IRS Form 706 Generation–Skipping Tax – and the Need for Qualified Business Valuation & Asset Appraisal Services

Foxboro Consulting Group, Inc. is currently working with numerous families & the decedent's estate in the Estate Settlement process by preparing business valuations, various commercial, multi-family housing & residential real estate appraisals, as well as related machinery & equipment appraisals involving family businesses for the Estate's income tax settlement process. Our valuation and appraisal services are required in order to file the Federal form 709 – Generation-Skipping Tax imposed by Chapter 13.

What Is IRS Form 706: United States Estate (and Generation-Skipping Transfer) Tax Return?

IRS Form 706 from the Internal Revenue Service is used by an executor of a decedent's estate to calculate estate tax owed according to Chapter 11 of the Internal Revenue Code. The tax covers the entire estate, not just any share received by a beneficiary. Executors also use Form 706 to calculate the generation-skipping transfer tax imposed by Chapter 13.

Who Can File IRS Form 706: United States Estate (and Generation-Skipping Transfer) Tax Return?

IRS Form 706 must be filed on behalf of a U.S. citizen or resident whose gross estate, plus adjusted taxable gifts and specific exemptions, exceeds $11,180,000 in 2018, which is also known as the exclusion amount. The executor also has to file the form should the executor transfer any amount to the surviving spouse.

Form 706 is the IRS' way of helping executors determine the overall value of an estate prior to distributing any assets to beneficiaries as outlined in the will. The IRS treats any inheritance on a stepped-up valuation, the cost basis is adjusted to the current fair market value of the inherited property. The stepped-up valuation is as of the date of death or six months after death. For example, any shares someone bought prior to death would be valued at their current level, not the original purchase price.

Using the stepped-up valuation methodology is a way for heirs to minimize capital gains taxes. The method also allows for a cleaner valuation process in terms of limiting the number of administrative tasks associated with the estate.

How to File IRS Form 706: United States Estate (and Generation-Skipping Transfer) Tax Return

IRS Form 706 is used to report estate and/or GST tax within nine (9) months after the date of the decedent's death. If you are unable to file Form 706 by the due date, you may receive an extension of time to file. For Forms 706 filed January 1, 2019, through June 30, 2019, use the following address:

1. Department of the Treasury Internal Revenue Service Center, Cincinnati, OH 45999
2. If using a PDS, send Form 706 to:
3. 201 W. River Center Boulevard Attn: Submission Processing, Stop 31, Covington, Kentucky 41011
4. For Forms 706 filed after June 30, 2019, use the following address:
5. Department of the Treasury Internal Revenue Service Center, Kansas City, MO 64999
6. If using a PDS, send Form 706 to:
7. Internal Revenue Service 333 W. Pershing Road, Kansas City, MO 64108

IRS Form 706 and the Generation-Skipping Tax

The generation-skipping transfer tax feature of IRS Form 706 intends to prevent the deceased from lowering a particularly large estate's tax burden by passing over one generation for the next generation, for example, leaving their estate to their grandchildren instead of their children. If subject to the estate tax, a decedent's grandchildren may also be subject to the generation-skipping transfer tax. The generation-skipping tax could be as much as 40 percent (%).

Notably, if any gift or inheritance is made to a relative, that relative has to be within one generation of the decedent, unless a prior death prevents that from happening. Also, any gifts or inheritances to someone who is not related to the decedent, and who is at least 37½ years younger than the deceased, could be subject to the generation-skipping tax.

When the Value of the Estate Exceeds the Tax Exemption

Form 706 must be filed when a U.S. citizen's or resident's gross estate plus any taxable gifts he's given during his lifetime are valued at more than $11.18 million as of 2018. This threshold has been indexed for inflation, so it can be expected to increase incrementally year by year...for the time being.

The Tax Cuts and Jobs Act (TCJA) increased the exemption significantly effective 2018. It was just $5.49 million for deaths occurring in 2017. But the terms of the TCJA might be temporary. The tax law expires at the end of 2025 unless Congress acts to renew it.

The federal estate tax exemption will revert back to 2017 levels if that doesn't happen, although it's indexed for inflation so it can be expected to be marginally greater than the 2017 $5.49 million figure.

How to Calculate the Value of an Estate

Add up the following to determine whether an estate tax return must be filed:

1. Taxable gifts under Section 2001(b) made by the decedent after December 31, 1976 if they exceed annual gift tax exclusion in the year they were made
2. The total specific exemption allowed under Section 2521 (as in effect before its repeal by the Tax Reform Act of 1976) for gifts made by the decedent after September 8, 1976
3. The value of the decedent's gross estate—his assets before deducting for liabilities such as debts and taxes and subtracting the value of assets that pass to his spouse or charities

A gross estate valued at more than $11.18 million as of 2018 must file Form 706 even if no federal estate tax will be owed after applicable deductions and tax credits have been applied.

When the Surviving Spouse Wants to Make a Portability Election

The concept of "portability" of the estate tax exemption between married couples was introduced in 2011. Under this rule, a surviving spouse can elect to pick up her deceased spouse's unused estate tax exemption and add it to her own federal estate tax exemption.

For example, if a husband dies in 2018 and his $11.18 million estate tax exemption is not entirely used up by the value of his estate, his wife can elect to add the unused portion to her own $11.18 million exemption.

If he used none of his estate tax exemption, she could pass up to $22.36 million tax-free at her death. If only $2 million of the husband's exemption is used, the wife can elect to add the remaining $9.18 million exemption to her own $11.18 million exemption and pass up to $10.36 million to her beneficiaries tax-free.

A surviving spouse can elect to use her deceased spouse's unused estate tax exemption by filing Form 706 for his estate regardless of whether the estate is subject to any estate tax. She would make the election on this tax form.

State Estate Tax Issues

As of 2018, the following states require that estates prepare and file IRS Form 706 at the state level, along with all necessary state estate tax forms, even if Form 706 isn't filed with the federal government:

- District of Columbia
- Hawaii
- Illinois (for 2009 and prior years and 2011 and future years)
- Kansas (for 2009 and prior years)
- Maine
- Maryland
- Massachusetts
- Minnesota
- New York
- Oregon
- Vermont.

Commonwealth of Massachusetts

If you're responsible for the estate of someone who passed away and had resided in Massachusetts, you may need to file an estate tax return. If the estate is worth less than $1,000,000, you don't need to file a return or pay an estate tax. Massachusetts estate tax returns are required if the gross estate, plus adjusted taxable gifts, computed using the Internal Revenue Code in effect on December 31, 2000, **exceeds $1,000,000.**

This guide is not designed to address all questions which may arise nor to address complex issues in detail. Nothing contained herein supersedes, alters or otherwise changes any provision of the Massachusetts General Laws, Massachusetts Department of Revenue Regulations, Department rulings or any other sources of the law.

New York State

For New York State residents, the estate of an individual must file a NY State estate tax return if the total of the federal gross estate plus any taxable gifts made while the individual was a resident of New York State exceeds the New York State basic exclusion amount ($5,250,000) applicable for dates of death on or after April 1, 2017, and on or before December 31, 2018.

Taxable gifts are any gifts taxable under IRC section 2503 made on or after April 1, 2014, that are not otherwise included in the federal gross estate of the individual. Gifts of real or tangible personal property having a location outside of NY State should not be included. Also, gifts made during any period the individual was a non-resident of NY State should not be included.

Connecticut

For decedents dying during 2018, the Connecticut estate tax exemption amount is $2.6 million. Therefore, Connecticut estate tax is due from a decedent's estate if the Connecticut taxable estate is more than $2.6 million. The Connecticut taxable estate is the sum of:

• The decedent's gross estate, as valued for federal estate tax purposes, less allowable federal estate tax deductions, as determined under Chapter 11 of the Internal Revenue Code (IRC); plus

• The aggregate amount of all Connecticut taxable gifts made by the decedent, during his or her lifetime, during all calendar years beginning on or after January 1, 2005, other than Connecticut taxable gifts that are includable in the decedent's federal gross estate; plus

• The amount of any gift tax paid to this state by the decedent or the decedent's estate on any gift made by the decedent or decedent's spouse during the three-year period preceding the date of the decedent's death. The deduction for state death taxes paid under IRC §2058 shall be disregarded. Any reference to Probate Court means the Connecticut Probate Court having jurisdiction of the estate.

Maine

If you answer "yes" to either of the following questions, you must file a Maine estate tax return.

A) Is a federal estate tax return required?

If a federal Form 706 is required, then a Maine estate tax return is also required if there is any Maine property in the decedent's estate.

B) Does the value of the federal gross estate plus taxable gifts made within one year of the date of death plus Maine elective property exceed the filing requirement threshold?

For deaths occurring in 2014 and 2015, the filing threshold is $2,000,000. For deaths occurring in 2016 and 2017, the filing threshold is equal to the federal threshold amount. For 2016 deaths, that amount is $5,450,000; for 2017 deaths, the amount is $5,490,000. For 2018 deaths, the threshold is $5,600,000 and for 2019 deaths, the threshold is $5,700,000.

If the answers to questions A) and B) are "no," you probably do not have to file an estate tax return. However, the fact that a federal Form 706 is not required does not mean that an estate is not liable for Maine estate tax. For example, if the Maine exclusion amount in the year of death is less than the federal exclusion amount, a “gap” estate is created making the estate taxable to Maine but not to the federal government. This would be the case for deaths occurring in 2014, as well as for deaths occurring in 2018 where the Maine exclusion amount is $5,600,000 and the federal exclusion amount is $11,180,000 and for deaths occurring in 2019 where the Maine exclusion amount is $5,700,000 and the federal exclusion amount is $11,400,000. More information on Maine's estate taxability threshold for each year can be found at the Estate Tax homepage on our web site at http://www.maine.gov/revenue/incomeestate/estate.

For deaths occurring in 2016 and 2017, the Maine exclusion amount is the same as the federal exclusion amount ($5,450,000 for 2016 and $5,490,000 for 2017). While there would be no “gap” estate for 2016 and 2017 deaths, tax may still be due if any taxable gifts were made within one year of the date of death or the estate includes Maine elective property.

Vermont

Who Must File - The executor or other fiduciary is required to file a Vermont return when property with situs in Vermont is included in the decedent’s federal gross estate and one or more of the following apply:

1. A Federal Estate Tax Return, Form 706, is required to be filed under section 6018 of the Internal Revenue Code.

2. The sum of the federal gross estate and federal adjusted taxable gifts (as defined in section 2001(b) of the Internal Revenue Code) made within two years of the date of the decedent’s death exceeds $2,750,000.

Filing Due Date - The Vermont Estate Tax Return, Form EST-191 (formerly E-1), is required to be filed within nine (9) months of the death of the decedent.

To receive a six (6) -month extension, file the Vermont Extension form, Form EST-195 (formerly ES-164).

Payment Due Date - Any amount owed is due and payable by the executor or other fiduciary at the time the return is required to be filed. An extension of time to file the return does not extend the time to pay.

The tax estimated to be due must be paid with the extension of time request. Required Information to be Included with the Vermont Return - If no return is due at the federal level, complete a pro forma Federal Form 706, Lines 1-4; Include all **related exhibits and appraisals**.

If no tax is due at the federal level then complete a pro forma Federal Form 706, Lines 1-4.

Include all related exhibits and appraisals. If federal tax is due and all assets are located in Vermont then include the Federal Form 706, excluding exhibits and appraisals. If federal tax is due and some assets are located outside of Vermont, then Include the Federal Form 706, excluding exhibits and appraisals.

Completing a Pro Forma Federal Form 706- The Vermont Estate Tax is computed using certain values located on the federal estate tax form. These values are defined in federal statute, which Vermont statute adopts (except when stated otherwise). Follow the instructions for Federal Form 706 as you complete Lines 1-4.

When Should a Nontaxable Estate Consider Filing Form 706?

Some estates that are not required to file federal estate tax returns should consider filing one anyway to lock in date-of-death fair market values of estate assets. This includes estates that utilize AB Trusts or ABC Trusts, as well as estates that create lifetime trusts for the benefit of non-spouse beneficiaries.

It's typically much easier to settle the estate of a surviving spouse or a non-spouse beneficiary later when an estate tax return has previously been filed because the starting fair market values and step-up in basis of estate assets will be clearly stated on the initial decedent's IRS Form 706.

Foxboro Consulting Group, Inc. –
Business Valuation & Financial Advisory Services,
P.O. Box 141,
Foxboro, MA 02035
Contact: **Ronald J. Adams, CPA, CVA, ABV, CBA, BCA, CFF, FVS, BCA, CGMA at:**
Office: (774) 719-2236 or
Mobile : (508) 878-8390, or
Email at**: adams.r@foxboro-consulting.com**

Internal Revenue Bulletin: 2006-46
November 13, 2006

Notice 2006-96

Guidance Regarding Appraisal Requirements for Noncash Charitable Contributions

---

Table of Contents

- SECTION 1. PURPOSE
- SECTION 2. BACKGROUND
- SECTION 3. TRANSITIONAL GUIDANCE
- SECTION 4. REQUEST FOR COMMENTS
- SECTION 5. PAPERWORK REDUCTION ACT
- SECTION 6. DRAFTING INFORMATION

SECTION 1. PURPOSE

This notice provides transitional guidance relating to the new definitions of "qualified appraisal" and "qualified appraiser" in § 170(f)(11) of the Internal Revenue Code, and new § 6695A of the Code regarding substantial or gross valuation misstatements, as added by § 1219 of the Pension Protection Act of 2006, Pub. L. No. 109-280, 120 Stat. 780 (2006) (the "PPA").

The Service and the Treasury Department expect to issue regulations under § 170(f)(11). Until those regulations are effective, taxpayers may rely on this notice to comply with the new provisions added by § 1219 of the PPA.

SECTION 2. BACKGROUND

A deduction for charitable contributions is generally permitted under § 170(a), subject to certain limitations depending on the type of taxpayer, the nature of the property contributed, and the type of donee organization. Section 170(f)(11), as added by § 883 of the American Jobs Creation Act of 2004, Pub. L. No. 108-357, 118 Stat. 1418 (2004), contains reporting and substantiation requirements relating to the allowance of deductions for noncash charitable contributions. In particular, under § 170(f)(11)(C), taxpayers are required to **obtain a qualified appraisal** for donated property for which a deduction of more than $5,000 is claimed. Under § 170(f)(11)(D), in certain cases the qualified appraisal must be attached to the tax return. For appraisals prepared with respect to returns filed on or before August 17, 2006, existing Treasury Regulations provide a definition of the terms "qualified appraisal" and "qualified appraiser" for purposes of § 170(f)(11).

Section 1219 of the PPA amends § 170(f)(11)(E) and provides statutory definitions of a qualified appraisal and qualified appraiser for appraisals prepared with respect to returns filed after August 17, 2006.

Section 170(f)(11)(E)(i) provides that the term "qualified appraisal" means an appraisal that is (1) treated as a qualified appraisal under regulations or other guidance prescribed by the Secretary, and (2) conducted by a qualified appraiser in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

Section 170(f)(11)(E)(ii) provides that the term "qualified appraiser" means an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization including the **National Association of Certified Valuators & Analysts** (NACVA), the **Institute of Business Appraisers** (IBA), the **American Society of Appraisers** (ASA), and the **American Institute of Certified Public Accountants** (AICPA)], or has otherwise met minimum education and experience requirements set forth in regulations prescribed by the Secretary, (2) regularly performs appraisals for which the individual receives compensation, and (3) meets such other requirements as may be prescribed by the Secretary in regulations or other guidance. Section 170(f)(11)(E)(iii) further provides that an individual will not be treated as a qualified appraiser unless that individual (1) demonstrates verifiable education and experience in valuing the type of property subject to the appraisal, and (2) has not been prohibited from practicing before the Internal Revenue Service by the Secretary under § 330(c) of Title 31 of the United States Code at any time during the 3-year period ending on the date of the appraisal.

Section 1219 of the PPA also adds a new penalty provision. If the claimed value of property based on an appraisal results in a substantial or gross valuation misstatement under § 6662, a penalty is imposed by new § 6695A on any person who prepared the appraisal and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for refund.

SECTION 3. TRANSITIONAL GUIDANCE

.01 *In general*

The Service and the Treasury Department expect to issue regulations under § 170(f)(11), as amended by the PPA. The terms in section 3 of this notice apply to contributions of property (other than readily valued property within the meaning of § 170(f)(11)(A)(ii)(I)) by individuals, partnerships, or corporations for which a deduction of more than $5,000 is claimed on returns filed after August 17, 2006, and before the effective date of the regulations that the Service and the Treasury Department expect to issue. Until regulations are effective under § 170(f)(11), as amended by the PPA, an appraisal that meets the requirements of this notice shall be treated as a qualified appraisal for purposes of § 170(f)(11). The determination of whether an appraiser is qualified under section 3.03 of this notice must be based on the appraiser's qualifications as of the date the appraisal is made.

.02 *Transitional terms-qualified appraisal*

(1) *Qualified appraisal*. An appraisal will be treated as a qualified appraisal within the meaning of § 170(f)(11)(E) if the appraisal complies with all of the requirements of § 1.170A-13(c) of the existing regulations (except to the extent the regulations are inconsistent with § 170(f)(11)), and is conducted by a qualified appraiser in accordance with generally accepted appraisal standards. See sections 3.02(2) and 3.03 of this notice.

(2) *Generally accepted appraisal standards*. An appraisal will be treated as having been conducted in accordance with generally accepted appraisal standards within the meaning of § 170(f)(11)(E)(i)(II) if, for example, the appraisal is consistent with the substance and principles of the Uniform Standards of Professional Appraisal Practice ("USPAP"), as developed by the Appraisal Standards Board of the Appraisal Foundation. Additional information is available at *http://www.appraisalfoundation.org*.

.03 *Transitional terms-qualified appraiser*

(1) *Appraisal designation*. An appraiser will be treated as having earned an appraisal designation from a recognized professional appraiser organization within the meaning of § 170(f)(11)(E)(ii)(I) if the appraisal designation is awarded on the basis of demonstrated competency in valuing the type of property for which the appraisal is performed.

(2) *Education and experience in valuing the type of property*. An appraiser will be treated as having demonstrated verifiable education and experience in valuing the type of property subject to the appraisal within the meaning of § 170(f)(11)(E)(iii)(I) if the appraiser makes a declaration in the appraisal that, because of the appraiser's background, experience, education, and membership in professional associations, the appraiser is qualified to make appraisals of the type of property being valued. *See also* § 1.170A-13(c)(5).

(3) *Minimum education and experience*. An appraiser will be treated as having met minimum education and experience requirements within the meaning of § 170(f)(11)(E)(ii)(I) if —

(a) *For real property*

(i) For returns filed on or before October 19, 2006, the appraiser is qualified as a "qualified appraiser" within the meaning of § 1.170A-13(c)(5) to make appraisals of the type of property being valued.

(ii) For returns filed after October 19, 2006, the appraiser is licensed or certified for the type of property being appraised in the state in which the appraised real property is located.

(b) *For property other than real property* —

(i) For returns filed on or before February 16, 2007, the appraiser is qualified as a "qualified appraiser" within the meaning of § 1.170A-13(c)(5) to make appraisals of the type of property being valued.

(ii) For returns filed after February 16, 2007, the appraiser has (A) successfully completed college or professional-level coursework that is relevant to the property being valued, (B) obtained at least two years of experience in the trade or business of buying, selling, or valuing the type of property being valued, and (C) fully described in the appraisal the appraiser's education and experience that qualify the appraiser to value the type of property being valued.

.04 *Applicability of reporting and substantiation regulations*

(1) *In general*

The requirements of § 1.170A-13(c) of the existing regulations concerning qualified appraisals and qualified appraisers continue to apply to all taxpayers, including those to whom the transitional guidance in this section may apply, except to the extent the regulations are inconsistent with the provisions of § 170(f)(11). In particular, all taxpayers are required to comply with §§ 1.170A-13(c)(3), (c)(5), (c)(6) and (c)(7).

(2) *Revision to appraiser declaration*

For returns filed after February 16, 2007, the declaration required under § 1.170A-13(c)(5)(i) must include an additional statement that the appraiser understands that a substantial or gross valuation misstatement resulting from an appraisal of the value of property that the appraiser knows, or reasonably should have known, would be used in connection with a return or claim for refund, may subject the appraiser to a civil penalty under § 6695A. *See also* § 1.170A-13(c)(3)(iii).

SECTION 4. REQUEST FOR COMMENTS

The Service and the Treasury Department invite comments containing suggestions for future guidance under § 170(f)(11), including regulations. In particular, comments are requested concerning the definition of the following terms: (1) “generally accepted appraisal standards” in § 170(f)(11)(E)(i)(II); (2) “appraisal designation from a recognized professional appraisal organization” in § 170(f)(11)(E)(ii)(I); (3) “minimum education and experience requirements” in § 170(f)(11)(E)(ii)(I); and (4) “verifiable education and experience in valuing the type of property subject to the appraisal” in § 170(f)(11)(E)(iii)(I). Comments also are requested on the potential impact any guidance under § 170(f)(11) may have on small businesses.

Comments should refer to Notice 2006-96 and be submitted by January 17, 2007, to:

Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Attn: CC:PA:LPD:PR
Room 5203

Alternatively, comments may be submitted electronically via e-mail to the following address: *Notice.Comments@irscounsel.treas.gov*. All comments will be available for public inspection and copying.

SECTION 5. PAPERWORK REDUCTION ACT

The collections of information in this notice have been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1953.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collections of information in this notice are in section 3 of this notice. The collections of information are required from donors to satisfy the substantiation requirements of § 170(f)(11). The collections of information are required from donors to obtain a benefit. The likely respondents are individuals, partnerships, and corporations.

The estimated total annual reporting burden is 161,571 hours.

The estimated annual burden per respondent varies from 5 minutes to 5 hours, with an estimated average of approximately 3.5 hours. The estimated number of respondents is 46,285.

The estimated annual frequency of responses (used for reporting requirements only) is once per year.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by § 6103.

SECTION 6. DRAFTING INFORMATION

The principal author of this notice is Susan J. Kassell of the Office of Associate Chief Counsel (Income Tax & Accounting). For further information regarding this notice, contact Susan J. Kassell at (202) 622-5020 (not a toll-free call).