

Notice of Proposed Rulemaking and Notice of Public Hearing

Estate Tax Return; Form 706, Extension To File

REG-106511-00

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the filing of an application for an automatic 6-month extension of time to file an estate tax return (Form 706). The proposed regulations provide guidance to executors of decedents' estates on how to properly file the application for the automatic extension. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by January 19, 2001. Outlines of topics to be discussed at the public hearing scheduled for January 24, 2001, at 10 a.m., must be received by January 3, 2001.

ADDRESSES: Send submissions to: CC:M&SP:RU (REG-106511-00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:M&SP:RU (REG-106511-00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at <http://www.irs.gov/taxregs/reglist.html>. The public hearing will be held in Room 4716, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Mary A. Berman, (202) 622-3090;

concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita Van Dyke, (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224. Comments on the collection of information should be received by December 19, 2000. Comments are specifically requested concerning:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collection of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collection of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

The collection of information in this proposed regulation is in §20.6081-1(b). To receive an extension of time to file an estate tax return, the executor of a decedent's estate must file Form 4768, "Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes."

This information is required to obtain a benefit (an automatic 6-month extension of time to file an estate tax return). The collection of information is mandatory if the extension is requested. The likely respondents are executors of decedents' estates.

The reporting burden contained in §20.6081-1(b) is reflected in the burden of Form 4768, "Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes."

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 tax information are confidential, as required by 26 U.S.C. 6103.

Background

In 1970, Congress amended section 6075(a) to provide that the Federal estate tax return is to be filed within 9 months after the date of the decedent's death. Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return; however, except in the case of taxpayers who are abroad, no such extension may be for more than 6 months.

Under the current regulations, the district director or the service center has the discretion to grant an extension of time to file an estate tax return upon a showing of "good and sufficient cause." Except in the case of executors who are abroad, the extension may not be granted for more than 6 months. Requests for an extension of time to file are made by completing Form 4768, "Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes." Upon receipt of a Form 4768, the IRS reviews the application, makes a determination, and notifies the applicant as to whether an extension is approved and, if so, the length of the extension.

In 1998, 110,100 estate tax returns were filed. In a significant number of these cases, the executors requested an extension of time to file. A majority of the applications requested and received the maximum 6-month extension allowed by the statute and the regulations. The IRS and the Treasury Department believe that executors of decedents' estates would benefit from the certainty created by an automatic 6-month extension of time to file Form 706 and that it is appropriate to provide for the extension.

Explanation of Provisions

Under the proposed regulations the executor of a decedent's estate will be allowed an automatic 6-month extension of time to file Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return," beyond the 9 months provided for by section 6075(a). The application for the automatic extension must be submitted on Form 4768 (or in any other manner as may be prescribed by the Commissioner). The application must be filed with the IRS on or before the date prescribed by section 6075(a) for filing the Form 706 and it must include an estimate of the full amount of tax due. The automatic extension of time does not apply to filers of Forms 706-A, 706-D or 706-NA who will continue to use Form 4768 to request extensions of time to file and pay estate taxes. The automatic extension of time also does not apply to filers of Form 706-QDT who will continue to request any extension of time as provided in the instructions for Form 706-QDT. The proposed regulations continue to permit executors who are abroad to request extensions beyond the automatic 6-month period.

A return as complete as possible must be filed before the expiration of the automatic 6-month extension period. The return as filed will be the return required by section 6018(a)(1). An extension of time for filing the return does not operate to extend the time for payment of the tax.

The proposed regulations also revise §20.6075-1 to conform to the changes proposed in §20.6081-1.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Exec-

utive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the regulations will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely (in the manner described in ADDRESSES) to the IRS. Treasury and the IRS specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for January 24, 2001, at 10 a.m. in Room 4716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the "FOR FURTHER INFORMATION CONTACT" section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit comments by January 3, 2001, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by January 3, 2001. A period of 10 minutes will be allotted to each person for making

comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Mary A. Berman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR part 20 is proposed to be amended as follows:

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 20.6081-1 also issued under 26 U.S.C. 6081(a). * * *

Par. 2. Section 20.6075-1 is revised to read as follows:

§20.6075-1 Returns; time for filing estate tax return.

The estate tax return required by section 6018 must be filed on or before the due date. The due date is the date on or before which the return is required to be filed in accordance with the provisions of section 6075(a) or the last day of the period covered by an extension of time as provided in §20.6081-1. The due date, for a decedent dying after December 31, 1970, is, unless an extension of time for filing has been obtained, the day of the ninth calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred, except that, if there is no numerically corresponding day in such ninth month, the last day of the ninth month is the due date. For example, if the decedent dies on July 31, 2000, the estate tax return and tax payment must be made on or before April 30, 2001. When the due date falls on Saturday, Sunday, or a legal holi-

day, the due date for filing the return is the next succeeding day that is not Saturday, Sunday, or a legal holiday. For the definition of a legal holiday, see section 7503 and §301.7503-1 of this chapter. As to additions to the tax in the case of failure to file the return or pay the tax within the prescribed time, see section 6651 and §301.6651-1 of this chapter. For rules with respect to the right to elect to have the property valued as of a date or dates subsequent to the decedent's death, see section 2032 and §20.2032-1, and section 7502 and §301.7502-1 of this chapter. This section applies to estates of decedents dying after August 16, 1954.

Par. 3. Section 20.6081-1 is revised to read as follows:

§20.6081-1 Extension of time for filing the return.

(a) *Extensions of time for good cause shown.* Where it is impossible or impracticable to file a reasonably complete return within the time prescribed by statute, the person required to file the return may request an extension of time for filing. Except as provided in paragraph (b) of this section, an extension of time for filing an estate tax return is not automatic and is within the discretion of the Internal Revenue Service. Unless the person required to file the return is abroad, an extension may not be granted for more than 6 months from the filing date prescribed by statute. Requests for an extension of time for filing are made by submitting Form 4768, "Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes." The application must contain a full recital of the causes for the delay. It should be filed with the Internal Revenue Service office designated in the application's instructions (except as provided in §301.6091-1(b) of this chapter for hand-carried documents). The application should, where possible, be filed sufficiently early to permit the Internal Revenue Service time to consider the matter and reply before what otherwise would be the due date of the return. Failure to file the application before the expiration of the time within which the return otherwise must be filed may indicate negligence and constitute sufficient cause for denial of the extension.

(b) *Automatic extension*—(1) *Application for extension.* Executors who are required to file Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return," may request an automatic 6-month extension of time beyond the date prescribed in section 6075(a) for filing the return by submitting Form 4768, "Application for Extension of Time To File a Return and/or Pay U. S. Estate (and Generation-Skipping Transfer) Taxes." An automatic extension will be allowed if—

(i) The application is filed on or before the date prescribed in section 6075(a) for filing the return;

(ii) The application is filed with the Internal Revenue Service office designated in the application's instructions (except as provided in §301.6091-1(b) of this chapter for hand-carried documents); and

(iii) The application includes an estimate of the amount of estate and generation-skipping transfer tax liability with respect to the estate.

(2) *Executors who are abroad.* If an executor who is abroad has received an automatic 6-month extension, the executor may request an additional extension of time by following the procedures in paragraph (a) of this section.

(c) *Filing the return.* A return as complete as possible must be filed before the expiration of the extension period. The return thus filed will be the return required by section 6018(a), and any tax shown on the return will be the amount determined by the executor as the tax referred to in section 6161(a)(2), or the amount shown as the tax by the taxpayer upon the taxpayer's return referred to in section 6211(a)(1)(A). The return cannot be amended after the expiration of the extension period although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax on the return.

(d) *Payment of the tax.* An extension of time for filing a return does not operate to extend the time for payment of the tax. See §20.6151-1 for the time for payment of the tax, and §§20.6161-1 and 20.6163-1 for extensions of time for payment of the tax.

(e) *Effective date.* This section applies to estates of decedents dying after August 16, 1954, except for paragraph (b) of this sec-

tion which applies to estate tax returns due after the date these regulations are published as a final regulation in the **Federal Register**.

Robert E. Wenzel,
Deputy Commissioner
of Internal Revenue.

(Filed by the Office of the Federal Register on October 19, 2000, 8:45 a.m., and published in the issue of the Federal Register for October 20, 2000, 65 F.R. 63025)