Notice

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Office of Policy & Research

NOTICE 03-08

Implications of 2003 Session HB2005 for the Kansas Estate (Pick-Up) Tax

During the 2003 Session, the Kansas Legislature reviewed the manner in which taxes are imposed on decedent's estates. At issue was the question of whether to retain, alter or repeal the estate tax (pick-up tax) and the succession tax.

In the final days of the 2003 Session, the Kansas Legislature passed HB2005, which is effective May 22, 2003. Sections 45 through 48 of the bill amend the existing estate tax law to provide clarification. New Sections 50 through 66 add administrative and enforcement provisions to the estate tax. New Section 49 of the bill provides for the retroactive repeal of the succession tax that was imposed on the estates of decedent's dying on or after June 6, 2002.

This Notice discusses the implications of HB2005 for the Kansas estate (pick-up) tax.

Kansas Estate Tax

The Kansas estate tax is based on federal law. By statute, Kansas has incorporated by reference federal law as it existed on December 31, 1997.

Federal law as it existed on December 31, 1997 provides that when estate taxes are paid to a state, a credit for all or a portion of that tax is allowed against the federal tax shown on the United States Estate (and Generation Skipping Transfer) Tax Return, federal Form 706. The Kansas estate tax is equal to 100% of the maximum federal credit allowable for state death taxes paid. In effect, the Kansas estate tax return picks up the maximum allowable credit amount. This is why the Kansas estate tax is referred to as a "pick-up tax".

2001 Changes In Federal Estate Tax Law

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 2001 changes in federal law fall into two primary categories. First, the accelerated increase in the Internal Revenue Code §2010 applicable exclusion amount has the effect of increasing the federal filing threshold to $1,000,000 effective for the estates of decedent's dying on or after January 1, 2002. In accordance with federal law this amount will increase to $1,500,000 for deaths occurring in 2004, $2,000,000 for deaths occurring in 2006, and $3,500,000 for deaths occurring 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 deaths occurring in 2003 by 50%, and for deaths occurring in 2004 by 75%. For deaths occurring in 2005 or later years the credit is eliminated and replaced with a deduction.

2001 Changes In Federal Estate Tax Law Do Not Affect The Kansas Estate Tax

Many believe the Kansas estate tax law is in total conformity with federal law, and that the 2001 changes to federal law 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 is not affected by the 2001 changes to federal law.

The 1997 federal law Kansas has incorporated by reference does not recognize the accelerated filing thresholds found in current federal law. Instead, the state filing threshold is $700,000 for deaths occurring in 2002 and 2003, $850,000 for deaths occurring in 2004, $950,000 for deaths occurring in 2005, and $1,000,000 for deaths occurring in 2006 or thereafter.

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

Forms Required For Estates of Decedents Dying Before May 22, 2003

If the gross value of the estate is in excess of the filing threshold established by the 1997 federal law Kansas has incorporated by reference for the year of the decedent's death:

> Estates of decedents dying on or after July 1, 1998 and prior to June 6, 2002 should file Kansas Form K-706 (Revised 7/00).
>
> Estates of decedents dying on or after June 6, 2002 and prior to May 22, 2003 should file Kansas Form K-707.

These forms, and instructions, are available on the Department of Revenue's web site at: **www.ksrevenue.org**

Because the estate (pick-up) tax is based on federal law, a federal return must be completed. Kansas Form K-706 (Revised 7/00) or Form K-707 may be used with the version of the federal form that corresponds to the decedent's date of death. 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.

If the estate files a *pro forma* federal Form 706 with Kansas Form K-706 (Revised 7/00) or Form K-707, the estate may make any elections that are available under federal law. These elections may be made regardless of whether a federal Form 706 is actually filed with the Internal Revenue Service. However, if the estate files a federal Form 706 with the Internal Revenue Service, the election(s) made on that form will be used for Kansas estate tax purposes.

Forms Required For Estates of Decedents Dying On or After May 22, 2003

The changes made by HB2005 make it necessary for the Department of Revenue to redesign the form used in reporting the estate tax imposed on the estates of decedents dying on or after May 22, 2003. This process is underway, and it is anticipated the new form [Form K-706 (Revised 2003)] will be available on-line around July 1, 2003. Please check the Department's web site at: **www.ksrevenue.org** for updated information.

Because the estate (pick-up) tax is based on federal law, a federal return must be completed. In deciding which version of the federal return to require for the estates of decedents dying on or after May 22, 2003, the Department noted the differences that presently exist between the 1997 federal law and forms and current federal law and forms. It also noted that additional differences are likely to arise as federal law continues to change. In light of these differences, the Department determined estates should file the federal Form 706 that most closely reflects the federal law that existed on December 31, 1997.

Therefore, all estates of decedents dying on or after May 22, 2003 must complete the April 1997 version of federal Form 706 and file it with the Kansas Form K-706 (Revised 2003). The April 1997 version of federal From 706 that must be completed and filed with the estate's Form K-706 (Revised 2003) is in addition to any current federal Form 706 that is filed with the Internal Revenue Service.

When completing the April 1997 version of the federal Form 706 the estate may make any elections that are available under federal law as it existed on December 31, 1997. These elections may be made regardless of whether a federal Form 706 is actually filed with the Internal Revenue Service. These elections are also independent of any election made on a federal Form 706 that is actually filed with the Internal Revenue Service.

When completing the April 1997 version of the federal Form 706 the estate should use the applicable Internal Revenue Code §2010 exclusion amount allowed for the year of death under federal law as it existed on December 31, 1997. These amounts, which are referred to on page 1, line 11, of the federal return as the "maximum unified credit against estate tax" are shown in the following table:

Unified Credit

Applicable Year	**Unified Exclusion Credit**	**Amount**
2002	229,800	700,000
2003	229,800	700,000
2004	287,300	850,000
2005	326,300	950,000
2006 and after	345,800	1,000,000

The amount of the federal credit for state death taxes determined on the April 1997 version of federal Form 706 should not be reduced by any percentage. Instead, 100% of the amount of the recalculated credit should be used in determining the amount of Kansas tax due.

Supporting Materials Required

All materials that are required by federal law to be filed in support of the federal Form 706 must be completed and must accompany the April 1997 version of federal form 706 that is filed with the Kansas return.

If the estate filed a federal Form 706 with the Internal Revenue Service, a copy of the federal return, together with a copy of all materials filed in support of the federal Form 706, must also accompany the Kansas return.

For More Information

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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