Notice

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Office of Policy & Research

NOTICE 02-01

Recent Changes In The Taxation of Estates
Of Decedents Dying On or After January 2, 2002

Recent changes in both federal and Kansas law affect the taxation of estates of decedents dying on or after January 2, 2002. This notice explains those changes and the effect they will have on estates subject to Kansas jurisdiction.

Changes To The Federal Estate Tax

A major feature of the federal tax package adopted in June of 2001 is the phasing down and eventual elimination of the federal estate tax. Under this law, the federal estate tax will be gradually reduced over the next decade until it is eliminated in calendar year 2010.

The recent changes in federal law fall into two primary categories. First, the accelerated increase in the Internal Revenue Code §2010 applicable exclusion amount will have the effect of increasing the federal filing threshold to $1,000,000 effective January 2, 2002. In accordance with federal law this amount will increase to $1,500,000 in 2004, $2,000,000 in 2006, and $3,500,000 in 2007.

Second, under the new federal law the federal credit for state death taxes found in Internal Revenue Code §2011 is phased out. In accordance with federal law, for deaths occurring in 2002 the amount of the credit is decreased by 25%, for 2003 by 50%, for 2004 by 75%. For deaths occurring in 2005 the credit is eliminated and replaced with a deduction.

Many practitioners mistakenly believe the Kansas estate tax law is in total conformity with federal law and that the recent federal law changes will automatically flow through to Kansas. This is not the case. By statute, Kansas has incorporated by reference federal law as it existed on December 31, 1997. Therefore, under current law, the Kansas estate tax will not be affected by the recent changes to federal law.

The 1997 federal law Kansas has incorporated by reference does include a provision that increases the filing threshold over time. However, the increase occurs at a slower pace and stops at a lower level. The state filing threshold is $700,000 in 2002 and 2003, $850,000 in 2004, $950,000 in 2005, and $1,000,000 in 2006 or thereafter.

The 1997 federal law Kansas has incorporated by reference does not include a provision that provides for a phase-out of the credit for state death taxes. Instead, 100% of the amount of the credit is to be paid.

Succession Tax In Addition To The Kansas Estate Tax

A feature of 2002 SB39, recently passed by the Kansas Legislature, is the imposition of a succession tax. The succession tax is imposed “on the privilege of succeeding to the ownership of any property, corporeal or incorporeal, and any interest therein within the jurisdiction of Kansas by any person who is not a spouse, sibling, lineal ancestor or lineal descendant of the decedent.” Included among the persons subject to the succession tax are nieces and nephews, cousins, and friends of the decedent.

The succession tax is charged upon the value of the property succeeded to by the recipient. The tax is charged at the rate of 10% on any amount up to $100,000; at the rate of 12% on any amount in excess of $100,000 up to $200,000; and at the rate of 15% on any amount in excess of $200,000.

The succession tax is supplemental to the Kansas estate tax. It is effective for deaths occurring on or after June 6, 2002**.**

Overview of Kansas Death Taxes

Deaths Occurring Prior To July 1, 1998 – Inheritance Tax

Estates of persons who died before July 1, 1998 are subject to an inheritance tax. Additional information about the inheritance tax is available from the Department of Revenue.

Deaths Occurring On Or After July 1, 1998 And Prior To January 2, 2002 – Estate Tax

Estates of persons who died on or after July 1, 1998 and prior to January 2, 2002 are subject to an estate tax. It is a tax on the value of the decedent's estate, and is equal to the federal credit for state death taxes computed on the basis of 1997 federal law.

Generally, no Kansas tax is due unless the gross value of the estate exceeds the federal estate tax filing threshold for the year in which the death occurred. In the case of estates of decedents dying during 1998, the federal filing threshold was $625,000. In the case of estates of decedents dying during 1999, the federal filing threshold was $650,000. In the case of estates of decedents dying during 2000 and 2001, the federal filing threshold was $675,000.

Death Occurring On Or After January 2, 2002 And Prior To June 6, 2002 – Estate Tax

Estates of persons who died on or after January 2, 2002 and prior to June 6, 2002 are subject to an estate tax. It is a tax on the value of the decedent's estate, and is equal to the federal credit for state death taxes computed on the basis of 1997 federal law. The Kansas filing threshold is $700,000 and the tax is equal to 100% of the amount of the federal credit for state death taxes. Generally, no Kansas tax is due unless the gross value of the estate exceeds $700,000.

Deaths Occurring On Or After June 6, 2002 – Estate Tax And Succession Tax

Estates of persons who died on or after June 6, 2002 are subject to an estate tax and to a succession tax.

Estates of persons who died on or after June 6, 2002 are subject to an estate tax. It is tax on the value of the decedent's estate, and is equal to the federal credit for state death taxes computed on the basis of 1997 federal law. For deaths occurring during 2002 and 2003 the Kansas threshold for the imposition of tax is $700,000. [The threshold is $850,000 in 2004, $950,000 in 2005, and $1,000,000 in 2006 or thereafter.] The tax is equal to 100% of the amount of the federal credit for state death taxes.

In addition to the estate tax, estates of persons who died on or after June 6, 2002 are subject to a succession tax. This tax is imposed on the privilege of succeeding to the ownership of any property, corporeal or incorporeal, and any interest therein within the jurisdiction of Kansas by any person who is not a spouse, sibling, lineal ancestor or lineal descendant of the decedent. Generally, any estate that includes property passing to any person who is not a spouse, sibling, lineal ancestor or lineal descendant of the decedent will be subject to the succession tax, regardless of the size of the estate.

Kansas Returns And Filing Requirements

For deaths occurring prior to July 1, 1998 an inheritance tax return should be filed. Additional information about the inheritance tax is available from the Department of Revenue.

For deaths occurring on or after July 1, 1998 and prior to January 2, 2002 an estate required to file a federal Form 706 must file a Kansas estate tax return. Use form K-706. A copy of the federal Form 706 filed for the estate must be attached. If the estate did not file a federal Form 706, the estate is not required to file a Kansas estate tax return.

For deaths occurring on or after January 2, 2002 and prior to June 6, 2002 an estate with a gross value of $700,000 or more must file a Kansas estate tax return. Use Form K-706. If the estate filed a federal Form 706, a copy must be attached. If the estate was not required to file a federal Form 706, a *pro forma* federal Form 706 must be completed and attached. Use revision of Form 706 dated July 1998.

For deaths occurring on or after June 6, 2002 an estate with a gross value of $700,000 or more must file an estate and succession tax return. [For deaths occurring during 2002 and 2003 the Kansas threshold for the imposition of estate tax is $700,000. The threshold is $850,000 in 2004, $950,000 in 2005, and $1,000,000 in 2006 or thereafter.] In addition, regardless of the gross value of the estate, any estate that includes property passing to any person who is not a spouse, sibling, lineal ancestor or lineal descendant of the decedent must file an estate and succession tax return.

If the estate has a gross value of $700,000 or more use Form K-707. If the estate filed a federal Form 706, a copy must be attached. If the estate was not required to file a federal Form 706, a *pro forma* federal Form 706 must be completed and attached. Use revision of Form 706 dated July 1998.

If the estate has a gross value of less than $700,000 but includes property passing to any person who is not a spouse, sibling, lineal ancestor or lineal descendant of the decedent, use Form K-708. Neither a federal Form 706 nor a *pro forma* federal Form 706 need be submitted.

Please note that as of the date of this Notice, neither Form K-707 nor Form K-708 is available. The Department of Revenue is in the process of developing these forms and will have them available in the near future. If you are facing a situation that requires you to file a Kansas estate and succession tax return immediately, please contact our Estate Tax Unit at the address or number listed below for special instructions.

To obtain additional copies of this or any other notice call the Kansas Department of Revenue's voice mail forms request line at (785) 296-4937 or download them from our web site: **www.ksrevenue.org**. If you have any questions about this notice or Kansas estate tax, please contact our Estate Tax Unit.

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Return to KSA Listing