

THE RISELING REPORT

EXCLUSIVELY FOR THE ESTATE PLANNING PROFESSIONAL

ESTATE TAX RETURNS — WHAT YOUR PREPARER NEEDS TO KNOW

As most of you know, Riseling & Rhodes practices law primarily in the areas of estate planning, estate and trust administration, business formation and tax consulting. As to our estate and trust administration practice, we are oftentimes called upon to give advice to successor trustees after the Grantor's death or personal representative of a Decedent's probate estate. This issue of The Riseling Report (this "Report") advises the Administrator as to the documents and information needed to accurately and efficiently prepare the necessary estate tax returns for a Decedent.

DEFINITIONS

For purposes of this Report, the following terms shall have the meaning provided:

ADMINISTRATOR. The Trustee of a Revocable Trust after the Grantor's death, the Personal Representative of a Decedent's probate estate, either surviving joint tenant of an asset whereby a Decedent owned an interest in the asset at the time of Decedent's death, or the beneficiary of an asset inherited via a beneficiary designation after a Decedent's death.

ALTERNATE VALUATION DATE. Under Oklahoma and Federal Estate Tax Law, the Decedent's Property may be valued for Estate Tax computation purposes as of Date of Death ("DOD") or the Alternate Valuation Date ("AVD").

For each asset, the AVD is the earlier of the following dates:

- (1) **the date six (6) months after the Date of Death,**
- (2) **the date an asset is sold, or**
- (3) **the date an asset is distributed or segregated.**

Again AVD valuation is done on each separate asset or group of assets. For example, if the Decedent died owning 1,000 shares of XYX common stock, and 200 were sold three months after DOD, and 300 were distributed five months after DOD, and the remaining were still owned six months after DOD; then AVD would be: 200 at net amount realized at sale PLUS 300 at their total value on date of distribution PLUS 500 on the date six months after Date of Death.

After AVD valuation is conducted on each asset, the totals for all assets for DOD and AVD must be compared. AVD may be used if, and only if, the use of AVD reduces the Decedent's Taxable Estate **and** Estate Tax Liability.

If the Decedent's Gross Estate has decreased in value between the DOD and AVD, the administrator should advise the Preparer. Failure to do so may result in missing this opportunity and estate taxes being higher.

BENEFICIARY. The person entitled to receive an asset as a result of an individual's death.

DATE OF DEATH. The date of death of the Decedent or ("DOD").

DECEDENT. The deceased owner of an asset or deceased grantor of a revocable trust.

DECEDENT'S ASSETS. Same as Decedent's Property.

DECEDENT'S PROPERTY. Each and every asset whereby the Decedent had an ownership interest on Date of Death. This would include any one of the following five (5) methods how the property may have been owned, to-wit:

1. Individually with a Beneficiary Designation,
2. Individually without a Beneficiary Designation,
3. Joint Tenancy with right of Survivorship,
4. In trust whereby the Decedent had the right to revoke the trust, and
5. Real estate whereby the Decedent transferred and retain a life estate.

The above list is NOT exhaustive, there may be other assets considered to be the Decedent's Property. However, most property fall within the above five (5) categories.

ESTATE TAX RETURN. Either an Oklahoma Estate Tax Return or Federal Estate Tax Return, whereby a Decedent's Property is reported to the government and any estate tax due is computed and reported to the government.

FEDERAL ESTATE TAX RETURN. Internal Revenue Service Form 706 known as a United States Estate Tax Return or Federal Return.

FEDERAL EXEMPTION AMOUNT. The amount of property that may pass to a non-spouse non-charity Beneficiary without a Federal Estate Tax liability. For the following years, the Federal Exemption Amount is the amount listed opposite the year,

<u>Year</u>	<u>*Federal Exemption Amount</u>
2001	\$675,000.00
2002 – 2003	\$1,000,000.00
2004 – 2005	\$1,500,000.00
2006 – 2008	\$2,000,000.00
2009	\$3,500,000.00
2010	Estate Tax Repealed
2011	\$1,000,000.00

* Must reduce this amount by the Decedent's prior taxable gifts.

GRANTOR. The same as a Trustor, Settlor, or Trustmaker - - - all of which mean the individual who created a trust during his or her lifetime. It may also mean one of two individuals who together created a trust during their joint lifetimes, for example husband and wife who create a joint (single trust agreement) trust.

GROSS ESTATE. Decedent's Property as defined herein.

OKLAHOMA ESTATE TAX RETURN. Oklahoma Tax Commission Form 454 known as an Oklahoma Estate Tax Return.

PREPARER. The attorney or certified public accountant hired by the Administrator to prepare the necessary Estate Tax Returns.

PROBATE. The court administration of a Decedent's Probate Estate.

PROBATE ESTATE. The property owned by a Decedent individually without a beneficiary designation and subject to probate administration.

TAXABLE GIFTS. Gifts made by the Decedent in prior years exceeding the annual exclusion for the year of the gift.

TRUSTEE. The acting trustee of a Trust.

ESTATE TAX RETURN FILING REQUIREMENTS

OKLAHOMA

If any part of the Decedent's property passes to a beneficiary who is *NOT the spouse* of the Decedent, the Oklahoma Estate Tax Return must be filed.

If all of the Decedent's property passes to the Decedent's surviving spouse an affidavit in lieu of Oklahoma Estate Tax Return should be filed.

FEDERAL

If the fair market value of the Decedent's property *PLUS* the Decedent's previous taxable gifts EXCEEDS the *Federal Exemption Amount* for the year in which Date of Death falls, a Federal Estate Tax Return must be filed.

ESTATE TAX RETURN DEADLINE

Estate tax returns are due nine (9) months after Date of Death.

INFORMATION and DOCUMENTATION always NEEDED

The Administrator should ALWAYS provide the Preparer with the following:

- 1) Copy of **Decedent's death certificate**
- 2) Copy of the **Trust Agreement** and any amendments governing any and all applicable trusts **created by Decedent** during Decedent's lifetime.
- 3) Copy of any **Trust Agreement** whereby Decedent had any interest (i.e. including general power of appointment) whereby **Decedent did not create** the Trust during Decedent's lifetime.
- 4) Copy of **Decedent's Last Will and Testament** or a note that known exists.
- 5) **A listing of the Decedent's Property** and the fair market value of each as of Date of Death. To properly report each asset on the applicable Estate Tax Returns, the administrator must advise the Preparer as to the way the Decedent's Property was owned on Date of Death. See explanation of the five (5) ways that the Decedent could own Decedent's Property under Decedent's Property in definition section above.
- 6) For each **Beneficiary**, the Administrator should provide the Preparer with a list that includes: **Name, Address, City, State, ZIP Code, Social Security Number, and Date of Birth**. If any beneficiary is contemplating disclaiming an interest in the Decedent's Property, the Administrator should advise the Preparer.
- 7) For the **Decedent's surviving spouse**, the Administrator should provide the Preparer not only with a list that includes the information in L above, but also advise the Preparer if the surviving spouse is not a United States citizen and whether the surviving spouse will be electing a forced share of the Decedent's Property.

INFORMATION and DOCUMENTATION usually NEEDED

The Administrator should USUALLY provide the Preparer with the following:

A --- **REAL ESTATE OR MINERAL INTEREST.** As to any real estate owned by the Decedent, the Administrator should provide the Preparer with the legal description and address for the property described.

B --- **SECURITY.** For each stock, bond, mutual fund or other marketable security, the Administrator should provide the Preparer with the CUSIP number. Each marketable security has a unique CUSIP number. If the security is part of brokerage account, the Administrator should request the stockbroker or financial advisor for the account to provide the Preparer with a Date of Death valuation of the brokerage account AND a copy of the periodic (monthly) brokerage statement which covers the period including Date of Death. This information allows the Preparer to review the brokerage statement and determine exactly the fair market value of the brokerage account on Date of Death.

C --- **BANK ACCOUNT.** For each checking account, savings account, credit union account, money market account, certificate of deposit or other bank account NOT part of brokerage account listed in B above, the Administrator should provide the Preparer with a copy of the periodic (monthly) bank statement which covers the period including Date of Death. This information allows the Preparer to review the bank statement and determine exactly what the balance in the account was at the close of business on Date of Death.

D --- **LIFE INSURANCE PAYABLE AS A RESULT OF DECEDENT'S DEATH.** For any life insurance payable as a result of Decedent's death, the Administrator should request an Internal Revenue Service Form 712 (the "Form 712"). Form 712 is a disclosure statement issued by an insurance company. Form 712 provides the Preparer with all the information necessary to properly report the life insurance on the Estate Tax Returns.

E --- **PENSION, IRA, TDA, 401(K), OR OTHER RETIREMENT ACCOUNT.** For each and every annuity, Individual Retirement Account ("IRA"), 401(k) benefit, 403(b) benefit, ROTH IRA or any other tax qualified retirement account of any kind, the Administrator should provide the Preparer with the same information shown above under B – SECURITIES or C-BANK ACCOUNTS. In addition, the Administrator should provide the Preparer with a copy of the beneficiary designation for each.

F --- **TANGIBLE PERSONAL PROPERTY.** As to tangible personal items such as clothing, furniture and jewelry, a detailed listing is not generally required to prepare an Estate Tax Return. However, a schedule listing those items by category should be provided and a total for each category disclosed. For vehicles, including any car, motorcycle, boat or other vehicle registered with the State of Oklahoma, the Preparer should be provided with a description of the item and a fair market value as of the Decedent's date of death.

G --- **OTHER PROPERTY**. If there is any Decedent's Property not falling with categories A through F, the Administrator should discuss each with the Preparer.

H --- **RESERVED**.

I --- **RESERVED**.

J --- **EXPENSES**. As to accounting fees, attorney fees, court costs, recording fees, sales commissions, appraisal fees, publication costs, postage, copying, and other expenses incurred after Date of Death, the Administrator should provide the Preparer with an actual to date list and an estimated to be paid list.

K --- **DEBTS OF THE DECEDENT**. As to each debt owed by the Decedent on Date of Death, the Administrator should provide the Preparer with the name of the creditor, a description of any collateral that secures the obligation, and a good faith estimate as to the amount owed to the creditor. Debts include but are not necessarily limited to promissory notes whereby the Decedent owed another person the balance, mortgage, credit card, utilities, nursing home, doctor, hospital, pharmacy and income taxes; federal and/or state. If there is an estate tax liability, the trustee should review all cash disbursements made after the Decedent's death through and including the date the estate tax returns are signed by the trustee to confirm that every cash disbursement made out of the bank accounts beginning the day after the Decedent died properly list all debts.

RISELING & RHODES, P.C.

**Ted M. Riseling
Jeff K. Rhodes
Jason M. Fields**

**2510 E. 21st St.
Inverness Park
Tulsa, OK 74114
(918) 747-0111**

Eastern Oklahoma

**Toll Free Nationwide
(866) 747-0111**

Bartlesville • Broken Bow • Idabel • McAlester
Muskogee • Ponca City • Tahlequah • Tulsa

WWW.OKTRUSTLAW.COM