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# DEATH & TAXES

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# Death & Taxes

by David Silver

In addition to the emotional difficulties of losing a loved one, the unfamiliarity of the nuts and bolts of handling the affairs of a deceased person often increases the stress and burden of dealing with a death. However, the tax implications of someone's death is not nearly as burdensome nor complicated as many people imagine.

The estate tax, sometimes referred to as the death tax or the gift tax, is a tax on funds a person gives to other people either during life or at death. There is no tax on assets on any amount given to a spouse, but there is a tax on assets given away to others. However, there is an exemption amount, which is the amount a person can give away without incurring this tax. This exemption amount is currently over \$11 million, and it is scheduled to go down to about \$6 million in 2026. If a person and their spouse aren't going to have near \$6 million of assets, then there is no need to be scared or concerned about the estate/death/gift tax.

The capital gains tax is a tax on the gains made on long-term investments. If your grandmother purchased farmland for \$40k in 1980, this purchase price is considered the land's tax "basis." If your grandmother

now sells the land for \$140k, she would have a gain of \$100k over the basis and would probably owe a capital gains tax of up to 20% on this gain. If your grandmother gave this property to you and you sold the land, your basis would be the same as your grandmother's basis, so you would owe capital gains tax on this \$100k gain. However, if you inherit this land as a result of your grandmother's death, then you get a "stepped up basis," meaning your basis in the land becomes the value of the property on the date of your grandmother's death. Therefore, when you eventually sell the property, you would owe capital gains tax only on the gain (if any) after your grandmother's death, meaning you would likely not owe any capital gains tax if you sold the land soon after her death. If you never sell the property, there is no capital gains tax. There is currently a proposal floating around congress to limit the stepped-up basis to \$1 million, but I have no insight on the likelihood of this proposal ever being voted upon, let alone becoming law.

We all are supposed to file income tax returns every year, and death is no excuse. The tax return process for a dead person is virtually the same as if the person were still living. However, just like a living person, a deceased person doesn't have to file a return if the deceased didn't earn enough income in the year. If a person dies in January, then it is less likely that a tax return will be required than if a person dies in December. A surviving spouse may

file one last joint tax return for the year of death, but is not required to do so. A person appointed as the personal representative of the deceased person's estate is responsible for filing the tax return for the deceased. In theory, this personal representative is supposed to file a tax return even if the amount of tax owed or the amount of refund would be very small. Also in theory, you could get a speeding ticket for driving 57 in a 55 mph zone, so use good judgment. If you are not the personal representative, then you do not have the authority to file the taxes even if you inherited all of the deceased's property outside of probate. You could open the estate for the sole purpose of filing a tax return, but that is not your responsibility.

Sometimes the deceased earns money after death. This often happens with stock investments or when IRAs are liquidated. If the deceased earns too much money, the estate will have to file a tax return. The estate could pay the taxes on these earnings directly, but the tax rate that applies to estates is very high. Therefore, it is usually better for these earnings to be passed on to the heirs of the estate, then these earnings get added on to the individual tax returns of the heirs in portion to their shares of the estate.

Probate fees are like a tax payable to the clerk of court for assets that you need the clerk's help to transfer after death. If assets are in a trust or have an automatic "Pay on Death" beneficiary, then they are not

subject to a probate fee. In some states, probate fees can be very expensive. In North Carolina, there is usually no probate fees on land, the fee is only four-tenths of one percent on probate assets, and there is a cap of \$6,000.00 which is reached with \$1.5 million of probate assets. Be wary of incurring thousands of dollars on estate planning or capital gains taxes in order to avoid hundreds of dollars in probate fees.

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