

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 20 and 602

[TD 8957]

RIN 1545-AX98

Estate tax return; Form 706, Extension to File

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the filing of an application for an automatic 6-month extension of time to file an estate tax return (Form 706). The final regulations provide guidance to executors of decedents' estates on how to properly file the application for the automatic extension.

DATES: Effective Date: These regulations are effective for estate tax returns due after [**INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER**].

Applicability Date: For dates of applicability, see §§20.6075-1 and 20.6081-1(e).

FOR FURTHER INFORMATION CONTACT: Mary Berman, (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of

Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545-1707. The collection of information in these final regulations is in §20.6081-1. To receive an extension of time to file an estate tax return, the executor of a decedent's estate must file Form 4768, "Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes." This information is required to obtain a benefit (an automatic 6-month extension of time to file an estate tax return). The collection of information is mandatory if the extension is requested. The likely respondents are executors of decedents' estates.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

The reporting burden contained in §20.6081-1 is reflected in the burden of Form 4768.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP:S:O, Washington, DC 20224 and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents may become material in

the administration of any internal revenue law. Generally, tax returns and tax information are confidential, as required by 26 U.S.C. 6103.

Background

On October 20, 2000, the IRS published in the Federal Register (65 FR 63025) a notice of proposed rulemaking (REG-106511-00) relating to the filing of an application for an automatic 6-month extension of time to file Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return." This document adopts final regulations with respect to that notice of proposed rulemaking. Written comments were received with respect to the proposed regulations, and a public hearing was held on January 24, 2001. A summary of the principal comments received is provided below.

In general, under the proposed regulations the executor of a decedent's estate is allowed an automatic 6-month extension of time to file Form 706 beyond the 9 months provided for by section 6075(a). The application for the automatic extension must be submitted on Form 4768. The application must be filed with the IRS on or before the date prescribed by section 6075(a) for filing the Form 706, and it must include an estimate of the full amount of tax due.

The proposed regulations refer to "the person who is required to file the return" as the person who may request an extension of time to file. Since §20.6018-2 of the Estate Tax Regulations requires that the return be filed jointly by all

executors in situations in which there is more than one executor, one commentator pointed out that "the person who is required to file the return" could be interpreted as meaning that all executors must sign the request for an extension of time to file in situations in which there is more than one executor.

Also, the Treasury Department and the IRS recognize that "the person who is required to file the return" may be interpreted to mean that only an executor may sign a request for an extension to file. However, as indicated on Form 4768, the request may be signed by an attorney, certified public accountant, or enrolled agent authorized by the executor, or by an authorized agent holding a power of attorney.

In response to the comment, the quoted language in the proposed regulations has been deleted from the final regulations. Also, the Form 4768 will be revised to clarify that it is only necessary for one executor to sign the request for an extension of time to file in situations in which there is more than one executor.

Two commentators suggested that the final regulations clearly provide that payment of the tax is not a prerequisite to obtaining an extension of time to file, and that an extension of time to file does not operate to extend the time for payment of the tax. In response to this suggestion, the final regulations provide that, if an extension of time to file has been obtained but no extension of time to pay has been granted, interest will

be due on the tax not paid by the due date and the estate will be subject to all applicable late payment penalties.

One commentator suggested that, in addition to the automatic 6-month extension of time to file, the regulations provide an automatic extension of time to pay. The commentator suggested that the executor be required to pay an amount equal to the executor's "best estimate" of the ultimate tax due and receive an automatic extension of time to pay any excess. The Treasury Department and the IRS believe that a standard incorporating an executor's "best estimate" would be difficult to administer, and the suggestion has not been adopted.

One commentator suggested that the regulations provide the criteria to be used in approving or denying requests for extensions of time to file that do not qualify for the automatic 6-month extension. This suggestion has not been adopted. The Treasury Department and the IRS believe that the circumstances surrounding requests for extensions of time to file that do not qualify for the automatic 6-month extension generally present factual issues and questions warranting the broad discretion of the IRS office responsible for granting or denying the extension of time.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the

Administrative Procedure Act (5 U.S.C. chapter 5) does not apply and because this rule does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Mary Berman, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 20 and 602 are amended as follows:
PART 20--ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Paragraph 1. The authority citation for part 20 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 20.6081-1 also issued under 26 U.S.C. 6081(a). * * *

Par. 2. Section 20.6075-1 is revised to read as follows:

§20.6075-1 Returns; time for filing estate tax return.

The estate tax return required by section 6018 must be filed on or before the due date. The due date is the date on or before which the return is required to be filed in accordance with the provisions of section 6075(a) or the last day of the period covered by an extension of time as provided in §20.6081-1. The due date, for a decedent dying after December 31, 1970, is, unless an extension of time for filing has been obtained, the day of the ninth calendar month after the decedent's death numerically corresponding to the day of the calendar month on which death occurred. However, if there is no numerically corresponding day in the ninth month, the last day of the ninth month is the due date. For example, if the decedent dies on July 31, 2000, the estate tax return and tax payment must be made on or before April 30, 2001. When the due date falls on Saturday, Sunday, or a legal holiday, the due date for filing the return is the next succeeding day that is not Saturday, Sunday, or a legal holiday. For the definition of a legal holiday, see section 7503 and §301.7503-1 of this chapter. As to additions to the tax in the case of failure to file the return or pay the tax within the prescribed time, see section 6651 and §301.6651-1 of this chapter. For rules with respect to the right to elect to have the property valued as of a date or dates subsequent to the decedent's death, see section 2032 and §20.2032-1, and section

7502 and §301.7502-1 of this chapter. This section applies to estates of decedents dying after August 16, 1954.

Par. 3. Section 20.6081-1 is revised to read as follows:

§20.6081-1 Extension of time for filing the return.

(a) Procedures for requesting an extension of time for filing the return. A request for an extension of time to file the return required by section 6018 must be made by filing Form 4768, "Application for Extension of Time To File a Return and/or Pay U. S. Estate (and Generation-Skipping Transfer) Taxes." Form 4768 must be filed with the Internal Revenue Service office designated in the application's instructions (except as provided in §301.6091-1(b) of this chapter for hand-carried documents). Form 4768 must include an estimate of the amounts of estate and generation-skipping transfer tax liabilities with respect to the estate.

(b) Automatic extension. An estate will be allowed an automatic 6-month extension of time beyond the date prescribed in section 6075(a) to file Form 706, "United States Estate (and Generation-Skipping Transfer) Tax Return," if Form 4768 is filed on or before the due date for filing Form 706 and in accordance with the procedures under paragraph (a) of this section.

(c) Extension for good cause shown. In its discretion, the Internal Revenue Service may, upon the showing of good and sufficient cause, grant an extension of time to file the return required by section 6018 in certain situations. Such an extension may be granted to an estate that did not request an

automatic extension of time to file Form 706 prior to the due date under paragraph (b) of this section, to an estate or person that is required to file forms other than Form 706, or to an executor who is abroad and is requesting an additional extension of time to file Form 706 beyond the 6-month automatic extension. Unless the executor is abroad, the extension of time may not be for more than 6 months beyond the filing date prescribed in section 6075(a). To obtain such an extension, Form 4768 must be filed in accordance with the procedures under paragraph (a) of this section and must contain a detailed explanation of why it is impossible or impractical to file a reasonably complete return by the due date. Form 4768 should be filed sufficiently early to permit the Internal Revenue Service time to consider the matter and reply before what otherwise would be the due date of the return. Failure to file Form 4768 before that due date may indicate negligence and constitute sufficient cause for denial of the extension. If an estate did not request an automatic extension of time to file Form 706 under paragraph (b) of this section, Form 4768 must also contain an explanation showing good cause for not requesting the automatic extension.

(d) Filing the return. A return as complete as possible must be filed before the expiration of the extension period. The return thus filed will be the return required by section 6018(a), and any tax shown on the return will be the amount determined by the executor as the tax referred to in section 6161(a)(2), or the amount shown as the tax by the taxpayer upon the taxpayer's

return referred to in section 6211(a)(1)(A). The return cannot be amended after the expiration of the extension period although supplemental information may subsequently be filed that may result in a finally determined tax different from the amount shown as the tax on the return.

(e) Payment of the tax. An extension of time for filing a return does not operate to extend the time for payment of the tax. See §20.6151-1 for the time for payment of the tax, and §§20.6161-1 and 20.6163-1 for extensions of time for payment of the tax. If an extension of time to file a return is obtained, but no extension of time for payment of the tax is granted, interest will be due on the tax not paid by the due date and the estate will be subject to all applicable late payment penalties.

(f) Effective date. This section applies to estates of decedents dying after August 16, 1954, except for paragraph (b) of this section which applies to estate tax returns due after **[INSERT DATE THIS DOCUMENT IS PUBLISHED IN THE FEDERAL REGISTER].**

PART 602--OMB CONTROL UNDER THE PAPERWORK REDUCTION ACT

Par. 4. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 5. In §602.101, paragraph (b) is amended by revising the entry for §20.6081-1 to read as follows:

§602.101 OMB Control numbers.

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(b) * * *

<u>CFR part or section where</u> <u>identified and described</u>	<u>Current OMB</u> <u>control No.</u>
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20.6081-1.....	1545-0015
	1545-0181
	1545-1707

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Deputy Commissioner of Internal Revenue

Approved:

Assistant Secretary of the Treasury