



Estate and Gift Tax Update

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ESTATE TAX RATES MADE “PERMANENT”



- ❖ Estate Tax, Gift Tax, and Generation-Skipping Tax (GST) exemption levels set at \$5 million, indexed for inflation.
- ❖ \$5.25 million exemptions for 2013
- ❖ \$5.34 million exemptions for 2014
- ❖ 40% top marginal rates
- ❖ \$14,000 annual gift tax exclusion



PORTABILITY MADE PERMANENT

Portability gives the surviving spouse's estate the option to utilize any unused estate and/or gift tax exemption remaining on the first spouse's death. There is no portability for an unused GST exemption.

The American Taxpayer Relief Act of 2012 makes portability permanent.

Making a portability election is not automatic. To make the election, an executor must file an estate tax return by the due date, including extensions, even if the estate is worth less than the applicable filing threshold.





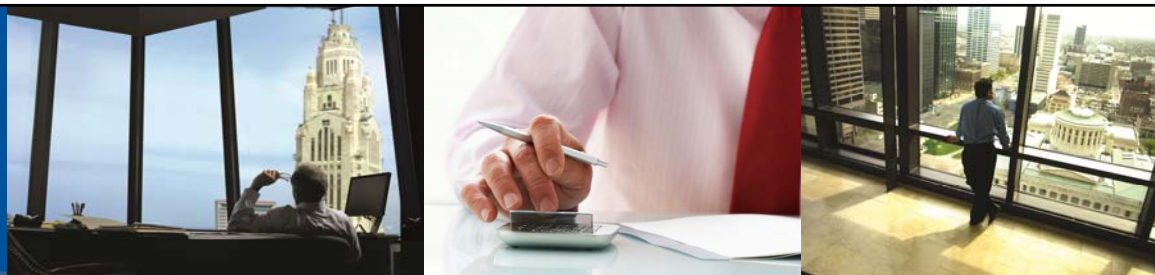
MAKING THE PORTABILITY ELECTION

Form 706
(Rev. August 2012)
Department of the Treasury
Internal Revenue Service

United States Estate (and Generation-Skipping Transfer) Tax Return
OMB No. 1545-0015
► Estate of a citizen or resident of the United States (see instructions). To be filed for decedents dying after December 31, 2011, and before January 1, 2013.
► Information about Form 706 and its separate instructions is at www.irs.gov/form706.

Part 1—Decedent and Executor	1a Decedent's first name and middle initial (and maiden name, if any)	1b Decedent's last name	2 Decedent's social security no.	
	3a County, state, and ZIP or foreign country and postal code, of legal residence (domicile) at time of death	3b Year domicile established	4 Date of birth	5 Date of death
	6b Executor's address (number and street including apartment or suite no.; city, town, or post office; state; country; and ZIP or postal code) and phone no.			
	6a Name of executor (see instructions)			
	6c Executor's social security number (see instructions)	Phone no.		
	6d If there are multiple executors, check here <input type="checkbox"/> and attach a list showing the names, addresses, telephone numbers, and SSNs of the additional executors.			
	7a Name and location of court where will was probated or estate administered		7b Case number	
8 If decedent died testate, check here <input type="checkbox"/> and attach a certified copy of the will. 9 If you extended the time to file this Form 706, check here <input type="checkbox"/>				
10 If Schedule R-1 is attached, check here <input type="checkbox"/> 11 If you are estimating the value of assets included in the gross estate on line 1 pursuant to the special rule of Reg. section 20.2010-27(a)(7)(ii), check here <input type="checkbox"/>				

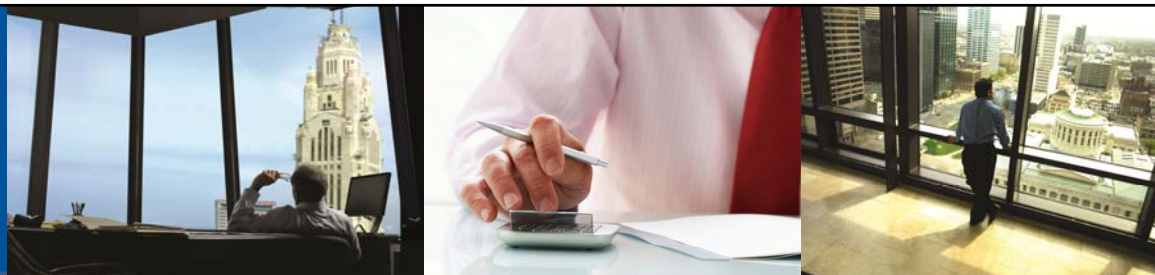
- ❖ Executor makes portability election by filing a timely and properly prepared federal estate tax return.
- ❖ Estate tax return is due nine months from death but an automatic six-month extension can be obtained.
- ❖ If return is not required other than to make portability election, executor can make good faith estimates of the valuation of charitable and marital deduction property. Formal appraisals are not necessary.
- ❖ Statute of limitations does not run until surviving spouse dies.



NEW TAX BRACKETS FOR ESTATES AND TRUSTS

2012	
If Taxable Income Is:	The Marginal Rate Is:
Not Over \$2,400	15%
Between \$2,400 and \$5,600	25%
Between \$5,600 and \$8,500	28%
Between \$8,500 and \$11,650	33%
Over \$11,650	35%

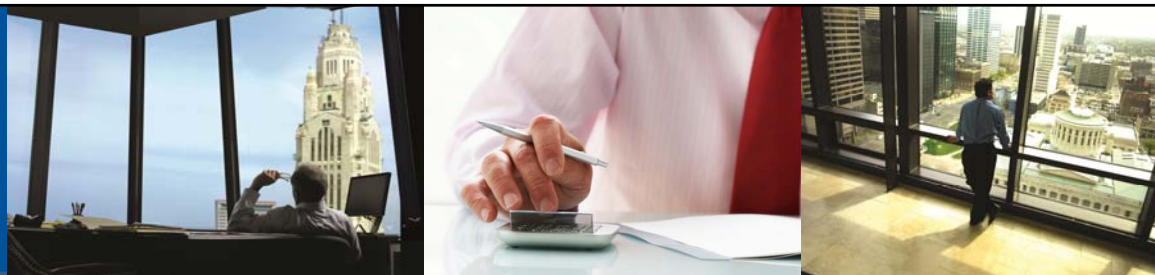
2013	
If Taxable Income Is:	The Marginal Rate Is:
Not Over \$2,450	15%
Between \$2,450 and \$5,700	25%
Between \$5,700 and \$8,750	28%
Between \$8,750 and \$11,950	33%
Over \$11,950	39.6%



THE 3.8 PERCENT MEDICARE SURTAX

- ❖ Imposed on the lesser of either undistributed net investment income or the excess of adjusted gross income over the highest estate or trust income bracket.
- ❖ Highest estate and trust income bracket of 39.6 percent begins at \$11,950.
- ❖ ***This means that trusts and estates with certain investment income over \$11,950 will be paying 43.4 percent in federal taxes on this income.***





INCOME SUBJECT TO THE SURTAX



- ❖ Interest
- ❖ Dividends
- ❖ Rents and Royalties
- ❖ Net capital gains derived from the disposition of property
- ❖ Passive income from trade or business

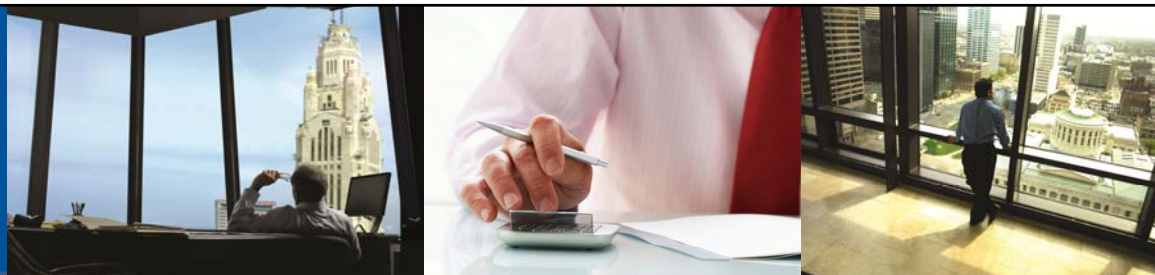


PASSIVE VS. ACTIVE INCOME

Trade or business income will be subject to the 3.8 percent surtax if the taxpayer's involvement in such trade or business is deemed a "passive activity."

Material participation in the business by the fiduciary is necessary to avoid classification as a passive activity. Material participation requires regular, continuous, and substantial involvement in the business on an ongoing basis throughout the tax year,

Who must participate?		
Grantor Trust	Complex or Simple Trust	QSST
<i>Grantor</i>	<i>Trustee</i>	<i>Beneficiary</i>



TECHNICAL ADVICE MEMORANDUM 201317010

FACTS: Trust fiduciary also served as an officer of a company and performed services to the company in both capacities.

HELD: An estate or trust materially participates in an activity only if the fiduciary, *in his fiduciary capacity*, satisfies the material participation standard. Because the trustee could not itemize the time he spent, the activity was held to be passive.

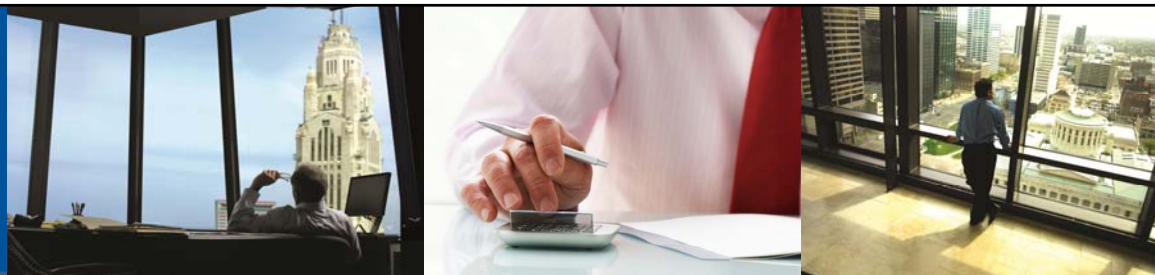
THE IRS IS MAKING IT MORE DIFFICULT FOR ESTATES AND TRUSTS TO AVOID THE MEDICARE SURTAX





COMPARISON OF MAXIMUM TAX RATES FOR TRUSTS AND ESTATES 2012 - 2013

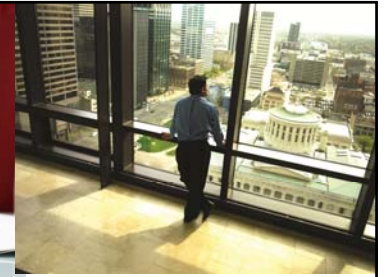
	2012	2013
Top Federal Rate	35%	39.6%
Top Ohio Rate	5.925%	5.421%
Medicare Surtax	-	3.8%
Top Tax Rate	40.925%	48.821%



WAYS FOR TRUSTS AND ESTATES TO AVOID MEDICARE SURTAX



- ❖ Invest in tax-exempt securities
- ❖ Make discretionary distributions to beneficiaries with higher exemption thresholds (65 day rule)
- ❖ Distribute appreciated assets in kind to avoid capital gains tax at the entity level
- ❖ Ensure that fiduciary actively participates in trade or business



Questions and Answers