

Tax Liabilities at Death



What are possible tax liabilities when a person dies?

Many people worry that when they die, their estate will have to pay taxes. Persons with large estates should consult an attorney to determine how tax laws may affect their estates.

Information Not Legal Advice

This pamphlet is for information only and is not a substitute for the advice of an attorney.

What kinds of taxes apply when a person dies?

One or more of the following might have to be paid after a person dies:

- Income taxes
- Federal and state estate taxes
- Gift taxes
- Property taxes

Should I file an income tax return for the decedent?

A person who has died is called *the decedent*. If the decedent would have needed to file a federal income tax return if he or she had lived until the end of the year, then you should file an income tax return (IRS form 1040).

Who should file the income tax return?

The income tax return can be filed by the executor or administrator of the decedent's estate. If there is no executor or administrator, the tax return can be filed by the surviving spouse. Usually it should be filed by April 15th of the year after death.

What about federal estate taxes?

The federal estate tax disappears in 2010. A person who died in 2016, will only have estate taxes if the estate is worth more than \$5.49 million. Federal estate taxes do not apply to most people. If you have an estate that is big enough to have to pay estate taxes, you should talk to a lawyer!

Where can I get information about federal estate taxes?

Information about federal estate taxes can be found at the IRS website www.irs.gov or in IRS publication 950, and IRS Frequently Asked Questions on estate taxes.

What about estate taxes in Texas?

If an estate is small enough that no federal return must be filed, then you do not need to file an inheritance tax return in Texas.

Are there any other taxes I need to know about?

The estate may need to pay *gift* or *property* taxes.

What do I need to know about gift taxes?

Gift taxes apply to big gifts of money. The law considers something a gift if ownership changes, but the receiver did not pay the fair market value for the property received. For example, if the decedent sold property for less than it was worth or did not expect any payment for the property it could qualify as a gift. Gift taxes do not have to be paid on:

- Gifts of \$14,000 per year to an individual
- Tuition or medical expenses paid for the benefit of an individual
- Gifts to your spouse
- Gifts to political organizations or to charities

Prior to transferring large sums of money or other large gifts, you should consult with an attorney or tax advisor.

What about property taxes?

In Texas, homeowners who are 65 or older or who are disabled can defer (put off) the property taxes owed on their homestead. These same homeowners can abate (stop) a lawsuit to collect back taxes on their homestead. When an elderly or disabled homeowner defers their property taxes or abates a lawsuit to collect property taxes, the taxes do not stop forever. The taxes plus interest plus a penalty keep adding up until the elderly or disabled homeowner dies. Then, the estate must pay the taxes, interest, and penalties.

A surviving spouse between the ages of 55 and 65 can keep the decedent's exemption by applying at their local tax appraisal office.

After the homeowner's death, if the estate cannot pay the property taxes, interest, and penalties, then the taxing authority becomes a creditor of the estate and can request that the home be sold to pay the amount due.

If you have a reverse mortgage, you generally cannot defer property taxes. This usually is considered a breach of the reverse mortgage.

For detailed information about deferring property taxes, contact your local tax appraisal district office.

Where can I get more information about federal gift taxes?

IRS Publication 950 and IRS Frequently Asked Questions on Gift Taxes. Both are available at www.irs.gov.

For more information...

To find out about many areas of the law. Go to www.texaslawhelp.org.

Legal Hotline for Texans: (800) 622-2520

Call our attorney-staffed legal hotline. Advice is free for Texans who are 60 years old and over or for anyone eligible for Medicare.