executor's phone no. \_\_\_\_\_

7 Executor's address \_\_\_\_\_

**Part 2. Information on Property Acquired**

A Item No.	B Description of property acquired from the decedent and the Schedule and item number where reported on the decedent's Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. If the beneficiary acquired a partial interest in the property, indicate the interest acquired here.	C Did this asset increase estate tax liability? (Y/N)	D Valuation Date	E Estate Tax Value (\$ in U.S. dollars)
1	Form 706, Schedule _____, Item _____ Description _____			

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## Consistency of Basis Requirement

Form 8971 is not required to be filed if:

- The gross estate plus adjusted taxable gifts is less than the basic exclusion amount;
- Estate tax-related forms (for example, Forms 706-QDT, 706-CE, and 706-GS(D), are being filed;
- The estate tax return is filed solely to make an allocation or election respecting the generation-skipping transfer (GST) tax; or
- **The estate tax return is filed solely to elect portability of the deceased spousal exclusion (DSUE) amount.**

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**Examination Changes – Appeals**

- The Office of Appeals is an independent and impartial forum
- Resolves tax disputes without litigation
- Applies a quasi-judicial approach

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**Examination Changes – Appeals**

1. Required time remaining on statute: IRM 8.2.1.4
2. New issue raised or new information submitted
3. New theory or alternative legal argument
4. Appeals’s involvement in docketed cases

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**Estate Tax Closing Letters**

- For estate tax returns filed before January 1, 2015, the estate automatically receives a closing letter.
- For estate tax returns filed between January 1, 2015, and June 1, 2015, a closing letter would be issued automatically if certain conditions were met.
- If an estate tax return was filed, after June 1, 2015, a closing letter must be requested by the estate.

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### Estate Tax Closing Letter, Estates Filed on or after June 1, 2015

- To request a closing letter call (866) 699-4083 and provide the following information:
  - Name of the Decedent
  - Decedent's social security number
  - Date of Death
- The Closing Letter will be prepared and issued to the Executor at the address of record.
- An Account Transcript can be used as an alternative to the Closing Letter.

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### Proposed Regulations - Section 2704

- Released August 2, 2016
- Limits valuation discounts for intra-family transfers of closely-held business interests
- Lapse of a restriction or liquidation right within 3 years of death would be disregarded
- Some restrictions would be disregarded if the family retains control after the transfer or bequest

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### IRS Tax Help

- Visit [www.irs.gov](http://www.irs.gov) and type keywords "estate and gift" to find out:
  - What's New
  - FAQs
  - Pub 559, Survivors, Executors and Administrators
  - Filing Information
- For questions about return accounts, lien discharges, and extensions only, call:  
(866) 699-4083

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