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ESTATE SETTLEMENT WORKSHEET WILL PROBATE OR ADMINISTRATION BE REQUIRED?

MUST A FEDERAL ESTATE TAX RETURN BE FILED? MUST A STATE ESTATE TAX RETURN BE FILED?

Reviewing the decedent's assets with this chart in mind will help you determine the likely answers to some of the most commonly asked questions when dealing with an estate. This form does not take the place of individual legal advice.

PROBATE & ADMINISTRATION THROUGH THE COURT. Probate is the process of proving the validity of the decedent's Last Will and Testament and having the court officially appoint an executor. Once the court approves the will, the executor can pay expenses and debts, and eventually transfer the decedent's assets as directed in the Will. If there is no will, these assets will pass according to the laws set out by the state where the decedent died in a court proceeding called an "administration." Generally, only the assets in Chart #4 below will be subject to probate/administration because many (and sometimes all) of the decedent's assets pass by other means. Note that you could have a probate proceeding but no estate tax issues (and vice versa, the estate may be taxable but not probate is required).

FEDERAL ESTATE TAX RETURN. A federal estate tax return must be filed if the total date of death value of the assets exceeds a certain amount. For individuals who died in 2020, if the gross estate is worth more than \$11.58million, a return must be filed, even if no tax will be due. A surviving spouse may want to file a federal return to take advantage of portability laws even if no tax is due. Note that it may be necessary to file an estate tax return even if there is no probate required, as taxation and probate are two separate issues. Taxes are due 9 months from the decedent's date of death, so it is important to speak with your accountant or estate attorney as soon as possible.

STATE ESTATE TAX RETURNS. In NY, for decedents dying on or after January 1, 2020 an estate tax return must be filed if the gross estate is more than \$5,850,000. In NJ, an inheritance tax may need to be filed regardless of the size of the estate. Note that it may be necessary to file a state return, but not a federal return. New York estate taxes are due 9 months from the decedent's date of death and inheritance taxes in New Jersey are due 8 months from the decedent's date of death, so it is important to speak with your accountant or estate attorney as soon as possible.

The charts below ask you to list all the assets of the decedent, estimate the values and segregate them by the title on the assets and how they pass at death. It is common for assets to be discovered even months after a person has died, but it is useful to begin organizing information right away. At the beginning of each section you will see suggestions of the types of assets the category is likely to contain.

In all cases, "Value" means fair market value as of date of death.

Examples: real estate, stocks & bonds, mortgages & notes owed to decedent's trust, cash, bank accounts, and/or valuable tangible personal property owned by the decedent's trust (e.g., The John Doe Trust dated January 1, 2010).

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE

[illegible][illegible]

3. ASSETS IN THE NAME OF THE DECEDENT MARKED AS “IN TRUST FOR” (“ITF”), “PAYABLE ON DEATH” (“POD”) or “TRANSFER ON DEATH” (“TOD”) TO A SPECIFIC INDIVIDUAL: No probate/administration is required on these assets if the other person named is living. Examples: real estate, stocks & bonds, cash, bank accounts, and/or valuable tangible personal property with an individual named as a beneficiary.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE	PAYEE/BENEFICIARY

4. ASSETS IN THE NAME OF THE DECEDENT ALONE: Probate/Administration will be required. Examples: real estate, stocks & bonds, mortgages & notes owed to decedent, cash, bank accounts, and/or valuable tangible personal property in the decedent’s sole name and no living beneficiary is named.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE

5. ASSETS PAYABLE TO NAMED INDIVIDUAL OR CHARITY BY BENEFICIARY DESIGNATION: No probate/administration is required for these assets if the designated beneficiary is living or is an existing charity. However, court proceedings may be necessary if the beneficiary is a minor and a guardian needs to be appointed. Examples: annuity, life insurance, IRA or retirement account, employment death benefit, etc.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE	BENEFICIARY

6. ASSETS PAYABLE TO “MY ESTATE” BY BENEFICIARY DESIGNATION, NO BENEFICIARY NAMED, OR NO LIVING BENEFICIARY NAMED: Probate/administration is required on these assets if it goes to “my estate” or there are no living beneficiaries. Examples: annuity, life insurance, IRA or retirement account, employment death benefit, etc.

ASSET INFORMATION	APPROXIMATE VALUE	CONFIRMED D/O/D VALUE