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Fall Seminar 2011

**Your Recent Developments Survival
Boot Camp**

Program Exhibits

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Traditional Planning without Portability

Main Worksheet

H&W - H with \$10m; \$10m Request to W H&W - H with \$10m; \$5m to Bypass & \$5m to W

	H&W - H with \$10m; \$10m Request to W		H&W - H with \$10m; \$5m to Bypass & \$5m to W	
	Decedent	Spouse	Decedent	Spouse
Date Of Death	1/31/2011	12/1/2011	1/31/2011	12/1/2011
Adjusted Gross Estate	10,000,000	8,932,400	10,000,000	4,083,600
Marital Deduction	10,000,000	0	5,000,000	0
Charitable Deduction	0	0	0	0
Taxable Estate	0	8,932,400	5,000,000	4,083,600
After 1976 Taxable Gifts	0	0	0	0
Federal Estate	0	8,932,400	5,000,000	4,083,600
Federal Tax Per Schedule	0	3,107,140	1,730,800	1,410,060
After 1976 Gift Taxes	0	0	0	0
Unified Credit	1,730,800	3,480,800	1,730,800	1,730,800
Federal Tax + Max Credit	0	0	0	0
State Death Taxes - Max Credit	0	0	0	0
Federal Tax Before Special Credits	0	0	0	0
Special Fed Estate Tax Credits	0	0	0	0
Federal Tax	0	0	0	0
State Death Taxes	0	1,067,600	0	916,400
Total Death Taxes	0	1,067,600	0	916,400
Family Share	0	8,932,400	5,000,000	4,083,600
Family Share Both Spouses	0	8,932,400	0	9,083,600

Planning with Portability and Gifting

Main Worksheet

	H & W With No Planning & Portability		H & W With No Planning, Portability & \$10m Gift		H & W With No Planning, Portability & Becoming FL Residents (No \$10m Gift)	
	Decedent	Spouse	Decedent	Spouse	Decedent	Spouse
	1/31/2011	12/1/2011	1/31/2011	12/1/2011	1/31/2011	12/1/2011
Date Of Death	1/31/2011	12/1/2011	1/31/2011	12/1/2011	1/31/2011	12/1/2011
Adjusted Gross Estate	10,000,000	8,932,400	10,000,000	0	10,000,000	10,000,000
Marital Deduction	10,000,000	0	10,000,000	0	10,000,000	0
Charitable Deduction	0	0	0	0	0	0
Taxable Estate	0	8,932,400	0	0	0	10,000,000
After 1976 Taxable Gifts	0	0	0	10,000,000	0	0
Federal Estate	0	8,932,400	0	10,000,000	0	10,000,000
Federal Tax Per Schedule	0	3,107,140	0	3,480,800	0	3,480,800
After 1976 Gift Taxes	0	0	0	1,750,000	0	0
Unified Credit	1,730,800	3,480,800	1,730,800	1,730,800	1,730,800	3,480,800
Federal Tax + Max Credit	0	0	0	0	0	0
State Death Taxes - Max Credit	0	0	0	0	0	0
Federal Tax Before Special Credits	0	0	0	0	0	0
Special Fed Estate Tax Credits	0	0	0	0	0	0
Federal Tax	0	0	0	0	0	0
State Death Taxes	0	1,067,600	0	0	0	0
Total Death Taxes	0	1,067,600	0	0	0	0
Family Share	0	8,932,400	0	10,000,000	0	10,000,000
Family Share Both Spouses	0	8,932,400	0	10,000,000	0	10,000,000

The Tax Impact of Gifting in Massachusetts

1 of 3

Estate Tax Calculation

Death Year:	2011
Adjusted Gross Estate:	\$5,000,000
Pre-1977 Taxable Gifts:	\$0
Adj. Taxable Gifts (After '76):	\$5,000,000
Unified Credit Used by Gifts:	\$0
Deceased Spousal Unused Exclusion:	\$0
State:	MA

State Tax Calculations (MA)

Exclusion Amount for Pickup Tax:	\$1,000,000
Estate Tax:	\$391,600
State Death Tax:	\$391,600

Federal Tax Calculations

Taxable Estate (2011):	\$5,000,000
Adjusted Taxable Gifts:	\$5,000,000
Deduction for State Death Tax (MA):	\$391,600
Tentative Tax Base:	\$9,608,400
Tentative Tax:	\$3,343,740
Gift Tax Paid:	\$1,730,800
Gross Federal Estate Tax:	\$1,612,940
Applicable Exclusion Amount:	\$5,000,000
Unified Credit:	\$1,730,800
Net Federal Estate Tax:	\$0
Assumed State Death Tax:	\$391,600
Total Federal and State Tax Payable:	\$391,600
Net Estate Remaining:	\$4,608,400
Taxes as Percentage of Taxable Estate:	7.83%

The Tax Impact of Gifting in Massachusetts

2 of 3

Estate Tax Calculation

Death Year:	2011
Adjusted Gross Estate:	\$5,100,000
Pre-1977 Taxable Gifts:	\$0
Adj. Taxable Gifts (After '76):	\$0
Unified Credit Used by Gifts:	\$0
Deceased Spousal Unused Exclusion:	\$0
State:	MA

State Tax Calculations (MA)

Exclusion Amount for Pickup Tax:	\$1,000,000
Estate Tax:	\$402,800
State Death Tax:	\$402,800

Federal Tax Calculations

Taxable Estate (2011):	\$5,100,000
Deduction for State Death Tax (MA):	\$402,800
Tentative Tax Base:	\$4,697,200
Tentative Tax:	\$1,624,820
Gross Federal Estate Tax:	\$1,624,820
Applicable Exclusion Amount:	\$5,000,000
Unified Credit:	\$1,730,800
Net Federal Estate Tax:	\$0
Assumed State Death Tax:	\$402,800
Total Federal and State Tax Payable:	\$402,800
Net Estate Remaining:	\$4,697,200
Taxes as Percentage of Taxable Estate:	7.90%

The Tax Impact of Gifting in Massachusetts

3 of 3

Estate Tax Calculation

Death Year:	2011
Adjusted Gross Estate:	\$100,000
Pre-1977 Taxable Gifts:	\$0
Adj. Taxable Gifts (After '76):	\$5,000,000
Unified Credit Used by Gifts:	\$0
Deceased Spousal Unused Exclusion:	\$0
State:	MA

State Tax Calculations (MA)

Exclusion Amount for Pickup Tax:	\$1,000,000
Estate Tax:	\$0
State Death Tax:	\$0

Federal Tax Calculations

Taxable Estate (2011):	\$100,000
Adjusted Taxable Gifts:	\$5,000,000
Tentative Tax Base:	\$5,100,000
Tentative Tax:	\$1,765,800
Gift Tax Paid:	\$1,730,800
Gross Federal Estate Tax:	\$35,000
Applicable Exclusion Amount:	\$5,000,000
Unified Credit:	\$1,730,800
Net Federal Estate Tax:	\$0
Total Federal and State Tax Payable:	\$0
Net Estate Remaining:	\$100,000
Taxes as Percentage of Taxable Estate:	0.00%

Having Your Cake and Eat it Too – Trust Provisions

1. Federal Marital Share

The Federal Marital Share shall be funded and administered as provided in this section.

.01 The Trustee shall pay to the Donor's spouse the income of the Federal Marital Share, from the date of the Donor's death, at least quarter annually, for life. In addition, the Trustee shall pay to the Donor's spouse so much of the principal of the Federal Marital Share as the Donor's spouse may request from time to time in one or more writing(s) delivered to the Trustee, and so much additional principal as the Trustee deems appropriate, in its discretion.

.02 Upon the death of the Donor's spouse, the Trustee shall distribute, in trust or otherwise, the Federal Marital Share as it may then exist, to such person or persons, including the estate of the Donor's spouse, as the Donor's spouse shall, by a will specifically referring hereto, appoint. Any portion or all of the Federal Marital Share not fully and effectually so appointed shall be added to and consolidated with the By-Pass Share, hereinafter established, and shall be administered as part of the principal thereof. Provided, however that no amount shall be added to any portion of the By-Pass Share for which there is a Generation Skipping Transfer Tax inclusion ratio of zero unless such amount also has an inclusion ratio of zero. To the extent such amount does not

have an inclusion ratio of zero, such amount shall be held as a separate share of the By-Pass Share but on the same terms and conditions as provided for in the By-Pass Share.

.03 The Federal Marital Share shall be established by setting aside an amount that is equal to the maximum (unlimited) marital deduction allowable in determining the federal estate tax for the Donor's estate, reduced by the aggregate value, as so determined, of all interests in property which pass to the Donor's spouse by will or in any other manner, to the extent that their value may be deducted as a marital deduction from the value of the Donor's gross estate in determining the value of the Donor's taxable estate; provided, that if said amount provides a deduction in excess of the minimum amount necessary to eliminate, if possible, or otherwise minimize, any federal estate tax in the Donor's estate, then said amount shall be reduced so as not to exceed said minimum amount. In computing this amount, any federal estate death tax credit for state death taxes shall be taken into account to the extent its use does not result in an increase in the state death taxes otherwise payable. If there is no federal estate tax in effect upon the Donor's estate, then all property shall be allocated to the Massachusetts Marital Share.

.04 The Federal Marital Share shall be funded only with the assets or the proceeds of assets which qualify for the applicable estate tax marital deduction(s), and, to the extent

that sufficient other property is available, shall not be funded with any assets with respect to which a credit for foreign taxes paid is allowable under the Internal Revenue Code. In funding the Federal Marital Share, the Trustee shall value assets at their fair market value on the date of distribution to the Federal Marital Share.

2. Massachusetts Marital Share

The Massachusetts Marital Share shall be funded and administered as provided in this section.

.01 The Trustee shall pay to the Donor's spouse the income of the Massachusetts Marital Share, from the date of the Donor's death, at least quarter annually, for life.

Additionally, a Disinterested Trustee shall be permitted to distribute principal to the Donor's spouse in such Trustee's sole and absolute discretion.

.02 Upon the death of the Donor's spouse, the remaining principal in the Massachusetts Marital Share, if any, shall be paid, in trust or otherwise, to such person or persons (in equal or unequal shares) selected from a class consisting of the Donor's issue of all generations and one or more charitable organizations exempt from taxation under §501(c) of the Internal Revenue Code as the Donor's spouse shall appoint by a will specifically referring to this power. Any portion or all of the Massachusetts Marital Share not fully and effectually so appointed shall be added to and consolidated with the By-Pass Share, hereinafter established, and shall be administered as

part of the principal thereof. Provided, however that no amount shall be added to any portion of the By-Pass Share for which there is a Generation Skipping Transfer Tax inclusion ratio of zero unless such amount also has an inclusion ratio of zero. To the extent such amount does not have an inclusion ratio of zero, such amount shall be held as a separate share of the By-Pass Share but on the same terms and conditions as provided for in the By-Pass Share.

.03 The Massachusetts Marital Share shall be established by setting aside an amount that is equal to the maximum (unlimited) marital deduction allowable in determining the applicable state estate tax for the Donor's estate, reduced by the aggregate value, as so determined, of all interests in property which pass to the Donor's spouse by will, by this trust, or in any other manner, to the extent that their value may be deducted as a marital deduction from the value of the Donor's gross estate in determining the value of the Donor's taxable estate; provided, that if said amount provides a deduction in excess of the minimum amount necessary to eliminate, if possible, or otherwise minimize, any applicable state estate tax in the Donor's estate, taking into account prior provisions of this trust, then said amount shall be reduced so as not to exceed said minimum amount. In the event that my executor fails or refuses to make the election under Internal Revenue Code §2056(b)(7) to treat the Massachusetts Marital Share as qualifying for an estate tax marital deduction

for any applicable state estate tax purposes, the property in the Massachusetts Marital Share shall be added to and consolidated with the By-Pass Share, hereinafter established, and shall be administered as part of the principal thereof.

.04 The Massachusetts Marital Share shall be funded only with the assets or the proceeds of assets which qualify for the applicable estate tax marital deduction(s), and, to the extent that sufficient other property is available, shall not be funded with any assets with respect to which a credit for foreign taxes paid is allowable under the Internal Revenue Code. In funding the Massachusetts Marital Share, the Trustee shall value assets at their fair market value on the date of distribution to the Massachusetts Marital Share.

3. By-Pass Share

The By-Pass Share shall be funded and administered as provided in this section.

.01 Out of the income or principal of the By-Pass Share, or both, the Trustee may, from time to time during the lifetime of the Donor's spouse, pay such amount or amounts (whether equal or unequal, and whether the whole or a lesser amount) as the Trustee, in its sole discretion, shall determine, to or for the benefit of such one or more persons as the Trustee, in its discretion, shall select from a class consisting of the Donor's spouse and the Donor's issue of all generations..

.02 The By-Pass Share shall be funded with all assets remaining in the hands of the Trustee after the Marital Share has been funded.

.03 Upon the death of the Donor's spouse, the remaining principal and any undistributed income in the By-Pass Share, if any, shall be paid, in trust or otherwise, to such person or persons (in equal or unequal shares) selected from a class consisting of the Donor's issue of all generations and one or more charitable organizations exempt from taxation under §501(c) of the Internal Revenue Code as the Donor's spouse shall appoint by a will specifically referring to this power. Any portion or all of the property not fully and effectually so appointed shall be administered as hereinafter provided.

.04 The Trustee shall divide and allocate the remaining principal and any undistributed income into as many equal shares as there are children of the Donor then living and children of the Donor then deceased leaving issue then living, by right of representation adjusting for advancements as provided for below.

.05 In the case of a share allocated to a then living child of the Donor:

(a) The Trustee may pay or apply so much of the income or principal, as it, in its sole and absolute discretion, shall determine to such child or such child's issue for their health, education, support and maintenance and such other amounts as the Trustee deems advisable.

(b) When such child attains the Applicable Distribution Age of twenty-five (25) years, the Trustee shall set aside, as a Distribution Account, one-third of the principal of such share. When such child attains the Applicable Distribution Age of thirty (30) years, the Trustee shall add to the Distribution Account one-half of the principal of such share exclusive of the Distribution Account, and when such child attains the Applicable Distribution Age of thirty-five (35) years, the Trustee shall designate the entire principal of such share as the Distribution Account. Such child at any time by written request may withdraw any part or all of the Distribution Account of such share.

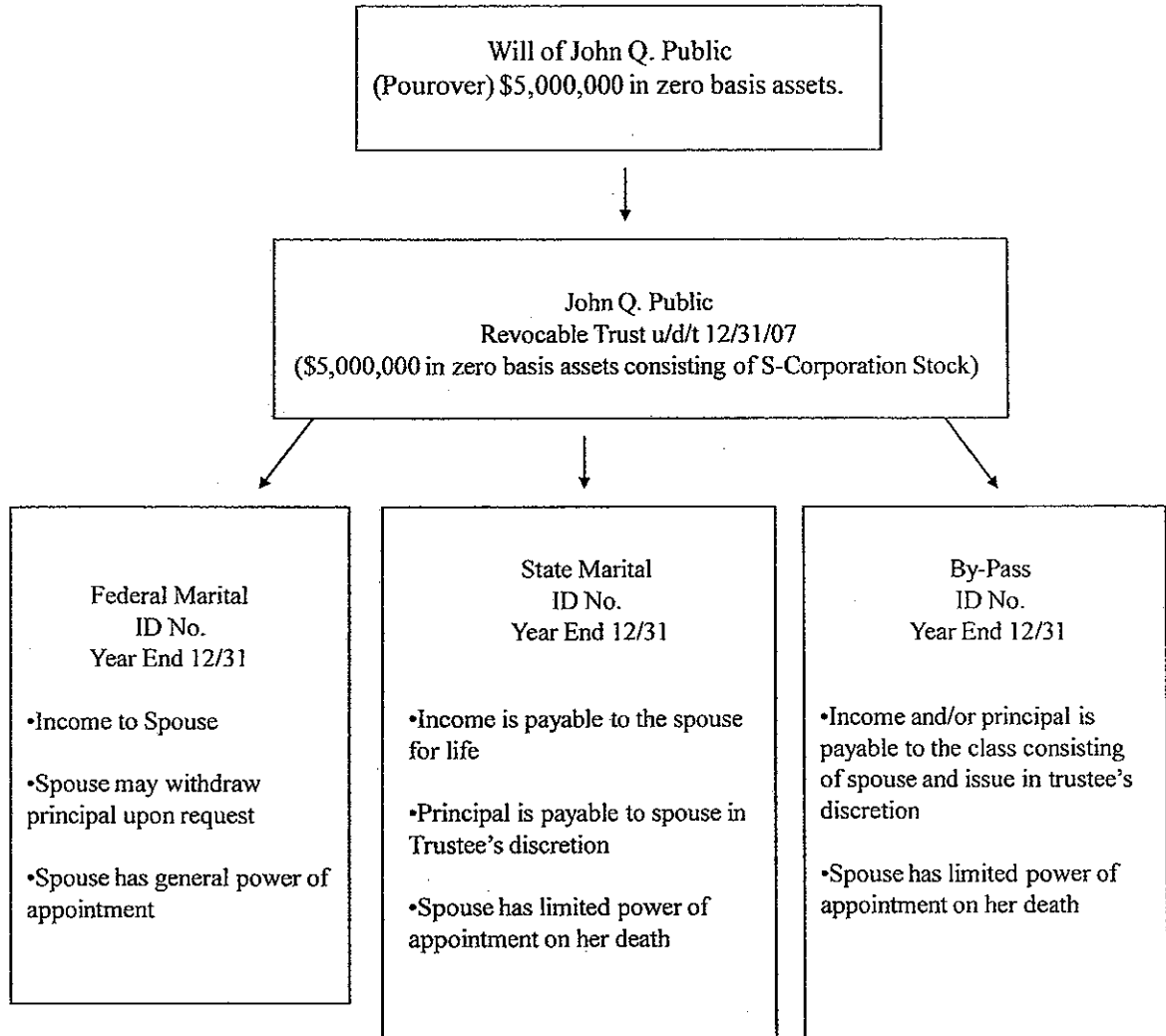
.06 In the case of a share allocated to issue of a deceased child of the Donor, or in the case of issue of a child who dies before attaining an Applicable Distribution Age, the Trustee may pay or apply so much of the income or principal as it, in its sole and absolute discretion, shall determine to such issue for their health, education, support and maintenance, and such other amounts as the Trustee deems advisable, until there is no child of such deceased child living who is under the age of twenty-five (25) years, and the Trustee shall distribute the then remaining balance of said share to said issue, by right of representation, or, if there are no such issue then living, to the then living issue of the Donor, provided that if any such issue are among the beneficiaries of any share then being held by the Trustee under

this instrument, each such issue's portion of such distribution shall be added to and held by the Trustee as part of the share of which such issue is a beneficiary.

.07 Any amount clearly denominated as an advancement in a written notice signed by the Donor and delivered to the Trustee during the Donor's lifetime shall be an advancement for purposes of this instrument. The amount of an advancement shall be added to the value of property required to be divided among issue under this paragraph and shall be treated as if included in the share of the individual benefiting from the advancement (or of the issue representing such individual).

In the case of real estate, which term shall include any entity where the primary asset is real estate, the amount of the advancement shall be the fair market value of such property on the date of the death of the Donor (or the death of the Donor and the Donor's spouse) unless the property previously was sold to a third party in a bona fide sale in which case the gross sales price shall be the amount of the advancement. The amount of all other advancements shall be the value of the transfer on the date of the transfer and this rule shall apply regardless of whether the property has been further transferred by the donee.

Diagram of Subshares



Year of Death

2009	→	\$6,500,000	\$2,500,000	\$1,000,000
2010	→	Zero	\$9,000,000	\$1,000,000
2011	→	\$5,000,000	\$4,000,000	\$1,000,000

FORM 8939

Form **8939**

Allocation of Increase in Basis for Property Acquired From a Decedent

OMB No. 1545-XXXX

2010

Department of the Treasury
Internal Revenue Service

File separately. Do NOT file with Form 1040. See below for filing address.
To be filed for decedents dying after December 31, 2009 and before January 1, 2011.

Part 1 - Decedent and Executor	1a Decedent's first (given) name and middle initial (and maiden name, if any)		1b Decedent's last (family) name		2 Decedent's Social Security No.	
	James E E		Smith		111-22-3366	
	3 County, state, and ZIP code, or foreign country, of legal residence (domicile) at time of death		4 <input type="checkbox"/> Check if decedent was a nonresident and was not a citizen of the U.S. See instructions. If checked, enter nationality (citizenship)		5 Date of death	
	New York NY 10022-				01/10/2010	
Part 2 - Basis Allocation Computation	6a Name of executor (see instructions)		6b Executor's address (number and street including apartment or suite number; city, town, or post office; state; and ZIP code) and phone number			
	Jim Jones		Williams & Jones et al White Plains NY 10603-3906			
	6c Executor's social security number (see instructions)				Phone no. (516) 775-3906	
		777-88-9999				
7 Marital status of the decedent at time of death:						
<input checked="" type="checkbox"/> Married						
<input type="checkbox"/> Widow or widower-Name, SSN, and date of death of deceased spouse ▶ _____						
<input type="checkbox"/> Single						
<input type="checkbox"/> Legally separated						
<input type="checkbox"/> Divorced-Date divorce decree became final ▶ _____						
8a Surviving spouse's name		8b Social security number		8c Value of property acquired (see instructions)		
Mary E. Smith		145-36-7890		5,366,800		
9 Individuals (other than the surviving spouse), trusts, estates, or other entities who acquired property from the estate (see instructions).						
Name of individual, trust, estate, or other entity		Taxpayer identification number		Value of property acquired (see instructions)		
See attached						
10 Built-in loss (see instructions). For non-resident alien decedents, enter zero				10	49,000	
11 Capital loss carryforward (see instructions). For non-resident alien decedents, enter zero				11	15,000	
12 Net operating loss carryforward (see instructions). For non-resident alien decedents, enter zero				12	10,000	
13 Aggregate Basis Increase limit. For non-resident alien decedents, enter \$60,000. All others, enter \$1,300,000				13	1,300,000	
14 General Basis Increase limit. Add lines 10 through 13				14	1,374,000	
15 Enter the total of the amounts from each Schedule B, line 9				15	1,374,000	
16 Subtract line 15 from line 14				16	0	
17 Spousal property Basis Increase limit (see instructions)				17	3,000,000	
18 Add lines 16 and 17				18	3,000,000	
19 Enter the total of the amounts from each Schedule A, line 5				19	2,975,000	
20 Subtract line 19 from line 18				20	25,000	

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer other than the executor is based on all information of which preparer has any knowledge.

Sign Here	Signature of executor	Date
	Signature of executor	Date

Paid Preparer Use Only	Print/Type preparer's name	Preparer's signature	Date	Check if self-employed <input type="checkbox"/>	PTIN
	Williams, Wilson & Reed				P12345678
	Firm's name ▶ Williams, Wilson & Reed	Firm's EIN ▶ 22-9999987		Phone no.	
	Firm's address ▶ 6 Clementon Road Gibbsboro NJ 08023				

Send Form 8939 (including accompanying schedules and statements) to: Internal Revenue Service, Estate & Gift Stop 824G, 201 W. Rivercenter Blvd., Covington, KY 41011

For Paperwork Reduction Act Notice, see the separate instructions for this form. Form 8939 (2010)

Estate of: James E. Smith

111-22-3366

Form 8939 Page 1, Line 9, Recipients who Acquired Property from the Estate (Page 1)

Name of Individual, Trust, Estate or Other Entity	Taxpayer Identification Number	Value of Property Acquired
Estate of James E Smith	22-3355666	6,700
John J. Smith	366-99-8888	5,624,000

DRAFT

Estate of <u>James E. Smith</u>	Decedent's Social Security Number <u>111-22-3366</u>	Number <u>1</u> of <u>1</u>
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SCHEDULE A-Property Acquired by Surviving Spouse

Recipients of Schedule A: For more information and details on the information shown on this schedule, see the instructions to Form 8939, Publication 4895, Tax Treatment of Property Acquired from a Decedent Dying in 2010, and www.irs.gov/form8939.

Complete a separate Schedule A for the surviving spouse and for any QTIP trust. See instructions.

Part I General Information

1a Name of executor <u>Jim Jones</u>	1b Executor's address (number and street including apartment or suite number, city, town, or post office; state and ZIP code) and phone number. <u>Williams & Jones et al White Plains NY 10603-3906 Phone no. (516) 775-3906</u>
1c Executor's social security number <u>777-88-9999</u>	
2a Name of recipient <u>Mary E. Smith</u>	
2b Recipient's taxpayer identification number (TIN) <u>145-36-7890</u>	

Part II Property Information

3 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date of death is greater than its fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Adjusted basis at death	(d) Fair market value at death	(e) Check if any gain would be ordinary (Attach statement)
	<u>See attached</u>				
3a Total for columns (c) and (d)			<u>366,000</u>	<u>301,800</u>	

4 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date is less than or equal to fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Check if qualified terminable interest property	(c) Date decedent acquired the property (mm/dd/yyyy)	(d) Check if ineligible property. Attach statement. See instructions.	(e) Adjusted basis at death	(f) Fair market value at death	(g) Basis increase allocated to property	(h) Amount of gain that would be ordinary (Attach statement)
	<u>See attached</u>							

5 Add the amounts in line 4, column (g). Enter this amount on page 1, line 19 2,975,000

111-22-3366

Estate of: James E. Smith
Name of Recipient: Mary E. Smith

Form 8939 Page 2, Schedule A, Part II, Line 3, Property Information (Page 1)

Item Number	(a) Accurate Description of the Property	(b) Date Decedent Acquired the Property	(c) Adjusted Basis at Death	(d) Fair Market Value at Death	(e) Check if	
					Any Gain Would be Ordinary	Adjusted Carryover Basis
1	2,000 DEF Company	1/10/2010	66,000	26,800		26,800
2	275,000 Tangible Personal Property	1/10/2010	300,000	275,000		275,000

Total (Carry forward to main schedule) 366,000 301,800

Estate of James E. Smith
 Name of Recipient: Mary E. Smith

Form 8936 Page 2, Schedule A, Part II, Line 4, Property Information (Page 1)

Item Number	Accurate Description of the Property	(a)	(b)		(c)	(d)	(e)	(f)	(g)	(h)	
			Check if Qualified Terminable Interest Property	Check if Ineligible Property							Date Decedent Acquired the Property
1	1,000 ABC Company CUSIP: ABC1003528899				1/10/2010		25,000	47,000	22,000	0	47,000
2	4,325,000 Decedent's Principal Residence				1/10/2010		1,750,000	4,325,000	2,575,000	0	4,325,000
3	18,000 GHI Company CUSIP: GHI12589996				1/10/2010		315,000	693,000	378,000	0	693,000

Total (Carry forward to main schedule) 2,975,000

Estate of: James E Smith	Decedent's Social Security Number 111-22-3366	Number 1 of 2
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SCHEDULE B-Property Acquired by Person Other Than Surviving Spouse

Recipients of Schedule B: For more information and details on the information shown on this schedule, see the instructions to Form 8939, Publication 4895, Tax Treatment of Property Acquired from a Decedent Dying in 2010, and www.irs.gov/form8939.

Complete a separate Schedule B for each recipient of property, including the decedent's estate. See instructions.

Part I General Information

1a Name of executor <u>Jim Jones</u>	1b Executor's address (number and street including apartment or suite number, city, town, or post office; state; and ZIP code) and phone number. Williams & Jones et al White Plains NY 10603-390 Phone no. (516) 775-3906
1c Executor's social security number <u>777-88-9999</u>	2b Recipient's taxpayer identification number (TIN) <u>22-3355666</u>
2a Name of recipient <u>Estate of James E Smith</u>	

Part II Property Information

3 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date of death is greater than its fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Date decedent acquired the property (mm/dd/yyyy)	(c) Adjusted basis at death	(d) Fair market value at death	(e) Check if any gain would be ordinary (Attach statement)
	<u>See attached</u>				

3a Total for columns (c) and (d) 16,500 6,700

4 For all property acquired from the decedent by the recipient named in line 2a the basis of which at the date is less than or equal to fair market value at the date of death, provide the following information. See instructions.

Item No.	(a) Accurate description of the property	(b) Check if included on Schedule A. Attach statement. See instructions.	(c) Date decedent acquired the property (mm/dd/yyyy)	(d) Check if ineligible property. Attach statement. See instructions.	(e) Adjusted basis at death	(f) Fair market value at death	(g) Basis increase allocated to the property	(h) Amount of gain that would be ordinary (Attach statement)

5 Add the amounts in line 4, column (g)	0
6 Enter the amount of basis increase allocated to property shown on this Schedule B and that was acquired by the decedent's estate and shown on the Schedule B for the decedent's estate. If this Schedule B is for the decedent's estate, enter zero	0
7 Enter the amount of basis increase allocated to property shown on this Schedule B and that was acquired by the surviving spouse and shown on Schedule A	0
8 Add lines 6 and 7	0
9 Subtract line 8 from line 5	0

111-22-3366

Estate of: James E. Smith
Name of Recipient: Estate of James E Smith

Form 8939 Page 3, Schedule B, Part II, Line 3, Property Information (Page 1)

Item Number	(a) Accurate Description of the Property	(b) Date Decedent Acquired the Property	(c) Adjusted Basis at Death	(d) Fair Market Value at Death	(e) Check if	
					Any Gain Would be Ordinary	Adjusted Carryover Basis

1	500 DEF Company	1/10/2010	16,500	6,700		6,700
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Total (Carry forward to main schedule) 16,500 6,700

Estate of: James E. Smith
 Name of Recipient: John J. Smith

Form 8939 Page 3, Schedule B, Part II, Line 4, Property Information (Page 1)

	(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)
Item Number	Accurate Description of the Property	Check If Included On Schedule A	Date Decedent Acquired the Property	Check if Ineligible Property	Adjusted Basis at Death	Fair Market Value at Death	Basis Increase Allocated to Property	Amount of Gain that Would be Ordinary Carryover Basis
1	8,600,000 Joint Rental Property		11/13/1978		4,250,000	8,600,000	1,374,000	0
								5,624,000



Total (Carry forward to main schedule) 1,374,000

Carryover Basis Worksheets

Assets Carryover Basis and Section 1022 Allocations

Estate of:
James E. Smith
Estate EIN:
22-3356666
Date of Death:
7/10/2010
Decedent's Social Security Number:
111-22-3366

Capital Loss Carryovers at Date of Death	15,000
Net Operating Losses at Date of Death	10,000
Section 1022(b)(2)(C)(i) Losses	49,000
Section 1022(b)(2)(B) Basis Increase	1,300,000
Section 1022(c)(2) Spousal Basis Increase	3,000,000

Totals:

1,300,000.00	74,000.00	2,975,000.00	30,997,500.00
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Asset Name	Group Header	Date of Death Shs/Par/Value	CUSIP	Decedent's Date Acquired	Decedent's Adjusted Tax Basis	Fair Market Value at Date of Death	Lester of Adjusted Tax Basis or FMV	FMV in Excess of Adjusted Tax Basis	Allocation of Basis Adjustments			Adjusted Carryover Basis	Date Acquired
									Section 1022(a)(2) 1,300,000 Basis Increase	Section 1022(b)(2)(C)(i) Less Adjustments	Section 1022(c)(2) 3,000,000 Spousal Increase		
ABC Company		1,000,000.00		11/13/2008	25,000.00	47,000.00	25,000.00	22,000.00	0.00	0.00	22,000.00	47,000.00	11/13/2008
DEF Company		2,500,000.00		3/17/2007	82,500.00	33,500.00	33,500.00	0.00	0.00	0.00	0.00	33,500.00	3/17/2007
Decedent's Principal Residence		4,325,000.00		6/16/1976	1,750,000.00	4,325,000.00	1,750,000.00	2,575,000.00	0.00	0.00	2,575,000.00	4,325,000.00	6/16/1976
GHI Company		18,000,000.00		6/19/2009	315,000.00	693,000.00	315,000.00	378,000.00	0.00	0.00	378,000.00	693,000.00	6/19/2009
Joint Rental Property		8,600,000.00		11/13/1978	4,250,000.00	8,600,000.00	4,350,000.00	4,350,000.00	0.00	74,000.00	0.00	3,624,000.00	11/13/1978
Tangible Personal Property		225,000,000.00		Various	300,000.00	275,000.00	275,000.00	0.00	0.00	0.00	0.00	275,000.00	Various

Assets Carryover Basis and Section 1022 Allocations Summary

Estate of: James E Smith
 Estate EIN: 22-3355666
 Date of Death: 1/10/2010
 Decedent's Social Security Number: 111-22-3366

Capital Loss Carryovers at Date of Death	15,000
Net Operating Losses at Date of Death	10,000
Section 1022(b)(2)(C)(ii) Losses	49,000
Section 1022(b)(2)(B) Basis Increase	1,300,000
Section 1022 (c)(2) Spousal Basis Increase	3,000,000

Totals:	1,300,000.00	74,000.00	2,975,000.00	10,997,500.00
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Asset Name	Group Header	Date of Death Shs/Par/Value	Allocation of Basis Adjustments				Adjusted Carryover Basis	Adjusted Date Acquired
			Section 1022(b)(2)		Section 1022(c)(2)			
			Basis Increase	Loss Adjustments	3,000,000 Spousal Increase	Section 1022(c)(2)		
ABC Company		1,000.00000	0.00	0.00	22,000.00	47,000.00	11/15/2008	
DEF Company		2,500.00000	0.00	0.00	0.00	33,500.00	3/17/2007	
Decedent's Principal Residence		4,325,000.00000	0.00	0.00	2,575,000.00	4,325,000.00	6/16/1976	
GHI Company		18,000.00000	0.00	0.00	378,000.00	693,000.00	6/19/2009	
Joint Rental Property		8,600,000.00000	1,300,000.00	74,000.00	0.00	5,624,000.00	11/13/1978	
Tangible Personal Property		275,000.00000	0.00	0.00	0.00	275,000.00	Various	

Assets Allocation Reconciliation

Estate of: James E Smith
 Estate EIN: 22-3355666
 Date of Death: 1/10/2010
 Decedent's Social Security Number: 111-22-3366

Capital Loss Carryovers at Date of Death	15,000
Net Operating Losses at Date of Death	10,000
Section 1022(b)(2)(C)(ii) Losses	49,000
Section 1022(b)(2)(B) Basis Increase	1,300,000
Section 1022 (c)(2) Spousal Basis Increase	3,000,000

Capital Loss Carryovers at Date of Death
 Net Operating Losses at Date of Death
 Section 1022(b)(2)(C)(ii) Losses
 Section 1022(b)(2)(B) Basis Increase
 Section 1022 (c)(2) Spousal Basis Increase

Asset Name	Group Header	Date of Death Shs/Par/Value	Shs/Par/Value		Percent		Total Shs/Par/Value
			Allocated to Beneficiaries	Beneficiaries	Allocated to Beneficiaries	Beneficiaries	
ABC Company		1,000.0000	0.00	100.00000000%	1,000.00	1,000.00	
DEF Company		2,500.0000	2,500.00	0.00000000%	2,500.00	2,500.00	
Decedent's Principal Residence		4,325,000.0000	0.00	100.00000000%	4,325,000.00	4,325,000.00	
GHI Company		18,000.0000	0.00	100.00000000%	18,000.00	18,000.00	
Joint Rental Property		8,600,000.0000	0.00	100.00000000%	8,600,000.00	8,600,000.00	
Tangible Personal Property		275,000.0000	0.00	100.00000000%	275,000.00	275,000.00	

Gains and Losses Analysis Sec 1022(b)(2)(C)(iii)

Estate of: James E Smith
 Estate EIN: 22-3355666
 Date of Death: 1/10/2010
 Decedent's Social Security Number: 111-22-3366

Asset Name	Group Header	Date of Death Shs/Par/Value	CUSIP	Decedent's Date Acquired	Decedent's Adjusted Tax Basis	Fair Market Value at Date of Death	Totals:	
							Assets with Unrealized Losses	Assets with Unrealized Gains & Losses
ABC Company		1,000.0000		11/15/2008	25,000.00	47,000.00	0.00	22,000.00
DEF Company		2,500.0000		3/17/2007	82,500.00	33,500.00	(49,000.00)	0.00
Decedent's Principal Residence		4,325,000.0000		6/16/1976	1,750,000.00	4,325,000.00	0.00	2,575,000.00
GHI Company		18,000.0000		6/19/2009	315,000.00	693,000.00	0.00	378,000.00
Joint Rental Property		8,600,000.0000		11/13/1978	4,250,000.00	8,600,000.00	0.00	4,350,000.00
Tangible Personal Property		275,000.0000		Various	300,000.00	275,000.00	0.00	0.00

* Note that the unrealized loss on tangibles
 May not be used to increase the basis of
 property with built-in gains because this
 loss would not have been deductible on
 the Decedent's personal income tax return.

Estate Carryover Basis and Section 1022 Allocations

Estate of: James E Smith
 Estate EIN: 22-3355666
 Date of Death: 1/10/2010

Totals:	0.00	0.00	6,700.00
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Asset Name	Group Header	Beneficiary's Allocation of Adjs.		Total	Shs/Par/Value	Adjusted Carryover Basis	Adjusted Date Acquired
		Sec. 1022(b)(2) Basis Increase	Capital Loss, NOL & Section 1022(b)(2)(C)(ii) Loss Adjustments				
DEF Company				500.00000		6,700.00	3/17/2007

Beneficiary Carryover Basis and Section 1022 Allocations

Beneficiary Name:
Beneficiary ID:
Relationship:

Mary E. Smith
145-36-7890
Surviving Spouse

Totals:	0.00	0.00	2,975,000.00	5,366,800.00
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Beneficiary's Allocation of Adjustments

Asset Name	Group Header	Sec. 1022(b)(2)		Capital Loss, NOL & Sec. 1022(c)(2)		Total	Shs./Par/Value	Adjusted Carryover Basis	Adjusted Date Acquired
		Basis Increase	Loss Adjustments	Section 1022(b)(2)(C)(ii)	Spousal Increase				
ABC Company					22,000.00	1,000.00000	47,000.00	11/15/2008	
DEF Company						2,000.00000	26,800.00	3/17/2007	
Decedent's Principal Residence					2,575,000.00	4,325,000.00000	4,325,000.00	6/16/1976	
GHI Company					378,000.00	18,000.00000	693,000.00	6/19/2009	
Tangible Personal Property						275,000.00000	275,000.00	Various	

Beneficiary Carryover Basis and Section 1022 Allocations

Beneficiary Name:
 Beneficiary ID:
 Relationship:

John J. Smith
 366-99-8888
 Brother

Totals:	5,624,000.00
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Asset Name	Group Header	Beneficiary's Allocation of Adjs.			Total Shs/Par/Value	Adjusted Carryover Basis	Adjusted Date Acquired
		Sec. 1022(b)(2) Basis Increase	Capital Loss, NOL & Section 1022(b)(2)(C)(ii) Loss Adjustments	Section 1022(b)(2)(C)(ii) Loss Adjustments			
Joint Rental Property		1,300,000.00	74,000.00	74,000.00	8,600,000.0000	5,624,000.00	11/13/1978

Notice 2011-82

(Portability)

Part III – Administrative, Procedural, and Miscellaneous

Guidance on Electing Portability of Deceased Spousal Unused Exclusion Amount

Notice 2011-82

PURPOSE

This notice alerts executors of the estates of decedents dying after December 31, 2010, of the need to file a Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, within the time prescribed by law (including extensions) in order to elect to allow the decedent's surviving spouse to take advantage of the deceased spouse's unused exclusion amount, if any, pursuant to section 303(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312 (124 Stat. 3302) (TRUIRJCA) and section 2010(c)(5)(A) of the Internal Revenue Code (Code). In particular, for the executor of the estate of a decedent to elect under section 2010(c)(5)(A) (a "portability election") to allow the decedent's surviving spouse to use the decedent's unused exclusion amount, the executor is required to file a Form 706 for the decedent's estate, even if the executor is not otherwise obligated to file a Form 706. This notice also alerts executors of the estates of decedents dying after December 31, 2010, that the estate of such a decedent will be considered to have made a portability election if a Form 706 is timely filed in accordance with the

instructions for that form. For those estates filing a Form 706 that choose not to make a portability election, this notice addresses how to avoid making the election. This notice also reminds taxpayers that a portability election can be made only on a Form 706 timely filed by the estate of a decedent dying after December 31, 2010, and any attempt to make a portability election on a Form 706 filed for the estate of a decedent dying on or before December 31, 2010, will be ineffective. Finally, this notice alerts taxpayers that the Treasury Department and the Internal Revenue Service (Service) intend to issue regulations under section 2010(c) of the Code to address issues arising with respect to the portability election, and anticipate that those regulations will be consistent with the provisions of this notice.

BACKGROUND

Sections 302(a)(1) and 303(a) of TRUIRJCA, enacted on December 17, 2010, amended section 2010(c) of the Code. Section 2010(c), as amended, generally allows the surviving spouse of a decedent dying after December 31, 2010, to use the decedent's unused exclusion amount in addition to the surviving spouse's own basic exclusion amount. Thus, sections 302(a)(1) and 303(a) of TRUIRJCA eliminate the need for spouses to retitle property and create trusts solely to take full advantage of each spouse's basic exclusion amount.

Section 2010(c)(1) of the Code provides that the applicable credit amount is the amount of the tentative tax that would be determined under section 2001(c) if the amount with respect to which the tentative tax is to be computed were equal to the applicable exclusion amount. Thus, generally, the applicable credit amount effectively

exempts from federal estate and gift tax a person's taxable transfers with a cumulative value not exceeding the applicable exclusion amount.

Under section 2010(c)(2), a person's applicable exclusion amount is the sum of (A) the basic exclusion amount and (B) in the case of a surviving spouse, the deceased spousal unused exclusion amount, if any.

Section 2010(c)(3) sets the basic exclusion amount at \$5,000,000 in 2011, to be adjusted annually for inflation after 2011.

Section 2010(c)(4) defines the term "deceased spousal unused exclusion amount" to mean, with respect to the surviving spouse of a decedent dying after December 31, 2010, the lesser of (A) the basic exclusion amount, or (B) the excess of (i) the basic exclusion amount of the last such deceased spouse of such surviving spouse, over (ii) the amount with respect to which the tentative tax is determined under section 2001(b)(1) on the estate of such deceased spouse. The unused exclusion amount of a deceased spouse who died before January 1, 2011, cannot be used by the surviving spouse, regardless of the date of the surviving spouse's death.

Under section 2010(c)(5)(A), a deceased spousal unused exclusion amount may be taken into account by a surviving spouse in determining the surviving spouse's applicable exclusion amount only if the executor of the deceased spouse timely files a Form 706 for the deceased spouse's estate, on which the executor computes the deceased spousal unused exclusion amount and makes a portability election. An election, once made, is irrevocable. However, no election may be made if the Form 706 is filed after the time prescribed by law (including extensions) for filing a Form 706.

Section 6075(a) requires the executor of a decedent's estate filing a tax return to file the Form 706 within 9 months after the date of the decedent's death.

Section 6081(a) provides that the Secretary may grant a reasonable extension of time for filing any return; however, generally, no such extension may be for more than 6 months. Section 20.6081-1(b) of the Estate Tax Regulations grants executors of decedents' estates an automatic 6-month extension of time to file the Form 706. Executors currently may request the automatic extension of time to file Form 706 by timely filing Form 4768, "Application for Extension of Time To File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes."

Section 2010(c)(5)(B) allows the Secretary to examine a return of the predeceased spouse, even after the time has expired under section 6501 for assessing tax under chapter 11 or 12, to make determinations with respect to the deceased spousal unused exclusion amount, notwithstanding any period of limitation in section 6501.

Section 2010(c)(6) provides that the Secretary shall prescribe regulations as may be necessary or appropriate to implement section 2010(c).

DISCUSSION

The Treasury Department and the Service anticipate that, as a general rule, married couples will want to ensure that the unused basic exclusion amount of the first spouse to die will be available to the surviving spouse and, thus, that the estates of most (if not all) married decedents dying after December 31, 2010, will want to make the portability election. As indicated above, because the election is to be made on a timely-filed Form 706, the Treasury Department and the Service anticipate a significant

increase in the number of Forms 706 that will be filed by the estates of decedents dying after December 31, 2010, and that many of those returns will be filed by the estates of decedents whose gross estates have a value below the applicable exclusion amount.

As a result, the Treasury Department and the Service believe that the procedure for making the portability election on the Form 706 should be as straightforward and uncomplicated as possible to reduce the risk of inadvertently missed elections. To that end, the Treasury Department and the Service have determined that the timely filing of a Form 706, prepared in accordance with the instructions for that form, will constitute the making of a portability election by the estate of a decedent dying after December 31, 2010. Thus, by timely filing a properly-prepared and complete Form 706, an estate will be considered to have made the portability election without the need to make an affirmative statement, check a box, or otherwise affirmatively elect, on the Form 706. Until such time as the IRS revises the Form 706 to expressly contain the computation of the deceased spousal unused exclusion amount, a timely-filed and complete Form 706 that is prepared in accordance with the instructions for that form will be deemed to contain the computation of the deceased spousal unused exclusion amount, thereby satisfying the requirements in section 2010(c)(5)(A) for making an effective election.

The Treasury Department and the Service acknowledge that an estate may not want to make the portability election. Not filing a timely Form 706 will prevent the making of that election. However, if such an estate is obligated to file a Form 706 because the value of the gross estate exceeds the applicable exclusion amount, or files a Form 706 for another reason, the executor must follow the instructions for Form 706 that will describe the necessary steps to avoid making the election.

The Treasury Department and the Service recognize that the due date for filing Form 706 for those decedents dying in the first quarter of 2011 is fast approaching and remind executors of the ability to request an automatic 6-month extension by filing Form 4768 before the due date for filing Form 706. See § 20.6081-1(a) and (b) of the Estate Tax Regulations.

The Treasury Department and the Service intend to issue regulations, pursuant to the specific authority provided in section 2010(c)(6), to address various issues arising with respect to implementation of the provisions of section 2010(c).

GUIDANCE

1. If the executor of the estate of a decedent dying after December 31, 2010, intends to make the portability election to allow the decedent's surviving spouse to use the deceased spousal unused exclusion amount, the executor must file a complete Form 706 within the time prescribed by law (including extensions), regardless of whether or not the gross estate has a value in excess of the exclusion amount or otherwise is obligated to file a Form 706.

2. The estate of a decedent dying after December 31, 2010, will be deemed to make the portability election to allow the decedent's surviving spouse to use the deceased spousal unused exclusion amount by the timely filing of a complete and properly-prepared Form 706. To ensure the correct exclusion amount and tax rates, executors should use the Form 706 issued for the year of the decedent's death. Until such time as the IRS revises the Form 706 to expressly contain the computation of the deceased spousal unused exclusion amount, a complete and properly-prepared

Form 706 will be deemed to contain the computation of the deceased spousal unused exclusion amount.

3. The executor of the estate of a decedent dying after December 31, 2010, that timely files a complete Form 706, but that chooses not to make the portability election to allow the decedent's surviving spouse to use the deceased spousal unused exclusion amount, must follow the instructions for Form 706 that will describe the steps the executor must take to notify the Service that the decedent's estate is not making the portability election. If the executor of such an estate chooses not to make the portability election and is not otherwise obligated to file a Form 706, not timely filing a Form 706 will effectively prevent the making of that election.

4. The estate of a decedent dying on or before December 31, 2010, is not entitled to make a portability election. Any attempt to make a portability election on a Form 706 filed for the estate of such a decedent will be ineffective.

5. The Treasury Department and the Service intend to issue regulations to implement the provisions of section 2010(c).

REQUEST FOR COMMENTS

Comments are invited on the following specific issues, which have been identified for consideration in proposed regulations to be issued under section 2010(c):

1. The determination in various circumstances of the deceased spousal unused exclusion amount and the applicable exclusion amount;
2. The order in which exclusions are deemed to be used;
3. The effect of the last predeceasing spouse limitation described in section 2010(c)(4)(B)(i);

4. The scope of the Service's right to examine a return of the first spouse to die without regard to any period of limitation in section 6501; and

5. Any additional issues that should be considered for inclusion in the proposed regulations.

Comments will be considered if submitted in writing by October 31, 2011. All comments will be available for public inspection and copying. Comments may be submitted in one of three ways:

- (a) By mail to CC:PA:LPD:PR (Notice 2011-82), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.
- (b) Electronically to Notice.Comments@irs.counsel.treas.gov. Please include "Notice 2011-82" in the subject line of any electronic communications.
- (c) By hand-delivery Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2010-82), Courier's Desk, Internal Revenue Service, 1111 Constitution Ave., NW, Washington, DC 20224.

EFFECTIVE DATE

This notice is applicable with respect to the estates of decedents dying after December 31, 2010.

DRAFTING INFORMATION

The principal author of this notice is Karlene Lesho of the Office of Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this notice, contact Karlene Lesho at (202) 622-3090 (not a toll-free call).

Notice 2011-76

(Form 8939)

Part III - Administrative, Procedural, and Miscellaneous

Due Dates for Filing Form 706, Form 706-NA, or Form 8939, Extension of Time to Pay Estate Tax, and Penalty Relief for Recipients of Property Acquired from Decedents who Died in 2010

Notice 2011-76

PURPOSE

This notice provides the executor of an estate of a decedent who died in 2010 (Executor of a 2010 Estate) who timely files a Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes, an automatic extension of time to file an estate tax return and to pay the estate tax due. Furthermore, this notice revises the due date of Form 8939, Allocation of Increase in Basis for Property Acquired From a Decedent. It also provides penalty relief to certain persons who acquired property, the basis of which is determined under section 1022, and disposed of such property during 2010. This notice applies to each Executor of a 2010 Estate and to recipients of property acquired from decedents who died in 2010.

BACKGROUND

In General

Section 501 of the Economic Growth and Tax Relief Reconciliation Act of 2001, P.L. 107-16 (115 Stat. 69) (EGTRRA), repealed the estate tax for the estates of decedents who died in 2010 (2010 Decedents). EGTRRA also repealed section 1014 and replaced it with section 1022. Section 1014 generally provides that the recipient's basis in property passing from a decedent is the fair market value (FMV) of the property on the decedent's date of death. Section 1022 generally provides that the recipient's basis in property acquired from a decedent is the lesser of the decedent's adjusted basis in the property and the FMV of the property on the decedent's date of death.

Section 301(a) of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312 (124 Stat. 3296) (TRUIRJCA), repealed section 501 of EGTRRA and section 1022. The repeal of EGTRRA retroactively reinstated the estate tax for 2010 Decedents and also reinstated section 1014. TRUIRJCA also increased the applicable exclusion amount to \$5,000,000 for 2010 Decedents. Section 301(c) of TRUIRJCA, however, allows the Executor of a 2010 Estate to elect not to have the estate tax provisions and section 1014 apply, but rather, to have the provisions of section 1022 apply (Section 1022 Election). With the election, the estate will pay no estate tax and in most cases the basis of the property acquired from the decedent will be determined under section 1022. In addition, the executor may allocate additional basis to certain property. See Rev. Proc. 2011-41, 2011-35 I.R.B. 188.

Filing and Payment Dates

Under section 301(d) of TRUIRJCA, the due date for filing an estate tax return and for paying the estate tax for an estate of a decedent who died after December 31, 2009, and before December 17, 2010, is no earlier than September 17, 2011. The due date, therefore, for estates of decedents who died on or after January 1, 2010, and on or before December 16, 2010, is September 19, 2011, because September 17, 2011, falls on a Saturday. Under section 6075(a), the due date for filing an estate tax return for a decedent who died after December 16, 2010, is nine months after the date of the decedent's death. Section 6151 provides that, when a tax return is required, the person required to make such return shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

Section 542 of EGTRRA provides that the return required under former section 6018 (Form 8939, which is filed to make a Section 1022 Election, to report the information required under section 6018, and to allocate additional basis under section 1022) shall be filed with the decedent's final income tax return (for example: Form 1040, United States Individual Income Tax Return, or Form 1040-NR, United States Nonresident Alien Income Tax Return) or by such later date specified in regulations prescribed by the Secretary. Notice 2011-66, 2011-35 I.R.B. 184, which the Treasury Department and IRS intend to confirm in regulations, provides that Form 8939 is due on or before November 15, 2011.

Section 6081 provides that the Secretary may grant a reasonable extension of

time for filing any return and that, except in the case of taxpayers who are abroad, no such extension may be for more than six months. In addition, section 6161(a) provides that the Secretary may extend the time for payment of the amount of the tax shown, or required to be shown, on any return for a reasonable period from the date fixed for payment thereof.

GUIDANCE

Forms 706 and 706-NA

Because of the date Congress enacted TRUIRJCA and the length of time required to implement the legislative changes and to issue the Form 8939 with related instructions, the Executor of a 2010 Estate may not have sufficient time to make an informed decision as to whether or not to make a Section 1022 Election and to complete the required filings. Therefore, the Treasury Department and IRS believe it is reasonable to grant the estates of 2010 Decedents an automatic extension of time to file the estate tax return and an extension of time to pay the estate tax. Accordingly, the Treasury Department and IRS grant the Executor of a 2010 Estate who files a Form 4768 by the due date for filing Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, or Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of Nonresident not a Citizen of the United States, both an automatic six-month extension of time to file Form 706 or Form 706-NA pursuant to section 6081, and a six-month extension of time to pay the estate tax. The Executor of a 2010 Estate is not required to substantiate on the Form 4768 the reason for requesting an extension of time for payment of the estate tax to receive the

six-month extension of time to pay the estate tax due. However, interest will accrue on the estate tax liability from the due date of the return, excluding extensions. See I.R.C. § 6601.

Except in the case of an executor abroad, under section 6081, the Treasury Department and IRS cannot grant additional extensions of time to file Form 706 or Form 706-NA to such estates, regardless of whether an executor files a Form 4768 requesting an additional extension of time to file. An executor, however, may apply for an additional extension of time to pay the estate tax under section 6161 if the executor files a Form 4768 on or before the extended due date of the payment of tax and provides the documentation required with such form. See I.R.C. § 6161.

The IRS will not impose late filing and late payment penalties under section 6651(a)(1) or (2) on estates of decedents who died after December 31, 2009, and before December 17, 2010, if the estate timely files Form 4768 and then files Form 706 or Form 706-NA and pays the estate tax by March 19, 2012. The IRS also will not impose late filing or late payment penalties under section 6651(a)(1) or (2) on estates of decedents who died after December 16, 2010, and before January 1, 2011, if the estate timely files Form 4768 and then files Form 706 or Form 706-NA and pays the estate tax within 15 months after the decedent's date of death.

Form 8939

The due date for filing Form 8939 is changed from November 15, 2011, to January 17, 2012. Thus, a Section 1022 Election is timely if made on a Form 8939 filed by (and may be amended or revoked on or before) January 17, 2012. The Treasury

Department and IRS will not grant any further extension of time to file Form 8939, to make the Section 1022 Election, or to amend or revoke the Section 1022 Election, except as provided in sections I.A, B, or D.1 or 2 of Notice 2011-66. Accordingly, as contemplated in section I.D.2 of Notice 2011-66, an executor may file an amended Form 8939 if the provisions of § 301.9100-2(b) are satisfied, by July 17, 2012.

Moreover, the penalty under section 6716 does not apply to the Executor of a 2010 Estate solely because the Form 8939 is filed after November 15, 2011, but on or before January 17, 2012. Similarly, a penalty under section 6716 does not apply to the Executor of a 2010 Estate solely because a statement required to be furnished to beneficiaries is provided after December 15, 2011, but on or before February 17, 2012.

Generation-Skipping Transfer (GST) Tax

If an executor makes a Section 1022 Election on a Form 8939 filed on or before January 17, 2012, and allocates the decedent's available GST exemption (or makes an election under the GST tax) on an attached Schedule R or R-1, the allocation or election will be considered timely and effective as of the decedent's date of death pursuant to section 2632. Alternatively, the automatic allocation rules under section 2632 will apply if the executor timely files the Form 8939 without attaching a Schedule R or R-1. If the executor does not make the Section 1022 Election or if the executor timely revokes a Section 1022 Election, then the automatic allocation rules under section 2632 will apply unless the executor timely files Form 706 or Form 706-NA with the Schedule R or R-1 attached.

Federal Income Tax Return for any Individual, Estate, or Trust, Form 709, and State

Estate or Inheritance Tax

This notice does not extend the due date for paying any income tax or for filing any income tax return for any individual, estate, or trust (for example, Form 1040, Form 1040-NR, or Form 1041, United States Income Tax Return for Estates & Trusts). In addition, this notice does not extend the due date for paying any gift tax or for filing any Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. Finally, this notice does not extend the time to file an estate or inheritance tax return required by any state of the United States or to pay any estate or inheritance tax due to such state.

Penalty Relief

Section 6651(a)(2) generally provides that, in the case of any failure to pay the tax shown on any return required to be filed under subchapter A of chapter 61 on its due date, unless it is shown that the failure is due to reasonable cause and not willful neglect, an addition to tax shall apply. In addition, section 6662(a) imposes a 20 percent penalty on any portion of an underpayment of tax due to negligence, disregard of rules or regulations, or a substantial understatement of income tax. Section 6664(c) provides that no penalty under section 6662(a) shall be imposed on any portion of an underpayment if it is shown that there is a reasonable cause for such portion and that the taxpayer acted in good faith with respect to such portion.

Revenue Procedure 2011-41 provides a safe harbor for determining a recipient's basis and other pertinent information such as the tax character and holding period of property acquired from a 2010 Decedent and whose executor makes a Section 1022 Election. However, when the recipient of property acquired from a decedent who

disposed of such property during 2010 files the recipient's income tax return, the recipient may not know whether the decedent's executor will make the Section 1022 Election and, if so, the amount (if any) of Basis Increase (as defined in Rev. Proc. 2011-41) the executor will allocate to that property. Therefore, the recipient may not know the property's basis or other pertinent information such as tax character and holding period. When filing the recipient's income tax return and computing the income tax liability, the recipient will have to make a good faith estimate, based on the facts and circumstances, regarding such information with respect to the property acquired from the 2010 Decedent. Accordingly, to the extent that the recipient's tax liability is increased, as shown on an amended return or otherwise, by reason of the application of section 1022 to the estate of a 2010 Decedent, the recipient's reasonable cause and good faith will be presumed and the Treasury Department and IRS will not impose either the section 6651(a)(2) addition to tax for failure to pay, or the section 6662(a) penalty. The recipient should write across the top of the amended return "IR Notice 2011-76" to alert the IRS that the recipient meets these requirements for reasonable cause.

EFFECTIVE DATE

This notice is effective on September 13, 2011. This notice applies to each Executor of a 2010 Estate and to persons acquiring property from a 2010 Decedent.

DRAFTING INFORMATION

The principal authors of this notice are Laura Daly, Theresa Melchiorre, and Mayer Samuels of the Office of Associate Chief Counsel (Passthroughs & Special

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Massachusetts Alimony Reform Act

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CHAPTER 124 AN ACT REFORMING ALIMONY IN THE COMMONWEALTH. (see House, No. 3617) Approved by the Governor, September 26, 2011
PREVNEXT

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same as follows:

SECTION 1. The first sentence of section 34 of chapter 208 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by adding the following words:- under sections 48 to 55, inclusive.

SECTION 2. Said section 34 of said chapter 208, as so appearing, is hereby further amended by striking out the third sentence and inserting in place thereof the following sentence:- In fixing the nature and value of the property, if any, to be so assigned, the court, after hearing the witnesses, if any, of each of the parties, shall consider the length of the marriage, the conduct of the parties during the marriage, the age, health, station, occupation, amount and sources of income, vocational skills, employability, estate, liabilities and needs of each of the parties, the opportunity of each for future acquisition of capital assets and income, and the amount and duration of alimony, if any, awarded under sections 48 to 55, inclusive.

SECTION 3. Said chapter 208 is hereby further amended by adding the following 8 sections:-

Section 48. As used in sections 49 to 55, inclusive, the following words shall, unless the context requires otherwise, have the following meanings:-

"Alimony", the payment of support from a spouse, who has the ability to pay, to a spouse in need of support for a reasonable length of time, under a court order.

"Full retirement age", the payor's normal retirement age to be eligible to receive full retirement benefits under the United States Old Age, Survivors, and Disability Insurance program; but shall not mean "early retirement age," as defined under 42 U.S.C. 416, if early retirement is available to the payor or maximum benefit age if additional benefits are available as a result of delayed retirement.

"General term alimony", the periodic payment of support to a recipient spouse who is economically dependent.

"Length of the marriage", the number of months from the date of legal marriage to the date of service of a complaint or petition for divorce or separate support duly filed in a court of the commonwealth or another court with jurisdiction to terminate the marriage; provided, however, that the court may increase the length of the marriage if there is evidence that the parties' economic marital partnership began during their cohabitation period prior to the marriage.

"Rehabilitative alimony", the periodic payment of support to a recipient spouse who is expected to become economically self-sufficient by a predicted time, such

as, without limitation, reemployment; completion of job training; or receipt of a sum due from the payor spouse under a judgment.

"Reimbursement alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to compensate the recipient spouse for economic or noneconomic contribution to the financial resources of the payor spouse, such as enabling the payor spouse to complete an education or job training.

"Transitional alimony", the periodic or one-time payment of support to a recipient spouse after a marriage of not more than 5 years to transition the recipient spouse to an adjusted lifestyle or location as a result of the divorce.

Section 49. (a) General term alimony shall terminate upon the remarriage of the recipient or the death of either spouse; provided, however, that the court may require the payor spouse to provide life insurance or another form of reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) Except upon a written finding by the court that deviation beyond the time limits of this section are required in the interests of justice, if the length of the marriage is 20 years or less, general term alimony shall terminate no later than a date certain under the following durational limits:

(1) If the length of the marriage is 5 years or less, general term alimony shall continue for not longer than one-half the number of months of the marriage.

(2) If the length of the marriage is 10 years or less, but more than 5 years,

general term alimony shall continue for not longer than 60 per cent of the number of months of the marriage.

(3) If the length of the marriage is 15 years or less, but more than 10 years, general term alimony shall continue for not longer than 70 per cent of the number of months of the marriage.

(4) If the length of the marriage is 20 years or less, but more than 15 years, general term alimony shall continue for not longer than 80 per cent of the number of months of the marriage.

(c) The court may order alimony for an indefinite length of time for marriages for which the length of the marriage was longer than 20 years.

(d) General term alimony shall be suspended, reduced or terminated upon the cohabitation of the recipient spouse when the payor shows that the recipient spouse has maintained a common household, as defined in this subsection, with another person for a continuous period of at least 3 months.

(1) Persons are deemed to maintain a common household when they share a primary residence together with or without others. In determining whether the recipient is maintaining a common household, the court may consider any of the following factors:

(i) oral or written statements or representations made to third parties regarding the relationship of the persons;

(ii) the economic interdependence of the couple or economic dependence of 1 person on the other;

(iii) the persons engaging in conduct and collaborative roles in furtherance of

their life together;

(iv) the benefit in the life of either or both of the persons from their relationship;

(v) the community reputation of the persons as a couple; or

(vi) other relevant and material factors.

(2) An alimony obligation suspended, reduced or terminated under this subsection may be reinstated upon termination of the recipient's common household relationship; but, if reinstated, it shall not extend beyond the termination date of the original order.

(e) Unless the payor and recipient agree otherwise, general term alimony may be modified in duration or amount upon a material change of circumstances warranting modification. Modification may be permanent, indefinite or for a finite duration, as may be appropriate. Nothing in this section shall be construed to permit alimony reinstatement after the recipient's remarriage, except by the parties' express written agreement.

(f) Once issued, general term alimony orders shall terminate upon the payor attaining the full retirement age. The payor's ability to work beyond the full retirement age shall not be a reason to extend alimony, provided that:

(1) When the court enters an initial alimony judgment, the court may set a different alimony termination date for good cause shown; provided, however, that in granting deviation, the court shall enter written findings of the reasons for deviation.

(2) The court may grant a recipient an extension of an existing alimony order for

good cause shown; provided, however, that in granting an extension, the court shall enter written findings of:

(i) a material change of circumstance that occurred after entry of the alimony judgment; and

(ii) reasons for the extension that are supported by clear and convincing evidence.

Section 50. (a) Rehabilitative alimony shall terminate upon the remarriage of the recipient, the occurrence of a specific event in the future or the death of either spouse; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) The alimony term for rehabilitative alimony shall be not more than 5 years. Unless the recipient has remarried, the rehabilitative alimony may be extended on a complaint for modification upon a showing of compelling circumstances in the event that:

(1) unforeseen events prevent the recipient spouse from being self-supporting at the end of the term with due consideration to the length of the marriage;

(2) the court finds that the recipient tried to become self-supporting; and

(3) the payor is able to pay without undue burden.

(c) The court may modify the amount of periodic rehabilitative alimony based upon material change of circumstance within the rehabilitative period.

Section 51. (a) Reimbursement alimony shall terminate upon the death of the recipient or a date certain.

(b) Once ordered, the parties shall not seek and the court shall not order a modification of reimbursement alimony.

(c) Income guidelines in subsection (b) of section 53 shall not apply to reimbursement alimony.

Section 52. (a) Transitional alimony shall terminate upon the death of the recipient or a date certain that is not longer than 3 years from the date of the parties' divorce; provided, however, that the court may require the payor to provide reasonable security for payment of sums due to the recipient in the event of the payor's death during the alimony term.

(b) No court shall modify or extend transitional alimony or replace transitional alimony with another form of alimony.

Section 53. (a) In determining the appropriate form of alimony and in setting the amount and duration of support, a court shall consider: the length of the marriage; age of the parties; health of the parties; income, employment and employability of both parties, including employability through reasonable diligence and additional training, if necessary; economic and non-economic contribution of both parties to the marriage; marital lifestyle; ability of each party to maintain the marital lifestyle; lost economic opportunity as a result of the marriage; and such other factors as the court considers relevant and material.

(b) Except for reimbursement alimony or circumstances warranting deviation for other forms of alimony, the amount of alimony should generally not exceed the recipient's need or 30 to 35 per cent of the difference between the parties' gross incomes established at the time of the order being issued. Subject to subsection (c), income shall be defined as set forth in the Massachusetts child support guidelines.

(c) When issuing an order for alimony, the court shall exclude from its income calculation:

- (1) capital gains income and dividend and interest income which derive from assets equitably divided between the parties under section 34; and
- (2) gross income which the court has already considered for setting a child support order.

(d) Nothing in this section shall limit the court's discretion to cast a presumptive child support order under the child support guidelines in terms of unallocated or undifferentiated alimony and child support.

(e) In setting an initial alimony order, or in modifying an existing order, the court may deviate from duration and amount limits for general term alimony and rehabilitative alimony upon written findings that deviation is necessary. Grounds for deviation may include:

- (1) advanced age; chronic illness; or unusual health circumstances of either party;
- (2) tax considerations applicable to the parties;

- (3) whether the payor spouse is providing health insurance and the cost of health insurance for the recipient spouse;
 - (4) whether the payor spouse has been ordered to secure life insurance for the benefit of the recipient spouse and the cost of such insurance;
 - (5) sources and amounts of unearned income, including capital gains, interest and dividends, annuity and investment income from assets that were not allocated in the parties divorce;
 - (6) significant premarital cohabitation that included economic partnership or marital separation of significant duration, each of which the court may consider in determining the length of the marriage;
 - (7) a party's inability to provide for that party's own support by reason of physical or mental abuse by the payor;
 - (8) a party's inability to provide for that party's own support by reason of that party's deficiency of property, maintenance or employment opportunity; and
 - (9) upon written findings, any other factor that the court deems relevant and material.
- (f) In determining the incomes of parties with respect to the issue of alimony, the court may attribute income to a party who is unemployed or underemployed.
- (g) If a court orders alimony concurrent with or subsequent to a child support order, the combined duration of alimony and child support shall not exceed the longer of: (i) the alimony or child support duration available at the time of divorce; or (ii) rehabilitative alimony beginning upon the termination of child support.

Section 54. (a) In the event of the payor's remarriage, income and assets of the payor's spouse shall not be considered in a redetermination of alimony in a modification action.

(b) Income from a second job or overtime work shall be presumed immaterial to alimony modification if:

- (1) a party works more than a single full-time equivalent position; and
- (2) the second job or overtime began after entry of the initial order.

Section 55. (a) The court may require reasonable security for alimony in the event of the payor's death during the alimony period. Security may include, but shall not be limited to, maintenance of life insurance.

(b) Orders to maintain life insurance shall be based upon due consideration of the following factors: age and insurability of the payor; cost of insurance; amount of the judgment; policies carried during the marriage; duration of the alimony order; prevailing interest rates at the time of the order; and other obligations of the payor.

(c) A court may modify orders to maintain security upon a material change of circumstance.

SECTION 4. (a) Section 49 of chapter 208 of the General Laws shall apply prospectively, such that alimony judgments entered before March 1, 2012 shall terminate only under such judgments, under a subsequent modification or as otherwise provided for in this act.

(b) Sections 48 to 55, inclusive, of said chapter 208 shall not be deemed a material change of circumstance that warrants modification of the amount of existing alimony judgments; provided, however, that existing alimony judgments that exceed the durational limits under section 49 of said chapter 208 shall be deemed a material change of circumstance that warrant modification.

Existing alimony awards shall be deemed general term alimony. Existing alimony awards which exceed the durational limits established in said section 49 of said chapter 208 shall be modified upon a complaint for modification without additional material change of circumstance, unless the court finds that deviation from the durational limits is warranted.

(c) Under no circumstances shall said sections 48 to 55, inclusive, of said chapter 208 provide a right to seek or receive modification of an existing alimony judgment in which the parties have agreed that their alimony judgment is not modifiable, or in which the parties have expressed their intention that their agreed alimony provisions survive the judgment and therefore are not modifiable.

SECTION 5. Any complaint for modification filed by a payor under section 4 of this act solely because the existing alimony judgment exceeds the durational limits of section 49 of chapter 208 of the General Laws, may only be filed under the following time limits:

(1) Payors who were married to the alimony recipient 5 years or less, may file a modification action on or after March 1, 2013.

(2) Payors who were married to the alimony recipient 10 years or less, but more than 5 years, may file a modification action on or after March 1, 2014.

(3) Payors who were married to the alimony recipient 15 years or less, but more than 10 years, may file a modification action on or after March 1, 2015.

(4) Payors who were married to the alimony recipient 20 years or less, but more than 15 years, may file a modification action on or after September 1, 2015.

SECTION 6. Notwithstanding clauses (1) to (4) of section 5 of this act, any payor who has reached full retirement age, as defined in section 48 of chapter 208 of the General Laws, or who will reach full retirement age on or before March 1, 2015 may file a complaint for modification on or after March 1, 2013.

SECTION 7. This act shall take effect on March 1, 2012.

Approved, September 26, 2011.