Preparing Form 706
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FYI:

I wanted to share my seminar material for my upcoming presentation on preparing Form 706 Federal Estate and Gift Tax Return.

Preparing the Federal Estate Tax Return (Form 706)
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I. Overview
A. Estate Tax Return (Form 706) – (the purpose of the tax and the form)
Chapter 11 Section 2001(a) of the Internal Revenue Code (IRC) states that a tax is imposed on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States. This tax is neither a property tax nor an inheritance tax. It is a tax imposed upon the transfer of the entire taxable estate and not on a particular legacy, devise, or distributive share. This tax is reported on Form 706. Form 706 is essentially a net worth statement. As the preparer you are required to determine the decedent's financial situation at the date of death. Then, by the return due date, which is nine months after the date of death (or 15 months if an extension is filed using Form 4768 (Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes"), the preparer must complete a detailed listing of the decedent's assets and liabilities.

II. Present law under EGTRRA
and Pending Legislation on Gift and Estate Taxes under ETETRA
A. Present Law. The present law under Economic Growth Tax Relief Reconciliation Act of 2001 ((“EGTRRA” or “Tax Act of 2001”) provides for a phase-in reduction of the estate, gift, and GST tax rates, and a phase-in increase in the estate, gift, and GST tax applicable exemption exclusion amounts, and a repeal of the federal estate tax and GSTT for persons dying in year 2010. The Tax Act of 2001 does not repeal the gift tax, but gift tax rates will be reduced after year 2009. Recapture provisions under IRC §2032A, IRC §2057, and IRC §6166 acceleration of payments continue to apply even during sunset year of 2010. See A Practical Guide to Drafting Martial Deduction Trusts, (ALI-ABA, Philadelphia, 2004), authored by Sebastian Grassi Jr., (p. 12, §1.9, for a more detailed discussion). Then, on January 1, 2011, the Tax Act of 2001 sunset provision repeals all theses changes and reinstates the pre-2001 Tax Act transfer structure. The table below summaries the Tax Act of 2001:

Year of Gift or Death	Federal Estate & GST Exemption Equivalent Amount	Federal Estate, GST, & Gift Tax Rates	Gift Tax Exemption Amount
2004	$1,500,000.00	45%-48%	$ 1,000,000.00
2005	$1,500,000.00	45%-47%	$ 1,000,000.00
2006	$2,000,000.00	Flat 46%	$ 1,000,000.00
2007	$2,000,000.00	Flat 45%	$ 1,000,000.00
2008	$2,000,000.00	Flat 45%	$ 1,000,000.00
2009	$3,500,000.00	Flat 45%	$ 1,000,000.00
2010	Taxes repealed	0% FET, GST & 35% Gift	$ 1,000,000.00

2011 $1,000,000 FET; $1.1m GST 37%-55% $ 1,000,000.00

B. Modified Carryover Basis. The Tax Act of 2001 repealed the estate tax and generation-skipping transfer (GST) tax for decedents dying after December 31, 2009. At that time, the present “step-up” (IRC §1014) basis rules will be replaced with a modified carryover basis system for persons receiving property from a decedent. Under this modified tax basis, the decedent’s executor may allocate up to $1.3 million of basis increase to appreciated assets owned by the decedent. IRC §1022(b)(2)(B). This $1.3 million amount is adjusted for inflation. Non-resident aliens are entitled to a basis increase of only $60,000 and not $1.3 million. IRC §1022(b)(3). See. The maximum amount that any asset can be increased to is the fair market value at the decedent’s date of death. The basis increase can be applied to some or not to other assets. Assets passing to a surviving spouse may be entitled to an additional $3 million of basis increase. IRC §1022(c)(2)(B). See Grassi, (p. 13, §1.9(a), for a more detailed discussion).
1. Pre-2001 Tax Act Reinstatement. In year 2011, the estate and GST transfer tax provisions in effect prior to the 2001 Tax Act will be reinstated/resurrected and the gift tax provisions will be returned to their 2001 status. The estate tax applicable exclusion amount will be $1 million and the maximum estate tax rate will be 55% plus a 5% surtax on certain estates. The GST exemption will be $1.1 million and the maximum GST transfer tax rate will be 55%. The gift tax applicable exclusion amount will be $1 million. The modified carry-over basis under §1022 will no longer apply. Also, the full credit for state death taxes under §2011 will be restored and §2058 will no longer apply. The QFOBI deduction on Schedule T will be restored under IRC §2057.
C. Pending Legislation on Estate and Gift Taxes (this is the closest thing we have to a change in the current law). In the past 2 years the House of Representatives has voted to permanently repeal the estate tax, but the Senate majority leaders could not obtain the 60 votes needed under Senate procedural rules to close the debate and allow a Senate vote on permanent repeal. In response, the House Republicans offered an estate tax reform bill instead of a full repeal in an effort to pass legislation before the 2006 elections. In order to obtain the 60 votes needed in the Senate, majority leaders in the House and Senate decided to link their proposed estate tax reform with an increase in the minimum wage and the extension of certain tax benefits not previously extended in Tax Increase Prevention & Reconciliation Act of 2005 (“TIPRA”), such as the extension of the research credit. They did so in the “Trifecta Bill” which ultimately failed passage in the Senate and has not become law. However, this bill has traveled further through Congress than most other and some form of this bill will probably be used as the platform to extend the expiring provisions of the Tax Act of 2001. Most Democrats objected to the estate tax provisions in ETETRA, and a vote to close the debate in the Senate failed by 56 to 44 (which includes 2 present/not voting) shortly before Congress took its summer recess on August 3, 2006 (see attached govtrack.com printout). As of August 15, 2007, Congress has yet to act.
1. Reunification of the Estate and Gift Taxes under ETETRA. The estate and gift taxes were unified in 1976 with the same equivalent exemption amount and the tax rates applying to both taxes. The Tax Act of 2001 repealed the estate tax in year 2010, but not the gift tax. In addition, the Tax Act of 2001 limited the exemption amount for gift taxes to $1,000,000 while increasing the exemption amount of estate taxes to $3,500,000 in year 2009. ETETRA proposes to reunify the exemption amount and the tax rates for both estate and gift taxes in 2010.
2. Proposed Changes to the Exemption amount and rates. The exemption amount would increase in increments of $250,000 per year for years 2010 through 2015. Then in year 2016 and thereafter, the exemption (for estate, GST, and gift taxes) amount would increase according to inflation adjustments. A tax rate equal to the long-term capital gain rates under §1(h)(1)©, which is currently 15% through year 2010 and 20% thereafter would be in effect on the date of the decedent’s death or the last day of the year in which a gift tax is made would apply to the first $25,000,000 of cumulative transfers. Cumulative transfers in excess of $25,000,000 would be taxed at a rate of 40% in 2010, with that rate decreased 2% each year until the rate is 30% in 2015. See the table below.

Year of Gift or Death	Exclusion amount for estate, GST, and gift taxes	Highest Estate and Gift Tax Rates
2010	$3,750,000.00	40%
2011	$4,000,000.00	38%
2012	$4,250,000.00	36%
2013	$4,500,000.00	34%
2014	$4,750,000.00	32%
2015	$5,000,000.00	30%
Years after 2015	$5,000,000 indexed for inflation	30%

3. Computation of Transfer Taxes. Under the Tax Act of 2001, current-year taxable gifts are placed on top of prior year taxable gifts for purposes of applying the marginal tax rates each year. Estate taxes are then calculated by summing the taxable estate on top of the taxable gifts made during life and after December 31, 1976. ETETRA proposes to account for the differences between the revised rate schedule effective in 2010 and prior, by taking the rates in effect on the date of a decedent’s death as the rate used in determining the tax on prior transfers and the credit available to offset such tax.
4. Stepped-Up Basis will be Retained. The Tax Act of 2001 provides for the repeal of the estate tax in 2010 and the replacement of the present stepped-up basis with a modified step up in basis. However, ETETRA would repeal the modified rules under the Tax Act of 2001 and reinstate the historical rule that property that passes from a decedent to a beneficiary is to receive a basis equal to the fair market value of the property on the date of death.
5. Repeal of the State Death Tax Credit. ETETRA would continue the repeal of the state death tax credit and NO deduction would be allowed for death taxes paid to any state.
6. Effective Date. The new provisions would be effective for estates of decedents dying, GST transfers made, and gifts made after December 31, 2009.

III. Filing Form 706
A. Filing Basics
1. Which Estates Must File? Form 706 must be filed by the executor for the estate of every U.S. citizen or U.S. residents whose gross estate plus the adjusted taxable gifts (i.e. gifts after gift-splitting and annual exclusions §2053(b) made after December 31, 1976) exceed the IRC §2010(c) applicable exemption amount. In this seminar material, the applicable exemption amount may be referred to as the “estate tax free amount”. For years 2006, 2007 & 2008 the estate tax free amount is $2,000,000. The estate tax free amount equates to $780,800 of applicable tax credit.
The estate tax is also imposed on nonresident aliens who have assets situated in the United States at death. IRC §2103. The estate tax free amount for nonresident aliens is $60,000 which equates to $13,000 of a tax credit. This amount does not increase under the Tax Act of 2001 See IRC §2102(b)(1). Check the Treaty provisions applicable to non-resident aliens.
If the value of the decedent’s estate equals or exceeds the estate tax free amount, then Form 706 should be filed timely. If the adjusted gross estate plus adjusted taxable gifts is less than the estate tax free amount, it still may be prudent to file Form 706 in order to:
a. Establish a step-up in basis for the assets.
b. Start the running of the statute of limitations (IRC §6501).
c. Avoid penalties for failure to file in the event that additional assets are later discovered which could make the estate exceed the estate tax free amount.
2. Gross Estate. The gross estate includes the value of all property, real or personal, tangible or intangible, wherever located in which the decedent had an interest IRC §2033. The gross estate also includes certain transfers made during the decedent’s life which were made without full and adequate consideration in money or money’s worth.
3. When to Start Gathering Information? Information gathering should start as soon as practically possible after death. Determining value of property and researching legal such as whether property is includable in the estate usually takes a lot of time. I recommend that you establish a folder or “binder method” for organizing information and research.
4. When to File. The Federal Estate Tax Return is due nine months after the date of death (IRC §6075(a)), assuming no extension was requested.
a. If there is no numerically corresponding date nine months after the date of death, the return will be due the last date of the ninth month. Thus, for a decedent who dies on December 31, the return is due on September 30.
b. If the due date is a Saturday, Sunday, or legal holiday (the term legal holiday includes those recognized by the District of Columbia as well as any state-wide legal holidays of the state where the filing is required IRC §301.7503-1(b)) the return is due the next business day.
5. Where to File. The executor is required to file form 706 at the Cincinnati Service Center, Cincinnati, OH 45999, regardless of whether the decedent was a U.S. citizen residing in the U.S., a resident alien, or a nonresident alien.
6. Methods of Delivery. See the instructions to Form 706 for more details on how to meet the “timely mailing and timely filing/paying” rules for tax returns and payments.
a. Walk-in Call you local IRS office and obtain the proper procedure. Always take at least one additional copy of the return (or just the signature page of the additional copy) and have both time-stamped to serve as your proof of the return being submitted by the IRS.
b. U.S. Postal Service. Mail by certified mail using the U.S. Postal service. The return is considered received timely if mailed on or before the due date even if it is not actually received until after the due date.
c. DHL Express (DHL): DHL Same Day Service, DHL Next Day 10:30am, DHL Next Day 12:00pm, DHL Next Day 3:00pm, and DHL 2nd Day Service.
d. Federal Express (FedEx). FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2 Day, FedEx International Priority, FedEx International First.
7. Payments. Checks should be made payable to the “U.S. Treasury.” Also, put the decedent’s name, social security number and reference Form 706 in the memo line.
8. Amended Returns. The regulations do not permit “amending” a 706 after the due date (including extensions), but “Supplemental Information” may be filed. Reg. §20.6081-1(d). File another form 706 and write the phrase “Supplemental Information” across the top of page 1 of the return. Then, attach a copy of pages 1,2, & 3 of the originally filed Form 706 to the supplemental Form 706. If the originally filed Form 706 is under IRS examination, then do not submit supplemental information, rather provide the additional information directly to the IRS Agent conducting the examination.
9. Specific Instructions. You must file the first three pages of Form 706 and all required schedules. Every line of the Recapitulation must have a numeric value even if that value is zero.
10. Attachments to 706. Once Form 706 is prepared and completed, then staple all required pages together in proper order. Staple the following attachments to the return:
1. Death certificate
2. Certified Copy of Will
3. Appraisals – real and personal property
4. Documentation for value of closely held business interests
5. Copies of trust(s)
6. Power of appointment instruments
7. State certification of payment of death taxes
8. Form 4768 – Extension of time to file
9. Form 2848 – Power of Attorney
10. Copies of Form 709 which were previously filed

11. Form 712
12. Form 706-CE if claiming a foreign death tax credit
13. Explanation of reasonable cause for late filing, if applicable.
14. §2204 letter
15. Evidence of payment of state death taxes
16. If it is time to file the Federal Estate Tax Return and you do not have all the exhibits, insert a letter stating that an attachment will be supplied at a later date, so that the IRS knows that you know that an attachment was required, but it was not available at the time of filing the return. If all documents are not filed with the return, then the processing of the return may be delayed.

IV. Extensions
B. Extensions are appropriate when information necessary to file the return is lacking.

1. Extension to File (Form 4768): Send by certified mail at least two or three months before the return is due. This is a request for an automatic 6 months extension to file the return. This is the maximum amount of additional time you can request to file the return. Indicate by checking the box on Part 1 Line 9 of the 706.
2. Extension to Pay (Short extension – see Form 4768): A §6161 election can be made on Form 4768. Form 4768 is a request for a 12-month extension of time to pay an estate tax liability. This extension of time to pay is granted based on IRS discretion and a finding of reasonable cause. In general, an extension of time to pay will be granted ONLY for the amount of the cash shortage. Show on Part V of Form 4768 the amount of the estate (and GST) tax; the amount of the cash shortage, and balance due. To avoid penalties and additional interest, you must pay any balance due with this form. See Reg. §20.6161-1(a)(1).
a. Reasonable cause extension would be based on:
A. Insufficient liquid assets to pay the tax when due; (e.g. majority of assets are business interests or real property)
B. Assets are in other jurisdictions and are not attainable by the personal representative;
C. There are rights to receive payment in the future;
D. Assets have to be collected in litigation.
b. Long extension. §6161(a)(2) permits a much longer extension of time for payment for “undue hardship.” See IRC Reg. §20.6161(a)(2).   Undue hardship means more than a mere inconvenience. A long-term extension will be issued for up to 10 years. If the extension is granted, interest will be payable at normal rates.
c. If the application is denied, there are appeal rights. Appeals must be sent to the IRS Official whose name appears at the bottom of page 2 of the Form 4768 denying the extension, and be filed within 10 days after the denial is mailed to the executor. The appeal is considered filed on the date it is postmarked. Send appeal by registered or certified mail, Federal Express, or by hand delivery.
3. Filing late without an extension:
a. If the estate tax return is filed late, the §6166 election (for closely held businesses) will be lost, but probably will not affect the following other elections: Qualified Terminal Interest Property (QTIP), alternative valuation, and Special Use Valuation (on the first filed return).
A. The only estate tax election that qualifies for a 12-month automatic extension after the original deadline for election under Reg. §301.9100-2(a)(2) is the §2032A(d)(1) Special Use Valuation. This valuation is only available if the IRS has not begun a review of the filed estate tax return.
b. Interest is always imposed and is not waived
4. Penalties:
a. Late Filing Penalties. §6651(a)(1) imposes a penalty of 5 percent (with a maximum of 25 percent) of the amount of the tax for each month of delinquency in filing (determined with regard to any extension of the time for filing), unless the delay is “due to reasonable cause and not due to willful neglect.” Therefore, the executor has a non-delegable duty to file the return on time.
b. Late Payment Penalties. There are also late payment penalties of ½ percent per month on the unpaid tax for each month or fraction of a month where the tax is unpaid to a maximum of 25% unless the failure to pay is due to reasonable cause and not willful neglect. IRC §6651(a)(2).
c. Both late filing and late payment penalties combined. In months where both the late payment and late filing penalties apply, the penalty for late filing is reduced by the penalty for failure to pay the tax. IRC §6651(c)(1).
d. Civil Fraud Penalty. If the IRS determines that the unpaid tax is due to fraud, there is an additional 75% penalty on the unpaid portion. IRC §6663(a).   If any portion of an underpayment is attributed to fraud, then the entire underpayment will be treated as attributable to fraud unless the taxpayer establishes by a preponderance of the evidence that it was not attributable to fraud. IRC §6663(b).
e. Substantial Estate or Gift Tax Valuation Misstatement Penalties. If the under-payment of estate tax is attributable to a “substantial estate or gift tax valuation understatement,” (§6662(b)(5)), then the estate will owe, in addition to the underpayment amount, a penalty equal to 20 percent of the underpayment amount. §6662(a). The penalty does not apply unless the underpayment attributable to a substantial estate or gift tax valuation understatement exceeds $5,000. §6662(g)(2). A substantial understatement occurs when the value of property included in the gross estate is 65 percent (see 109 P.L. 280 Section 1219 for modifications to the thresholds for substantial and gross valuation misstatements; Prior threshold was 50%) or less of the finally determined value. §6662(g)(1).   Therefore, if the value stated on the estate tax return is $130,000, but the actual value is determined to be $200,000 or more, the substantial underpayment penalty applies.

A. Reasonable cause exception. Section 6664(c) offers a safe harbor from the substantial understatement penalty. If the personal representative can prove that there was reasonable cause for the understatement and that the personal representative acted in good faith with respect to any portion of the valuation, the substantial understatement penalty will not apply to that portion. §666(c). Reliance on a professional appraiser alone will not provide relief from penalty. Reg.1.6664-4(b)(1). Consideration must also be given to the information supplied to the appraiser, and relationship of the appraiser to the interested parties, and the competency of the appraiser. See Reg. §1.6664-4(b)(1).
f. Gross Estate or Gift Tax Valuation Misstatement Penalties. If the value of property included in the gross estate is 50 percent (see 109 P.L. 280 Section 1219 for modifications to the thresholds for substantial and gross valuation misstatements; Prior threshold was 25%) or less of the value finally determined, the penalty amount increases to 40 percent of the underpayment amount. §6662(h)(1).
A. No reasonable cause exception for gross valuation misstatements. 109 P.L. 280; 120 Stat. 780; 2006 Enacted H.R. 4; 109 Enacted H.R. 4 Section 1219 eliminated the reasonable cause exception for gross misstatements.
g. Overvaluation penalty §6662(b)(3). Overvaluation to obtain a “free stepped up” cost basis. Section §6662(b)(3) provides for an addition to tax in cases of valuation overstatements that result in an underpayment of income tax. This section applies to property listed on the 706, which causes overvalued property to pass at an inflated basis to a beneficiary, and results in less income tax due on a subsequent sale of that asset. A 20 percent valuation overstatement penalty under §6662(a) is imposed if the value or adjusted basis of any property claimed on the return is 200 percent or more of the amount finally determined to be the correct amount.
h. Appraiser penalties for incorrect appraisals leading to substantial and gross valuation misstatements. See IRC §6695A and 109 P.L. 280; 120 Stat. 780; 2006 Enacted H.R. 4; 109 Enacted H.R. 4 Section 1219 for more details.
i. Burden of Proof. Section 7491 purports to shift the burden of proof to the Service if the taxpayer submits “credible evidence” in support of the valuation. §7491(a).
A. Service challenge of valuation §7517. If the Service challenges the value of an item stated on the estate tax return, the personal representative (PR) can require that within 45 days of the request, the Service furnish the PR with a statement (§7517(a); also See Reg. §301-7517-1) that includes:
1. The basis of the Service’s conflicting valuation,
2. Any computations used by the service in arriving at the item’s value, and
3. A copy of any expert appraisal performed by the Service.

V. Elections
A. Always read the current instructions for revisions, and changes to the manner and method of making an election. Instructions for the 706 are attached.
1. Alternative Valuation IRC §2032;
a. What is it? IRC §2032 provides for an optional date (6 months after date of death) for valuing property required to be included in the gross estate. It is an election to value all property according to its value 6 months after date of death rather than at using the date of death values. The purpose is to reduce estate tax. Therefore, it can only be elected if it causes a decrease in the value of the decedent’s gross estate and in the amount of GST Tax to be paid. IRC §2032(c).
i. If elected, the decedent’s assets will be valued at the date of disposition (if within six months of decedent’s death) or the six-month anniversary of the decedent’s death, whichever comes first.
ii. This election applies to all property. No partial elections are permitted.
iii. Final Regulations: The election was irrevocable under Reg §301.9100-6T(b). However, the final regulation (T.D. 9172 appearing as Reg §20.2032-1(b) and (h)), removes the language in Reg §301.9100-6T(b) and provides that:
i. The alternative valuation election can be made on or before the due date (including extensions), or, if a timely return is not filed, the first estate tax return filed after the due date provided that the return is filed no later than one year after the due date (including extensions). Once the election is made it is irrevocable, except it may be revoked on a subsequent return filed on or before the due date (including extensions).
iv. FYI: Using the alternative valuation date may result in lower estate tax; however, this means the basis in the property transferred to beneficiaries will carry a lower basis thereby potentially causing capital gains tax exposure to the beneficiary/recipient when the property is later sold/transferred by the beneficiary/recipient. This may be acceptable to the estate and the beneficiaries, as capital gain taxes receive preferential tax treatment compared to estate, GST and gift taxes.
b. How to make the Election is made on Form 706 by marking “Yes” on Page 2, Part 3, and question # 1.
c. How to make a protective election under §2032. A protective election can be made by checking yes on Page 2, Part 3, and question # 1 of Form 706 and writing the word “protective” and filing Form 706 using the regular values. Why should you make a protective election? Such an election would be appropriate if, based on the return as filed, the alternative valuation method would not result in the required decrease in the value of the gross estate and the sum of the estate and GST taxes, but later it is determined that such a decrease would occur.
d. IRS has discretion under Reg. §301-9100-1(c). Under this regulation, the IRS has the discretion to grant a reasonable extension of time to make an election allowed by the Internal Revenue Code or its regulations (Code or IRC). However, a request for an extension of time to make the alternative valuation date election or a protective election Reg §301.9100-6T(b)under this regulation will not be granted unless the estate tax return is filed no later than one year after the due date (including extensions). Therefore, the failure to make the election on a return filed no later than one year after the due date can be cured with a request for an extension of time to make the election even if the request is made more than one year after the due date.
e. When to make the election. For the election to be valid the return must be filed within 1 year of the date of timely filing,

including extensions, for a total of 27 months after death (Due 9 months after death (§6075) + 6 month extension (§6081) + 12 months under §2032(d)). The last timely filed return determines the election.
i. Although the alternative valuation election can be made on a return that is filed late, the preparer should be cognizant of penalties for late filing and the loss of IRC §6166 relief.
f. IRC §2032(a)(3) does not apply to:
i. Disposition Rule. Also IRC §2032 does not apply to property distributed (e.g. distributed to a beneficiary and sold by him/her), sold, exchanged, or otherwise disposed of within 6 months following death IRC §2032(a)(1). Use the actual sales value if property is sold within 6 months of death.
ii. Value of property affected by time lapse. (e.g. a patent, which had a limited life span and may diminish in value as time passes). Such property must be valued as of the date of death. If the patent is sold 2 months after date of death, then both the disposition rule and the lapse of time rule are applicable. See Reg. §20.2032-1(f)(2) for illustration and valuation methods.
iii. Special Rule: §2032(b)(1) & §2032(b)(2) state that if the alternative valuation date is elected, the value of the property for determining the charitable deduction and marital deduction under sections 2055 and 2056, respectively must be on the basis of the value of the property at the date of death. §2106(a)(2) & §2106(a)(3). May also affect the ability to qualify for QFOBI deduction. QFOBI deduction was available prior to year 2004. For a more detailed discussion on QFOBI please see George W. Gregory, “Drafting for the Qualified Family Owned Business Interest (QFOBI) Deduction (ICLE 8th Annual Drafting Estate Planning Documents Seminar).
g. When you elect the alternative valuation date, include both the date of death value and the value at the alternative valuation date.
2. Special Use Valuation IRC §2032A. Special rules for valuing family farms and ranches.
a. What is it? Under IRC § 2032A, the executor may elect to value certain farm and closely held business real property at its farm or business use value rather than its fair market value (FMV).
b. How to make the election? Election is made on Form 706, by marking “Yes” on Page 2, Part 3, question # 2. You must also attach schedule A-1 and its required statements.
c. Protective election. You may make a protective election to special value qualified real property. To make a protective election, check “Yes” on line 2 and complete Schedule A-1 according to the instructions for a protective election. Once made, you should value all property at its fair market value. Do not use the special-use valuation. This will usually result in a higher estate and GST tax than will be ultimately determined if special use valuation is allowed. The protective election does not extend the time to pay. If you wish to extend he time to pay, then file Form 4768 before the return is due. If it is later determined that the estate qualifies for the special-use valuation based on values as finally determined, then file an amended (i.e. “Supplemental Information”) Form 706 within 60 days of the determination.
d. Limitations. The total value of the property valued under IRC § 2032A may not be decreased from FMV by more than $900,000 for decedents dying in year 2006.
e. When to make the election? On the first filed return, even if it is filed late. This election can not be made after the originally filed return is submitted.
f. How to qualify. The decedent’s property may qualify for IRC §2032A election if all the following conditions are satisfied:
i. The decedent was a U.S. citizen or resident at the time of death;
ii. The real property is located in the United States;
iii. At the decedent’s death, the real property was used by the decedent or a family member for farming or in a trade or business, or was rented for such use by either the surviving spouse or a lineal descendant of the decedent to a family member on a net cash basis;
iv. The real property was acquired from or passed from the decedent to a qualified heir of the decedent;
v. The real property was owned and used in a qualified manner by the decedent or a member of the decedent’s family during 5 of the 8 years before the decedent’s death;
vi. There as material participation by the decedent or a member of the decedent’s family during 5 of the 8 years before the decedent’s death; and
vii. The qualified property meets the following percentage requirements:
1. At least 50 percent of the adjusted value of the gross estate must consist of the adjusted value of real or personal property (§2032A(b)(1)(A)) used for a qualified use by the decedent or the decedent’s family on the date of the decedent’s death (§2032A(b)(1)(A)(i)), which passes to a qualified heir (§2032A(b)(1)(A)(ii); and
2. A minimum of 25 percent of the adjusted value of the gross estate must consist of the adjusted value of real property that passes to a qualified heir and that, for a periods aggregating at least 5 years in the eight-year period immediately preceding the decedent’s death, was owned by the decedent or a member of the decedent’s family and used for a qualified use generally involving material participation by the decedent or a member of the decedent’s family. §2032A(b)(1)(B).
g. Please See IRC §2032A(e)(7) & §2032A(e)(8) for methods of valuing farm real property according to “actual use” (Formula method and multiple factor method) rather than the “highest and best use.”
3. Installment payments.
a. IRC §6163 applies to remainder or reversionary interests. This is an election to postpone tax attributable to reversion or remainder interests that are includable in the gross estate until six months after the reversion or remainder interest becomes possessory to the decedent or his heirs. §6163(a). This section provides relief for the estate that is taxed on assets that it does not yet have. Election is made on Form 706, by marking “Yes” on Page 2, Part 3, and question # 4.
b. IRC §6166 applies to closely held businesses. The purpose is to help resolve illiquidity problems and provide a deferral for the portion of estate tax attributable to closely held businesses (qualified estate tax). Under this section, the

qualified estate tax can remain unpaid for 5 yrs after which the tax generally may be paid over a maximum of ten installments, one each year with the first due at the end of year five, thus extending the time to pay the qualified estate tax for up to fourteen years. Interest is charged on the unpaid tax, but is charged at preferential rates. This section works in combination with §303, §2032A, and §2057. Election is made on Form 706 by marking “Yes” on Page 2, Part 3, and question # 3. (See Stephens, Maxfield, Lind, Calfee, and Smith, Federal Estate & Gift Taxation, Eighth Edition).
i. Qualifications for extension: (1) The decedent must have been a U.S. citizen or resident of U.S. at time of death and an election must be made by the executor; and (2) the closely held business interest must constitute more than 35% of decedent’s adjusted gross estate. Election is made with the decedent’s return.

ii. Closely Held Business: A decedent’s interest in a sole proprietorship qualifies as a closely held business under §6166(b)(1)(A). If decedent was a partner in a partnership, then the decedent’s interest qualifies as a closely held business if at least 20 percent of the total capital interest in the partnership is included in the decedent’s gross estate or if the partnership has 45 or fewer partners. §6166(b)(1)(B). The decedent’s ownership in a corporation qualifies as a closely held business if at least 20 percent of the voting stock is included in the decedent’s gross estate or if the corporation has no more than 45 shareholders. §6166(b)(1)(C). Both, the 20 percent ownership test and the 45-member test are to be determined immediately before the decedent’s death. §6166(b)(2)(C).

iii. Active business requirement:

1. The deferral provisions require the closely held business to carry on an active trade or business and not merely operate as a holding company (or other passive activity). §6166(b)(1)(A) (also see §6166(b)(8) for piercing a holding company to see the extent to which the holding company owns stock in an active trade or business). There is no requirement that the decedent materially participates or even actively participates in a closely held business in order to utilize the election. However, the portion of the business related to passive assets (e.g. rental property) is disregarded. §6166(b)(9)(A). A passive asset is any asset other than an asset used in a trade or business. §6166(b)(9)(B)(i). Maintaining rental homes constitutes mere management of investment assets, which is not an active business interest. Rev Rul 75-366, 1975-2 CB 472.

2. Closely held farming business is permitted. §6166(b)(3).

3. If a business owns stock in another business, that stock will generally be treated as a passive asset. §6166(b)(9)(B)(ii). But see §6166(b)(9)(B)(iii)(I) for exception.

4. Stock in certain qualifying lending and finance businesses is treated as an active trade or business. §6166(b)(10)(A).
iv. 35% test:

1. Active business interest must exceed 35 percent of the value of the decedent’s adjusted gross estate. §6166(b)(4). Adjusted gross estate is defined as the gross estate less the allowable §2053 and §2054 deductions. §6166(b)(6). The value of the closely held business is reduced by allowable expenses, losses and indebtness related to the assets.

2. In order to satisfy the 35 percent test the estate must pass the 35 percent test by including and by not including in the decedent’s gross estate all property gratuitously transferred within years of the decedent’s death §2035(a). Also, if family attribution election is made under §6166(b)(7) to qualify the 20 percent requirement, that election triggers the attribution of ownership of interests for the 35 percent test as well.

3. Each closely held business interest is treated separately under the 35 percent test. §6166(a)(1). However, interests in two or more business interests can be aggregated and treated as a single business under the 35 percent test, if the decedent’s gross estate includes 20 percent or more of the total value of each separate business. §6166(c).

v. Maximum amount of deferral: Deferral is limited to the tax attributable to the value of the active business assets of the closely held business interest. The balance of the tax is payable in a lump sum on the usual date.

1. Formula: Qualified tax = closely held business amount §6166(b)(5) divided by adjusted gross estate §6166(b)(6)) multiplied by the tax less credits.

2. Interest: Even though §6166 permits deferred payments of the estate tax, interest must be paid. Interest imposed is 2 percent on the “2 percent portion (i.e. CHBI) and 45 percent of the normal interest rate on any deferral amount in excess of the 2 percent portion. The 2 percent portion is the deferred tax due on the lesser of the entire amount of extended tax or the first 1 million (adjusted for inflation §6601(j)(3)) of estate tax liability attributable to the qualifying closely held business interest. §6601(j)(2). This interest is NOT deductible as a §2053 administrative exp. §2053(c)(1)(D). Nor is it deductible for income tax purposes. §163(k).

3. Deferral is lost: If any installment is not paid when due or within six months following the due date, the entire unpaid portion of the tax must be paid upon notice and demand. §6166(g)(3)(A). In addition, the deferred installments are accelerated if the reason for the deferral ceases (sale, exchange, or distributed of the closely held business) or if money

is withdrawn (exceeds 50 percent) from the closely held business interest. §6166(g)(1)(A)(i)(I).

4. Declaratory judgments: §7479(a) gives the tax court the authority to issue a declaratory judgment in response to a termination or disqualification of a §6166 election. This can be done without paying the estate tax before the court reviews the issue.

4. Qualified Terminal Interest Property (QTIP) §2056(b)(7). QTIP trust is a trust for the benefit of a spouse, which qualifies for the marital deduction to the extent that the executor elects on Form 706. The trust must be held for the benefit of the surviving spouse during his/her lifetime and at the death of the surviving spouse, the QTIP property can pass to persons chosen by the first spouse to die (creator of the QTIP). The persons receiving the property after the second spouse dies are called the remainder beneficiaries.

a. QTIP election is made by the executor and can be made for all or a specific portion (§2056(b)(10)) of the property passing from the decedent in which the surviving spouse receives a qualifying income interest. §2056(b)(7). If the election is only for a specific portion of property in which the surviving spouse receives a qualifying income interest, the portion must be expressed as a percentage or fractional share.

b. QTIP election can be made on a late filed return as long as it is made on the first 706 filed. The statute does not require that the election be timely made. §2056(b)(7)(B)(v).

5. Qualified Domestic Trust (QDT) §2056A: A federal estate tax marital deduction will not be allowed for property passing to or for the benefit of surviving spouse who is not a U.S. citizen unless the property passes to a qualified domestic trust. §2056(d).

VI. Schedule Preparation & Valuation

A. Schedule A – Real Estate
What items are listed? All real estate interests (including easements) (1) titled in the decedent's name alone; (2) interest held as tenants in common, and (3) interests outside the United States, are reported on Schedule A. §20.2033-1(a);
1. Describe the property in such a manner so that it can be properly identified. List the legal description and street address. Also, mention any improvements, easements and permanent fixtures attached to land. A title search should be performed.
2. List separately any accrued rents on land. §20.2033-1(b).
3. Report the full price/value of any land contract on Schedule A, and any unpaid portion is reported as a debt on Schedule K.
Valuation issues
1. Fair Market Value is defined as "the price at which the property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of the relevant facts." Treas. Reg. §20.2031-1(b).
2. Generally, real property is to be valued according to "the highest and best use of the property" on the valuation date. Thereby considering possible uses as well as the owner's actual use.
3. The local authority's assessed value of real property for property tax purposes should not be used unless the assessed value bears a "fixed and known relationship" to the fair market value of the property. Estate of Cary v. Comm'r, 7 TCM (CCH) 731 (1948).
4. For non-taxable estates: For residential real property, an experienced realtor's market analysis is usually sufficient. There is usually little or no cost for their appraisal.
a. If the estate has no tax liability because of the unlimited marital deduction or the unified credit, a short descriptive letter from the real estate agent is sufficient.
5. If the property sells within 6 to 12 months after the date of death, the IRS will accept the sales price as the date of death value, unless you can demonstrate unique facts.
a. If the alternative valuation date is selected, instruct the appraiser to update the appraisal to reflect the alternative valuation date.
6. For taxable estates: For all real property including residential real estate, make sure that you use a qualified appraiser and inquire into his/her familiarity with estate tax audits. See Rev Proc 66-49, 1966-2 CB 1257 for IRS guidelines on persons making appraisals. Also, contact the American Institute of Real Estate Appraisers 420 North Michigan Ave., Chicago, Illinois 60611, or on the web for a list of licensed appraisers in your area. No set formula for valuing any asset.
a. Know that there are three methods that an appraiser can use to determine fair market value. The IRS Valuation Guide states that an appraiser is never to average the three methods. Each method is distinctive and has its own application. The three methods are:
i. Cost Approach
ii. Capitalization of Income Approach
iii. Comparable Sales Approach
b. The cost of the appraisal is deductible on Schedule J.
c. Valuation of contaminated property. Appraiser must be knowledgeable in the area of contamination and CERCLA

responsibility. If not then valuable discounts will be lost. CERCLA imposes strict liability on owners and operators as well as other parties.
7. Report mortgages on real property on Schedule K. Make sure that the net value of the property minus the mortgage is not less than zero.
8. If the mortgage is non-recourse, and under local law the debt may not be charged against the decedent's estate, report only the value of the equity interest on Schedule A and attach a description of the mortgage and explanation to the return.

B. Schedule B – Stocks and Bonds
What Items are reported?
1. For stocks, the description should include the number of shares, whether common or preferred, cusip number (if applicable), the unit value for each share of stock, and par value if needed to identify the stock. (CUSIP: Committee on Uniform Security Identification Procedure).
2. For bonds, the description should include: the quantity, name of obligor, maturity date, interest rate, the date interest is due, and cusip number if applicable. Municipal bonds are exempt from federal income tax but are not exempt from federal estate tax. If the bond is not publicly traded then list the obligors address.
3. For dividends, list separately. If the stock was selling "ex-dividend" on the date of the decedent's death, then add it to the value of the stock rather than listing it separately as income.
Valuation issues
1. For securities traded on a national, regional or local exchange, the value is the mean between the highest and lowest selling price on the date of death.
2. Dividends:
a. Dividends that are payable to the decedent's estate on or before the date of death of the decedent are includible in the gross estate and listed as a separate item on Schedule B following the item to which it relates. Reg. §20.2033-1(b).
b. Dividends declared but payable to decedent after his date of death are not includible in the gross estate. However, for stock's selling "ex-dividend" on the date of death, the dividend is added to the ex-dividend quotation in order to determine the value of the stock on the date of death. Reg. §20.2031-2(j).
c. Use a stock valuation software that can be imported into the 706 preparation program. (e.g. Estate Val). There is a cost of about $1.55 per transaction and the report includes ex-dividends. This can make the preparer's life simpler and the cost can be passed along to the estate. The cost of using the software is usually cheaper than the hourly rate for an attorney or paralegal to individually enter each item completely.
3. If alternative valuation date is selected, do not overlook accrued interest and dividends. The value of accrued interest does not change if alternative valuation date is elected §20.2032-1(d)(1).
4. If there were no sales on the valuation date, or if the valuation date is not a trade date, find the mean between the highest and lowest selling prices on the date immediately before and immediately after the valuation date.
5. Worthless securities should be disclosed as such and proof must be attached. (Attach a copy of the articles of dissolution, letter from bankruptcy trustee, along with the name of the state and date where it was incorporated.
6. Foreign Death Taxes. If any stocks or bonds included on this schedule were subject to foreign death taxes, then group those stocks together and label them "Subjected to Foreign Death Taxes."
7. Flower Bonds are U.S. treasury bonds that can be redeemed at face value to pay federal estate tax. They are valued at full face value. They are valued at full face value even if they are not used to pay the estate tax. Excess flower bonds are valued according to actual trades like other bonds.
8. U.S. Series E and EE bonds are valued by the government redemption table, which is updated monthly and is available at commercial banks and online now. See Rev Rul 55-278, 1955-1 C.B. 471. Obtain the month and year of issue from the face of the bond and look up the value on the government redemption table. List all Series E and/or EE bonds in one total amount on Schedule B. Go to www.savingbond.gov for valuation information and forms.
a. An election maybe made under IRC §454(1) to report accrued interest on E and EE savings bonds on a decedent's final income tax return. If such election is made, income tax paid on such accrued interest is deductible as a debt f the decedent on Form 706. If the election is not made, then the transferee who redeems the bonds reports the interest as income in respect of a decedent for the year in which the bond is redeemed. Rev Rul. 68-145. 1968-1 C.B. 203.
9. U.S. Series H bonds can be cashed in at face value, including H bonds that were converted E bonds. H bonds cashed in between interest dates pay no accrued interest, so none is reportable.
a. Even though Series E & H bonds carry built-in ordinary income on disposition, there is no discount in their valuation for this factor. This is usually treated as IRD §691(c). Consider whether it would be advantageous to make a §454 lection so as to report the income on the decedent's 1040, with the income tax being deductible as a debt of the decedent on Schedule K.
10. Accrued interest on all bonds is reported separately on Schedule B and described as "accrued interest thereon."
11. Valuation of shares of closely held non-traded corporations. See Rev Rul 59-60, 1959-1 C.B. 237 which is cited as authority in virtually every appraisal of closely held business interests; Rev Rul 65-193, 1965-2 C.B. 370; Rev Rul 77-287, 1977-2 C.B. 319 and Rev Rul 80-213, 1980-2 C.B. 102. The factors considered when determining value are briefly described below:

a. The history and uniqueness of the corporation, which considers the history, stability, rate of growth, and diversity of operations.
b. Economic outlook in general and specific to that industry.
c. Loss of a key manager. Was decedent vital to the operations and customer relations?
d. Capacity to pay dividends.
e. Trades of stock for competing corporations.
f. Asset values; look at both book reported value and FMV.
g. Look at the extent of control; minority discounts may be appropriate.
h. Were there a bonding buy-sell agreement? If so then this may override other considerations.
i. Was there any options or other restrictive agreements?
j. Use a qualified appraiser to avoid §6662 penalty. Tax Court does not “split the difference.” IRS usually request 5 years of financial records. Rev Rul 59-60 1959-1 C.B. 237.
k. Consider potential discounts for lack of marketability and control.
l. Obtain an appraisal and consider discounting the value of the closely held business for minority interests. Minority interest discounts reflect the inability to both compel liquidation of the entity’s assets and to control its management.
m. The fair market value of an interest included in the gross estate is determined without attribution to the decedent of interests owned by other individuals. There is also no attribution for purposes of valuing the decedent’s minority interest. Rev Rul. 93-12, 1993-1 CB 202.
n. Obtain an appraisal and consider discounting the value of the closely held business or lack of marketability. Determining the appropriate amount of discount is a fact-intensive inquiry. Obtain a qualified appraiser to determine.
o. Litigation discount. Risk of litigation and the likelihood of loss greatly affect the size of the discount.
p. Buy-Sell agreements may set the estate tax value. Read the agreement. §2703
12. Valuation Discounts.
a. Lack of Marketability. This is based on the premise that an interest in a company for which there is no establish or ready market has a lower value than its pro rata share of the total value because of the difficulty the owner of such interest would have in reselling such an interest in the open market. The Tax Court typically reviews a few cases annually that deal with marketability discounts. These cases usually result with the Court finding fault with experts as to the valuation and discounts taken and a re-determination of the appropriate amount of discount for lack of marketability.
b. Minority Discounts. Such discounts are based on the premise that a purchase of a business interest will pay less for a non-controlling interest because the holder of the minority interest lacks key control over the operation and management of the business (such as dividend or distribution policy and liquidation policies).
c. Fractional Interest Discounts. This applies to property held as tenants in common or with multiple joint owners. This does not apply where the joint owners are husband and wife. Theory is that the interest in the property is inherently difficult to sell because ownership is limited to only part of the property.
d. Blockage Discounts. Reg. §25.2512-2(e) allows blockage discounts where the size of the block of stock to be valued is so large that it could not be sold within a reasonable time without depressing the market.
e. Discounts for Built-In Capital Gains Tax. This applies to C corporations or conversions of C corporations to an S Corporation. See Estate of Davis v. Comm’r, 110 T.C. 530 (1998) which held that a discount was appropriate because a hypothetical investor would consider built-in gains tax in determining the value of a company.

C. Schedule C – Mortgages, Notes and Cash
What Items are reported?
1. All mortgages, notes, certificates of deposit, and checking & savings accounts reported in the decedent’s name alone are reported on Schedule C. Jointly owned interests are reported on Schedule E, and interests held in trust are reported on Schedule G.
2. Example: Mortgage of $50k, unpaid balance of $30k; interest rate of 8%; and dated January 2, 2000;
3. Cash. Check for cash at home & in the safe deposit box at date of death. Cash in foreign banks are valued using official currency exchange rates on the valuation date.
4. Un-cashed gift checks are included in the estate unless they are to charity. This is because gift checks to individuals are not considered an obligation of the decedent while gift checks to charities are considered an obligation. Look for completed gifts to individuals (e.g. delivery and/or deposit of check).
5. Describe checking/savings account and certificates of deposit. Report bank accounts at amount actually present at the date of death plus accrued interest at date of death. For certificate of deposits describe the financial institution, account number and type of account.
6. Mortgage receivables are included at the face value of any unpaid balance. Also list the maturity date, mortgagor’s name, and property mortgaged.
7. If the decedent was a seller under a land contract, then include this on Schedule C. List name of purchaser, date of contract, legally describe the property, sale price, unpaid balance of principle and interest.
8. Collectible coins/currency are listed on Schedule F, not on Schedule C. Rev Rul 78-360, 1978-2 C.B. 228.
Valuation issues
1. The fair value of notes whether secured or unsecured is usually the amount of unpaid principle plus accrued interest at death.
2. See the IRS Valuation Guide for discounting notes.
3. Certificates of deposit are valued at full face value even if a CD has several years to run and bears a low interest rate. At the owner’s death, a CD can be redeemed at full value without an interest penalty. Rev Rul 79-340, 1979-2 C.B. 320.

4. Foreign bank accounts should be checked for currency restrictions. If funds are blocked, then there may be a liquidity problem and a discount may be arguable.
5. If the note is impaired then attach an appraisal.

D. Schedule D – Insurance on Decedent's Life – IRC §2042
What Items are reported?
1. Include all insurance on the decedent's life (1) receivable by the executor or (2) receivable by decedent's beneficiaries where decedent had incidents of ownership (e.g. power to change the beneficiary, to surrender or cancel the property, revoke or assign the policy for a loan) in the policy at death. Reg. §20.2042-1(b).
a. Relation to other sections:
i. See §2038 for insurance paid to a revocable trust, this should be reported on Schedule G.
ii. See §2035 for throwback rule and report on Schedule G.
iii. See §2041 for general power of appointment and report on Schedule H.
2. Include in the gross estate if the decedent had any incidents of ownership. Examples:
a. The right of the insured to the economic benefits of the policy;
b. The power to change beneficiaries;
c. The power to surrender or cancel the policy;
d. The power to pledge or assign the policy;
e. The power to obtain a loan or insure a loan against the surrender value of the policy;
f. The reversionary interest is more than 5% of the policy immediately before the decedent died.
3. Description should include the name of the insurance company and the policy number. Also, attach Form 712 to the estate tax return (mandatory attachment).
4. Proceeds of corporate owned life insurance policies on a controlling shareholder-decedent's life are not included in the gross estate of the decedent if the proceeds are payable to the corporation or a third person for a valid business reason. (e.g. satisfaction of business debt). However, these proceeds will be reflected in decedent's ownership interest when the business interest is valued. §20.2031-2(f).
5. Irrevocable life insurance trusts where the trustee was obligated to pay the decedent's debts or estate tax will cause the proceeds from the insurance policy to be included in the decedent's estate. Schnack Est v. Comr., 848 F.2d 933 (9th Cir 1988) aff'g 89 T.C. 235 (1987).
6. Transfers within three years §2035 & §2042:
a. If decedent transfers property more than three years before death and the beneficiary pays all the premiums, then nothing is included in the decedent's gross estate. No incidents of ownership.
b. If the transfer is within three years of death and the beneficiary pays all post-transfer premiums, then a part of the proceeds is includible in the decedent's gross estate. The includable interest is determined by subtracting from the full proceeds a portion of the amount commensurate with the portion of the premiums by the beneficiary.
c. If the decedent transfer is made more than three years before death, but the decedent continues to pay all post-transfer premiums, then the proceeds and the premiums are entirely excluded from the decedent's gross estate.   See Bel v United States, 452 F2d 683, 690 (5th Cir) for exception.
7. Second to die policies: Disclose on return and assign a zero value.
8. Question 8(a) on page 3 of the 706 must be answered to disclose insurance on the decedent that is not reported on the decedent's 706.
Valuation issues
a. Form 712 lists the amount, dividends, interest, post mortem dividends, return of unearned premiums and any additional benefits due under the policy, net of indebtedness.
b. If life insurance is payable as an annuity for years the amount includible is the sum of the life for a term of years. Reg. §20.2042-1(3).

E. Schedule E – Jointly Owned Property - IRC §2040
What Items are reported? This section applies to joint tenancies, tenancies by the entirety, and joint bank accounts. This includes jointly owned realty, stocks, bonds, and titled personal property (e.g. automobile, boat, and mobile home). Local law controls joint tenancy survivorship.
Schedule E, Part I – Jointly Owned Property With A Spouse – IRC §2040
1. 100% of the value of the property is listed on line 1(a) of Part I, and on line 1(b), include only ½ as part of the gross estate.
2. For married couples it is not unreasonable to assume that household furniture and furnishings belong on Schedule E, Part I rather than Schedule F, especially if the residence is jointly owned.
3. Property owned as tenants in common is reported on Schedule A.
4. See Gallenstein v. U.S; 975 F3d 286 (6th Cir 1992) for inclusion of 100% of the value. This is an exception to joint property acquired by husband and wife prior to 1977 and provides that if the decedent contributed 100% of the consideration for the property, 100% of the fair market value at the time of the decedent's death is includable in his/her gross estate, and the surviving spouse receives a 100% step-up in basis.
Schedule E, Part II – All Other Joint Interests – IRC §2040
1. The basic policy of §2040(a) is to include in the decedent's gross estate 100 percent of the value of the jointly owned property except to the extent that the surviving joint tenant contributed to the cost of the acquisition of the joint property.
2. Possible outcomes: "TRACKING OF ASSETS"

a. If the decedent's interest and that of all other co-owners interest were acquired gratuitously from outsiders (e.g. by gift or bequest), then each co-owner's estate is taxed at death on the co-owner's ratable share of the property, even though the co-owner's interest expires with the co-owner's death. §2040(a) (last sentence).
b. If the decedent's wealth created all the joint tenant's interest (e.g. the decedent bought the property and gave others their interest in it), then the entire value of the property is taxed in the decedent's estate. §2040(a) (first clause).
c. If the decedent's interest was acquired entirely gratuitously from another co-owner, then the decedent's estate is not taxed at all at death. §2040(a)("except" clause).
d. If the wealth of the decedent and that of the other co-owners went into their acquisition (i.e. each paid part of the cost of the acquisition) of the property, then each is taxed on their share of the cost of the acquisition. §2040(a) ("except" clause).
Valuation issues
1. Enter the full value of the spousal joint interest on Part I, line 1(a) of Schedule E. Then enter ½ of the line 1(a) amount on line 1(b) of Schedule E. It is presumed under IRC §2040(a) that the deceased contributed 100% of the consideration unless this presumption can be rebutted.
2. If the surviving spouse is not a U. S. citizen, the estate is not entitled to the presumption that only ½ of the value of jointly owned property is includible. §2056(d)(1)(B).

F. Schedule F – Other Miscellaneous Property Not Reported Under Any Other Schedule – IRC §2031 and IRC §2033
What Items are reported?
1. All property not reported on any other schedule is reported on Schedule F.
2. Types of Schedule F property include: sole proprietorship interest; partnership interests, (but not interests in closely held businesses, including S-corporations because these would be reported on Schedule B); Archer medical savings accounts (ARCHER MSA) unless such interest passes to the surviving spouse; tangible personal property including antiques and art objects; remainder interests; royalties; insurance policies owned by the decedent on another's life; firearms; vested interests in other estate and trusts; claims for refunds; deferred compensation payments; unpaid commissions; bonuses or wages; un-cashed checks; coin & stamp collections; gold and silver bullion; bankruptcy claims; books; automobiles; boats; clothing; jewelry; qualified terminal interest property; income tax refunds.
3. Items not included on Schedule F: Social Security lump sum death benefits paid to a surviving spouse (See Rev Rul 67-277, 1967-2 C.B. 322); or Workers Compensation proceeds payable as a result of the decedent's death on the job (See Rev Rul 56-637, 1956-2 C.B. 600); and rights to recover under wrongful death statutes do not represent any interest in property that the decedent had under §2033, because it is the right of others, not the decedent, that may be enforced against the wrongdoer. Regardless of the fact that the right to sue grew from the decedent's death.
4. However, recoveries for pain and suffering or related expenses during the decedent's lifetime are included as part of the decedent's estate tax return. Rev Rul. 75-127, 1975-1 CB 296.
5. Schedule F item No. 3 asks if the decedent had a safe deposit box.
6. Individual retirement accounts and other non-annuity t

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Re:Preparing Form 706
Posted by CA1040 - 2010/08/23 20:13

DO YOU HAVE THE BALANCE OF THIS TOPIC? INTERESTED IN WHETHER AN EXECUTOR MUST FILE A SUPPLEMENTAL 706, WHEN SHE KNOWS THE FIRST 706 IS SUBSTANTIALLY INACCURATE, BECAUSE OF A TRUST REFORM ACTION. AND WHETHER THAT DUTY IS NON-DELIGIBLE.

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Re:Preparing Form 706
Posted by steve - 2010/08/23 22:24

I can send you the entire material in pdf. Email me at snofar@hertzschram.com

The instructions to the 706 state that supplemental information may be provided by resending the first three pages of the updated Form 706 along with schedules that had changes. I would also include a letter explaining the changes.

When was your form 706 filed? Just curious on the length of the statute of limitations.

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