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IRS EXTENSIONS FOR ESTATES OF DECEDENTS WHO DIED IN 2010

The Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (the 2010 Tax Relief Act) reinstated the estate tax for decedents dying in 2010. Under the 2010 Tax Relief Act, executors of estates of 2010 decedents were given a choice between the previous 2010 tax regime of no estate tax with a modified carryover basis (subject to certain adjustments) and the 2011 tax regime of an estate tax at a 35% top rate and a \$5 million exemption with a stepped-up basis. Until this fall, the Internal Revenue Service had not released a final Form 706 (Federal Estate Tax Return) or Form 8939 (Allocation of Increase in Basis for Property Acquired From a Decedent), with instructions that prohibited executors from making informed decisions regarding which form to file. The Internal Revenue Service recently announced that the filing deadlines for various required returns and for paying any estate taxes due have been extended into 2012. The extensions are designed to give large estates (typically those exceeding \$5 million) time to evaluate both tax regimes and to comply with the new tax laws. In addition to the extensions, the IRS has also provided penalty relief to certain beneficiaries of these estates. Please note that these provisions only apply where the decedent died in 2010.

Extension for IRS Form 8939

For large estates where executors have decided to opt out of the estate tax and file an IRS Form 8939 (Allocation of Increase in Basis for Property Acquired From a Decedent), the filing deadline has been extended from Tuesday, November 15 to Tuesday, January 17, 2012. This is an automatic extension and so no additional filings are required to have this new date apply. The deadline was extended from the previous deadline of November 15, 2011 to allow executors additional time to comply with and understand the new reporting requirements under this tax regime.

Extension for IRS Form 4768

IRS Form 4768 (Application for Extension of Time to File a Return and/or Pay U.S. Estate and Generation Skipping Transfer Taxes) also provided additional relief to executors of 2010 estates. Many executors who were uncertain about whether to elect carryover basis filed an extension for time to file an Estate Tax Return, Form 4768, in order to preserve the option to file an Estate Tax Return if the executor later determined it was the most advantageous to the estate once the final tax forms were released. As part of the IRS's announcement regarding filing deadlines, the IRS extended the deadline to file an Estate Tax Return, Form 706, and to pay any estate tax due to March 19, 2012 (or 15 months from the date of death for a decedent dying between December 16, 2010 and January 1, 2011) for those executors that filed the Form 4768 on or before the original due date of September 17, 2011. Prior to the IRS's announcement of filing extensions, a six-month filing extension was automatically granted to estates filing this form, but extensions for time to pay estate tax were granted only for good cause. The extension for 2010 estates applies to both the time to file an Estate Tax Return and the payment of any estate tax due, however, the IRS noted that interest will accrue on the estate tax liability from the due date of the return, excluding extensions.

Penalty Relief for Beneficiaries

Due to the various extensions granted to executors of 2010 estates, many executors failed to determine if a carryover basis election would be made by the time 2010 Federal Individual Income Tax Returns were due. As a result, beneficiaries who received property from 2010 estates and sold the property in 2010 may have incorrectly reported gains from the sale of that property because the beneficiary was unclear as to which tax regime the executor was going to elect. The IRS announced that those beneficiaries are required only to make a good faith estimate in reporting basis information. Late payment and negligence penalty relief will be granted if a tax increase results by reason of the executor's carryover basis election.

This *Trusts and Estates Perspectives* provides general information and should not be construed as legal advice or a legal opinion. Readers should seek legal counsel concerning specific factual situations confronting them.