



JAMES M. KRAFT  
S. SCOTT SEAMANDS  
MARK O. BRITAIN  
ALEXIS H. WONG  
CHARLOTTE SIEW-KUN TAY  
CATHY L. HWANG  
RITA B. DELA CRUZ  
STANLEY WOO

## IRS RELEASES DRAFT FORM 706 AND ISSUES GUIDANCE FOR EXECUTORS TO MAKE CARRYOVER BASIS ELECTION

The IRS has released on its website a draft copy of the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, for estates of decedents dying after December 31, 2009 and before Jan. 1, 2011. The new form reflects changes made by the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010 (2010 Tax Relief Act).

The instructions to the draft Form 706 indicate that the current revision only applies to decedents dying in calendar year 2010. One notable change in the instructions is that the due date for filing the Form 706 for decedents who died between the dates of January 1, 2010 and December 16, 2010 is September 19, 2011. A six month extension to file the return can be requested by filing Form 4768. However, this does not extend the time for payment, if any estate taxes are due.

Other significant changes to note are the \$5 million exclusion amount, the 35% maximum tax rate, generation-skipping tax (GST) rate is zero, and that executors must now provide documentation of their status.

The IRS has also issued Notice 2011-66 which provides guidance for executors who will elect out of the estate tax for decedents who died in 2010 and will apply the basis carryover rules for the estate's assets. Executors will need to file Form 8939, Allocation of Increase in Basis for Property Acquired from a Decedent, to opt out of the estate tax and have the carryover basis rule apply.

**Please contact Mark Britain should you have any questions at [mbrittain@lvhj.com](mailto:mbrittain@lvhj.com).**