NOTICE 10-08

SUNSET OF THE KANSAS ESTATE TAX
"PICK-UP" TAX AND "STAND ALONE" ESTATE TAX

There are two Kansas estate tax acts applicable to the estates of decedents dying prior to January 1, 2010; the "pick-up" tax and the "stand-alone" estate tax. While both of these acts have been repealed they continue to apply, based on the decedent's date of death. Both of these acts are now subject to "sunset" provisions which will cause these taxes to end in 2017 and 2020, respectively.

The "Pick-Up" Tax

For many years, Kansas had an inheritance tax. In 1998 the inheritance tax was replaced with an estate tax that applied to the estates of decedents dying on or after July 1, 1998. The tax imposed under this act was in an amount equal to the federal credit for state death taxes and, because the amount of the federal credit was "picked up" by Kansas, this estate tax was referred to as a "pick-up" tax. The provisions of this estate tax are found in K.S.A. 79-15,100 through 79-15,125 and K.S.A. 79-15,127 through 79-15,145.

In 2006 the "pick-up" tax was replaced with a "stand-alone" estate tax that applies to the estates of decedents dying on or after January 1, 2007. When the "stand-alone" estate tax was enacted, however, it contained a provision, K.S.A. 79-15,251, which specifically provided for the continuation of the "pick-up" tax. Because of this provision, and because the statute of limitations for the "pick-up" tax does not begin to run until an estate tax return is filed, the "pick-up" tax continues to apply to estates of persons who died before January 1, 2007.

In 2010 the Kansas legislature enacted legislation which includes language that ends the "pick-up" tax on January 1, 2017. New Section 1 of HB2557 provides:

> New Section 1. The provisions of K.S.A. 79-15,100 through 79-15,125 and K.S.A. 79-15,127 through 79-15,145, and amendments thereto, applicable to the estates of all decedents dying after June 30, 1998 and before January 1, 2007, shall only apply to estates for which an estate tax return was filed before January 1, 2017. In the event no estate tax return has been filed with the director before January 1, 2017, no liability which may have been imposed if the return was filed by such date shall accrue to either the estate or the distributees of the estate.

As noted in New Section 1 of HB2557, if an estate tax return has not been filed by January 1, 2017 for the estate of a decedent dying before January 1, 2007, neither the estate nor any distributee of the estate is liable for the "pick-up" tax. In addition, under the "pick-up" tax there

is no lien for any property considered to be an asset of the decedent's estate. As a result, with the exception of matters then pending before the Department of Revenue, the "pick-up" tax will end as of January 1, 2017.

The "Stand-Alone" Estate Tax

In 2006 the "pick-up" tax was replaced with a "stand-alone" estate tax that applied to the estates of decedents dying on or after January 1, 2007. Because it was not dependant upon federal law as a starting point for computing the Kansas tax, this estate tax was referred to as a "stand-alone" estate tax. The provisions of this estate tax are found in K.S.A. 79-15,201 through 79-15,253.

When the "stand-alone" estate tax was enacted, it contained a provision, K.S.A. 79-15,251, which specifically provides that it apply only to the estates of decedent dying after December 31, 2006 and before January 1, 1010. In addition, in K.S.A. 79-15,253 it provides that:

> On January 1, 2010 the provisions of K.S.A. 2006 Supp. 79-15,201 through 79-15,253, and K.S.A. 2009 Supp. 79-15,206a, and amendments thereto, are hereby repealed.

Because the statute of limitations for the "stand-alone" estate tax does not begin to run until an estate tax return is filed the "stand-alone" tax continues to apply to estates of persons who died on or after January 1, 2007 but before January 1, 2010.

In 2010 the Kansas legislature enacted legislation which includes language that ends the "stand-alone" tax on January 1, 2020. New Section 12 of HB2557 provides:

> New Sec. 2. The provisions of K.S.A. 79-15,201 through 79-15,253, and amendments thereto, applicable to the estates of all decedents dying after December 31, 2006 and before January 1, 2010, shall only apply to estates for which an estate tax return was filed before January 1, 2020. In the event no estate tax return has been filed with the director before January 1, 2020, no liability which may have been imposed if the return was filed by such date shall accrue to either the estate or the distributees of the estate.

As noted in New Section 2 of HB2557, if an estate tax return has not been filed by January 1, 2020 for the estate of a decedent dying before January 1, 2010, neither the estate nor any distributee of the estate is liable for the "stand-alone" tax. In addition, the running of the statute of limitation serves to release the state's lien from any property considered to be an asset of the decedent's estate. As a result, with the exception of matters then pending before the Department of Revenue, the "stand-alone" estate tax will end as of January 1, 2020.

Estates of Decedents Dying On or After January 1, 2010

The Kansas Legislature has not enacted any estate tax provisions which apply to the estates of decedents dying after December 31, 2009. As a result, no tax is or will be due from these estates. Because no Kansas estate tax law applies to these estates the Department of Revenue will not process estate tax returns filed for them.

For additional information in this regard, please see Notice 10-07.

Taxpayer Assistance

Additional copies of this notice, forms or publications are available from our web site, **www.ksrevenue.org**. If you have questions about income tax, please contact:

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