WESTERN™ CPE

CHECKLIST OF ESTATE ADMINISTRATION ISSUES & RESPONSIBILITIES

Written by Steven G. Siegel, JD, LLM for Western CPE's 2024 Federal Tax Update

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SECTION 1:

To Be Done as Soon as Possible After a Death

A. Consider Immediate Family Needs	
	Review sources of cash for family maintenance before probate.
	Joint bank accounts. Surviving joint tenant may be able to withdraw some or all bank balances upon presentation of a death certificate before probate.
	Pension and profit-sharing benefits payable to an individual beneficiary other than the estate.
	Social Security and Veterans' survivor benefits (spouse and minor children).
	Life insurance proceeds payable to an individual beneficiary may be payable upon presentation of death certificate and completed claim form.
	Consider custody of children if orphans.
	Explain to the immediate family that probate and estate and trust administration take time and can be involved.
	Order a sufficient number of death certificates. Ascertain whether the decedent has communicated wishes for disposition of remains.

B. Income Tax and Gift Tax Returns	
	Are returns due? Are returns overdue?
	Are payments due? Are payments overdue? (Note that quarterly estimates of personal income taxes are suspended by death for the decedent, but not for the surviving spouse.)
	Have extensions been requested? Has a new employer identification number (EIN) been obtained for the estate or trust?

C. Secure the Property	
	Secure the decedent's residence and private offices. Remove valuables for safekeeping.
	Secure the decedent's computer, if appropriate, and determine who has passwords and access to business and financial records. Also, consider the value of proprietary domain names.
	Consider care and protection of pets and perishable assets.
	Have tangible personal property inventoried and appraised. Consider multiple appraisals of rare or valuable articles.
	Review insurance coverage for real estate, automobile, tangible property, and liability exposure. Check ownership, payment of premiums, and expiration dates of policies.
	Take possession of bank and brokerage statements, checkbooks, and passbooks for three prior years plus year of death. Cancel credit cards. Locate safe deposit boxes.
	Get control of mail.
	Check maturity dates for investments, such as bonds, certificates of deposit, and time deposits. Check deadlines for corporate tender offers.
	Review outstanding leases, including real property, vehicles, and equipment, including rights to cancel or renew or extend the terms, or to assign or sublet.
	Review other outstanding contractual obligations.
	Notify SSA and Veterans' Administration if the decedent was receiving benefits or if the estate or family is entitled to benefits.

D. Commence Probate or Administration Proceedings	
	Locate the will. If the original will is in the decedent's safe deposit box, obtain an order to open the box if required.
	Review the will for its dispositive scheme and for information as to assets, beneficiaries, and witnesses. The will may "pour over" assets to a trust. Review the trust agreement.
	Identify any potential probate or construction problems, such as duplicate wills, interlineations, or mutilations.
	Resolve issues of the decedent's domicile if there was more than one residence.
	Identify distributees and other persons required to be cited in probate proceedings; contact witnesses if there is no self-proving affidavit or if a will contest is contemplated; and prepare and file necessary papers. State laws require that estate and trust beneficiaries and creditors be notified.
	Review any prenuptial or postnuptial agreements affecting the rights of the surviving spouse. Determine whether there is a potential right-of-election by the surviving spouse, especially where "elective share" has been put into a trust or where a QTIP trust has been established for most of the estate.
	Consider whether the state Attorney General must be notified of probate because of the existence of a bequest in trust to charity or a residuary bequest to charity.
	Consider whether the state Attorney General must be notified because there is no distributee or beneficiary or the facts are unknown.
	Where an attorney is also named as executor, look for an attorney disclosure statement if local practice requires this.
	Apply for letters testamentary.
	Consider use of small estates provisions as an alternative to probate, if applicable under local rules. Present the will for probate.
	Determine whether ancillary probate is required in another jurisdiction for tangible personal property or real estate.

SECTION 2:

To Be Done Within 30 Days

A. Marshall the Assets	
	Locate assets.
	Confer with the family.
	Check the decedent's attorney's records.
	Open the decedent's safe deposit box
	Determine title of all assets: JWROS, Trust, Community property etc.
	Prepare an inventory and have valuables appraised.
	Write to the decedent's banks inquiring as to other accounts or safe deposit boxes.
	Review checkbooks and income tax returns for information about assets.
	Search the residence(s) and office.
	Search the computer files.
	Determine employer-provided retirement and death benefits and locate IRAs.
	Are there assets in foreign countries? Has the income been reported?
	Gain control of assets.

A. Marshall the Assets

	Register bank accounts and securities in the estate name, not in the fiduciary's personal name. The fiduciary should be identified in the title.
	Collect proceeds of life insurance payable to the estate. Ask for IRS Forms 712 if an estate tax return is required and assist with the collection of life insurance proceeds payable to named beneficiaries.
	Make private medical insurance, major medical and Medicare claims, and applications for refunds on cancellation of any health or property insurance or prepaid services.
	Determine whether there are any decedent-held employee stock options that must be exercised within a specific time after death.
	Are there claims of the decedent or the decedent's family, such as wrongful death claims or pending contract claims?
	Determine status of outstanding leases, including real estate, auto, equipment, etc. Can any be canceled if desired?
	Value the assets.

	a. Have real property appraised. Use a formal real estate appraisal rather than a letter from a realtor, especially if there will be any estate tax to pay.
	b. Obtain valuations of securities. (Note that the value of securities is the mean between high and low on the date of death, not the closing price.) The broker may provide this, or an outside service may be necessary
	c. Obtain date-of-death values on bank accounts from the banks. Bank accounts should be reconciled because of outstanding checks at date of death.
	d. Is there a marital trust from a predeceased spouse? Was portability involved?
	e. Is there income due from a marital or non-marital trust from a predeceased spouse or a parent or other relative?

B. Begin Estate Administration		
	Determine estate cash requirements, and circulate to executors and, if appropriate, to residuary beneficiaries.	
	Determine funeral expenses and obtain a receipted funeral bill. If the funeral was paid for by a relative, they must be reimbursed.	
	Determine balances due at death on mortgages and loans – this includes interest accrued to date of death	
	Review mail for current bills.	
	Estimate administration expenses, including attorney's fees and commissions, appraisal fees, accountant's fees.	
	Make a preliminary determination of estate taxes owed and proper apportionment of estate tax liability under the will.	
		a. Determine state estate taxes in state of domicile.
		b. (Determine estate taxes in any other state or in any foreign country.
		c. Are available assets subject to capital gains taxes on sale, despite the general rule of step-up in basis? Are there assets classified as income in respect of a decedent for which there is no basis adjustment?
		d. Are there any assets inherited from a spouse or other testator who died in 2010, which is when carryover basis applied, if elected?
		e. Are there any assets held in trust with historic basis?
	Are there lawsuits pending or other claims against the decedent or potentially against the estate?	
	Determine total dollar amount of cash bequests under the Will.	

B. Begin Estate Administration	
	Review whether the beneficiaries will need access to the assets of the residuary estate during the period of estate administration, for their support or any business use.
	Does the will or living trust set up a disclaimer option for the surviving spouse? Make preliminary calculations of the optimum disclaimer. Note the nine-month filing deadline. Arrange for counseling of surviving spouse and children. A disclaimer is available even if not mentioned in the documents but the potential disclaimant cannot benefit from assets before disclaiming or try to direct who will receive those assets. Determine if the estate plan includes any directed trusts. If so, contact the persons named as having directing authority.

C. Business Needs and Estate Liquidity		
	Business needs: Review the will/ trust agreement as to the fiduciary's powers and duties.	
	Does the executor/trustee have authority to continue the decedent's business?	
	Will the executor/trustee retain assets or sell them and reinvest?	
	Who is managing the investments?	
	Who is the responsible accountant?	
	Apply to the court if required to continue the decedent's business if the decedent was the sole owner and the will/trust agreement does not authorize continuation.	
	Determine the estate liquidity.	
	Consider sales of assets, including common stocks and non-income-producing assets.	
	Withdraw funds from time deposits without penalty for early withdrawal and make certain that a penalty is not imposed.	
	Consider the possibility of an IRC Section 303 redemption of the decedent's stock in a closely held business.	
	Consider provisions for deferring the payment of estate taxes.	
	Consider valuing farm or closely held business real property in accordance with the qualified use value under IRC Section 2032A.	
	Consider the desires of residuary beneficiaries for the retention of assets.	
		a. Determine state estate taxes in state of domicile.
		b. (Determine estate taxes in any other state or in any foreign country.
	Are there lawsuits pending or other claims against the decedent or potentially against the estate?	
	Determine total dollar amount of cash bequests under the Will.	

D. Tax Filings	
	Apply for an estate identification number from the IRS, using Form SS-4 or on the IRS website.
	File a notice of fiduciary relationship (IRS Form 56).
	Apply for federal and state releases of liens on real estate before their sales, using IRS Form 4422 and the appropriate state form.
	Review gift tax filings, especially filings for large gifts. Request copies of previous Forms 709 if not available. File any missing gift tax returns.
	Is the decedent liable for gift taxes, employer taxes, or other lifetime taxes?
	Are there any pending audits of previously filed income tax or gift tax returns?
	For a decedent with more than one home, is any state challenging the decedent's claimed residence? Is there a pending audit relating to the residence?
	Regarding S corporations, does the will or trust affect the Subchapter S election?
	If S corporation shares are left to a QSST or ESBT Trust, file the required elections within 2½ months.

SECTION 3:

To Be Done Within 3 Months

A. Raise Cash Requirements	
	Sell marketable securities.
	List real estate with a broker.
	Deliver works of art to be sold to a dealer or auction house.
	Reinvest the sale proceeds in income-producing assets.

B. Develop Post-Mortem Tax Plans		
	Income Taxes	
	Determine whether to use the calendar year or a fiscal year.	
		a. For trusts, use of the calendar year is mandatory, but combined temporary filing of the trust as a Qualified Revocable Trust (IRC Section 645) with executor as an estate may permit use of a fiscal year. Calendar year is still available with this election.
		b. For estates, use of a fiscal year or the calendar year is permitted. Use of a short fiscal year is also permitted.
	Determine the timing of deductions and distributions.	
		a. With the new, larger U.S. estate tax exemption, it may become common to elect to take deductions on the income tax return, rather than for estate tax purposes.
		b. Income tax deductions are generally available only in the year the expenses are incurred.
		c. Timing of deductions may become a significant element of estate administration. For example, it may be wise to consider advance payment of executors' commissions rather than paying all commissions in one year at the end of the administration of the estate. If probate is required, often commissions are deferred but electing accrual basis may resolve.

B. Develop Post-Mortem Tax Plans

		d. Consider the timing of distributions to beneficiaries and income-splitting between the estate and residuary beneficiaries.
		e. Fiduciary income tax rates on Form 1041 are generally higher than the beneficiaries' personal income tax rates on Form 1040.
		f. Consider the impact of the 3.8% tax on net investment income.
		g. Consider whether capital gains can be distributed to beneficiaries at the discretion of the trustee, or whether capital gains are limited by a strict definition of principal.
		h. Address the distinction between allowable deductions to the estate or trust which can be passed to beneficiaries as deductible expenses on the final return of the entity and miscellaneous itemized deductions which cannot be deducted by the estate or trust and cannot be distributed as deductible expenses to the beneficiaries.
	Assess whether to deduct the decedent's medical expenses on the decedent's final income tax return or on the estate tax return. Those paid within one year of death can be claimed on the final income tax return.	
	Assess whether to report accrued interest on U.S. savings bonds on the decedent's final income tax return.	
	Pensions and IRAs.	
	Consult with the family and the family accountant.	
	Review methods of payment from qualified plans and IRAs:	
		a. Income taxes
		b. Estate taxes
	Consider the different tax needs of different beneficiaries. Consider outright distributions, inherited IRAs, spousal rollover opportunities. Has the decedent's plan been updated to take into account the provisions of the SECURE Acts?	
	Payment of debts and legacies.	
	Pay undisputed debts. Pay legacies if the estate is solvent.	
	If the estate may not be solvent, review the priority of payment of debts.	

B. Develop Post-Mortem Tax Plans	
	Pay special attention to an estate fully disposed of by specific bequests and devises.
	Consider whether an informal (non-judicial) accounting is permitted by local rules and whether it would be acceptable to beneficiaries. Be sure to reserve ample funds for all applicable taxes before making any distributions to beneficiaries. Fiduciaries risk personal liability if taxes are not satisfied after distributions have been made. Liabilities presented after the claims period should only be paid if the attorney agrees.
	Begin to prepare the final accounting for eventual presentation to beneficiaries and/or the court.
	Are all beneficiaries also executors? Are they taking equal responsibility?
	Will the attorney, accountant, or executor prepare an accounting if required? Will accountings be required in more than one court?
	Use official forms of the local court or a format required by the local court
	Begin to enter data. List assets already received, list income as it is received, and list disbursements as they are made.

SECTION 4:

To Be Done Within 6 Months

A. Estate Tax Returns

	Prepare draft IRS Form 706 and state return, if applicable. Determine if electing the alternate valuation date is available and advantageous.		
	Assemble additional papers to be filed with returns.		
		a.	Forms 712 from life insurance companies for policies owned by the decedent or policies on the life of the decedent or payable to the estate.
		b.	Balance sheets for the previous five years for closely held businesses in which the decedent had an interest, including family partnerships, S Corporations or LLCs.
		c.	Appraisals of real and personal property.
		d.	Is there unified credit available from a predeceased spouse: "portability"?
		e.	Will, death certificate, trust agreements.
		f.	Assemble an "audit file" for papers an IRS agent may wish to examine on audit.
		g.	Collect pre-death checkbook records, bank and brokerage statements, and income tax returns for year of death and three years prior to death.
		h.	Collect verification for debts claimed as deductions.
		i.	Collect gift tax returns.
	Plan to obtain alternate valuations of estate assets if the estate will be taxable. Determine if electing the alternate valuation date is available and advantageous. (Note that the estate tax value will become the basis of the decedent's assets for determining future capital gain or loss on sales.)		
	Does the will/trust agreement take advantage of the decedent's unified credit and/or generation-skipping tax exemption? Review QTIP Trust provisions carefully to determine if a reverse QTIP election is contemplated. If so, be sure to complete Form 706 to make the election. Consider the U.S. tax implications in contrast to the state tax implications and reach a final decision as to a possible disclaimer by the surviving spouse.		

SECTION 5:

To Be Done Within 9 Months

A. File U.S. Estate Tax Return and State Death Tax Return, and Pay the Tax	
	Complete and file Form 706 and any applicable state return.
	Many estates are no longer taxable and will not require the filing of an IRS Form 706. Nevertheless, consider filing Form 706 to take advantage of portability. Alternate valuation may be elected only on a timely filed return and only if the election reduces the value of the estate assets and the estate tax, not merely for the purpose of increasing the basis of assets.
	If necessary, file a six-month extension of time to file.
	Pay any estate taxes due, regardless of whether the returns are filed. If necessary, apply for an extension of time to pay the tax.
	Consider an application for discharge of the fiduciary from personal liability for the estate tax, Form 5495, to take effect nine months after the return is filed.
	Consider requesting a prompt assessment of the federal estate tax from the IRS. File Form 4810.
	Consider the availability of the credit for tax paid on prior transfers from a prior decedent.
	Review and refine the post-mortem tax plan.
	Advise the executor with respect to how much of the residuary estate to distribute and how much to hold as a reserve against the possibility of an estate tax audit or other contingencies. File the required basis form when less than 100% of the assets go to the surviving spouse.
	Have discounts been taken with respect to any interests in property owned by the decedent?
	Did the decedent own real estate, art works, or other assets that are inherently hard to value?

B. Advise Beneficiaries with Regard to Disclaimer	
	Consider disclaimers by beneficiaries other than the surviving spouse, including wealthy children or children exposed to claims, such as doctors. Review alternative will provisions that would apply to disclaimed property.
	A "qualified" disclaimer must be made within nine months of death, to avoid federal gift tax consequences. (Note that an extension of time to file estate tax returns does not extend the time for filing a disclaimer. For U.S. gift tax purposes, a beneficiary who is under age 21 is allowed nine months after his or her 21st birthday to make a qualified disclaimer.)
	Fiduciaries may waive commissions.
	If the fiduciaries are beneficiaries or family members and if there is no U.S. estate tax, the acceptance of commissions may create an income tax obligation without a corresponding estate tax deduction. (Note that there will be many more estates with no U.S. estate tax.)
	A waiver should be in writing and signed on a timely basis before estate tax returns are filed; otherwise, the fiduciary risks constructive receipt of the commissions for income tax purposes.

SECTION 6:

To Be Done Within Other Periods

A. File the Decedent's Final Income Tax Returns	
	These are due by April 15 of the year after death unless an extension is granted.
	No estimated payments need to be made after death for the decedent, but for joint returns, the surviving spouse must continue to make estimated tax payments.

B. File the Decedent's Final Gift Tax Returns	
	These are due no later than the earlier of the due date (with extensions) for filing the Form 706, or by April 15 of the year after death or the extended due date granted for filing the donor's gift tax return.

C. File the Estate Income Tax Returns. (Form 1041)	
	These are due within three and one-half months after the close of the fiscal year chosen by the executor, unless an extension is granted. (Note that the extension for fiduciary income tax returns is now limited to 5½ months.)

D. Consider Other Tax Filings	
	Apply for a refund of overpayment of U.S. estate tax within three years after a required return was filed or within two years after the tax was paid, whichever period expires later. Consider filing protective refund claims on Schedule PC as part of Form 706.
	Report to the IRS any asset discovered within three years after the U.S. estate tax return was filed or within six years after the return was filed if the omitted asset exceeds 25% of the reported gross estate.
	The estate tax credit for foreign death taxes under IRC Section 2014 is normally allowed only if such taxes are paid and the credit is claimed within four years after filing a required U.S. estate tax return. Proof of payment of the foreign taxes is required.
	Apply for a refund of any overpayment of state inheritance or estate tax.
	If an estate tax return is required to be filed, prepare and file Form 8971 to satisfy the consistent basis reporting obligation. Monitor required amendments to this reporting for subsequent estate administration developments.
	Consider requesting a closing letter from the IRS because such letters will now be issued only upon request. User fee of $67 required.

E. Complete the Final Accounting Proceedings	
	Complete the accounting after the completion of estate tax proceedings. This should be done as soon as possible and should be done within two or three years after the issuance of permanent letters testamentary to the executors. (Note that there will be many more estates for which a U.S. estate tax return is not required.)
	Obtain receipts and releases from the beneficiaries or commence a formal court proceeding for settlement of the executors' accounting.