



December 4, 2020

The Honorable David J. Kautter  
Assistant Secretary for Tax Policy  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

The Honorable Charles P. Rettig  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Mr. Eric Hylton  
Commissioner, Small Business/Self-Employed  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Ms. Lisa M. Piehl  
Program Manager, Estate and Gift Tax Policy  
Internal Revenue Service  
SE:S:DCE:E:HQ:SP:E&GTP  
21040 Califa Street  
Woodland Hills, CA 91367

**RE: Comments on Electronic Filing (e-filing) of Forms 706, 706-NA, and 709**

Dear Messrs. Kautter, Rettig, Hylton and Ms. Piehl:

The American Institute of CPAs (AICPA) appreciates the efforts of the Department of the Treasury (Treasury) and the Internal Revenue Service (IRS) in allowing electronic filing (e-filing) of income tax returns. However, Treasury and IRS currently require paper filing, and do not allow for e-filing, of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return (Estate of nonresident not a citizen of the U.S.), and Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. We suggest that Treasury and IRS allow the e-filing of Forms 706 and 709 (the Forms) and related, separately filed paper forms.<sup>1</sup> Additionally, while federal estate tax can be paid electronically using the Electronic Federal Tax Payment System, (EFTPS), we suggest the implementation of electronic payments of federal estate tax and federal gift tax through tax preparation software, as is routinely done with individual income tax returns.

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<sup>1</sup> Related, separately filed paper forms include Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes; Form 8892, Application for Automatic Extension of Time to File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax; and Form 8971, Information Regarding Beneficiaries Acquiring Property From a Decedent. In addition, the Form 1041-A, U.S. Information Return Trust Accumulation of Charitable Amounts; Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts; Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner; and Form 5227, Split-Interest Trust Information Return; currently are required to be paper filed by many trusts and taxpayers.

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## Background

The executor of a decedent's estate is required to file Form 706 when the value of the gross estate, plus adjusted taxable gifts and the specific exemption, is more than the Basic Exclusion Amount (currently \$11,580,000 per individual). Form 706 is required to be filed on or before nine months after the decedent's death; a six-month extension of time can be requested by the executor. Form 706 is also required for the executor to transfer the Deceased Spousal Unused Exclusion amount to the surviving spouse, regardless of the size of the decedent's gross estate.

Form 706 reports the value of assets owned or deemed owned by the decedent on the date of death (unless the executor elects alternate valuation pursuant to Internal Revenue Code section 2032, in which case the executor reports the values 6 months after the date of death). A decedent's gross estate reportable on Form 706 commonly includes real property, artwork and collectibles, and frequently includes business interests owned outright or through partnerships, limited liability companies and corporations. Valuation of assets (with the exception of cash and publicly traded securities) is almost always subjective, and in most cases requires that the executor obtain appraisals.

An individual who gifts more than \$15,000 to a single person in a given year is generally required to report the gift on Form 709.

Gifts disclosed on Form 709 are also reported at fair market value. As with Form 706, unless the gifts are of cash or marketable securities, the valuation of the gift must be established.

During the 2020 pandemic, IRS issued news releases on August 28, 2020 ([IR 2020-194](#)) and September 10, 2020 ([IR 2020-206](#)) permitting the use of digital signatures on a number of the forms which cannot be filed electronically, citing safety concerns for tax professionals and taxpayers in light of the current COVID-19 pandemic.

## Recommendation

The AICPA recommends that Treasury and IRS allow the e-filing of Forms 706, 706-NA, and 709 (and related, separately filed forms, such as Forms 3520, 3520-A, 4768, 5227, 1041-A, 8971, and 8892). The ability to electronically file these returns would streamline the filing process and would enhance efficiency and security to executors, taxpayers and the Internal Revenue Service. In addition, Treasury and IRS should provide taxpayers with the ability to electronically pay estate, gift and generation-skipping transfer taxes.

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## Analysis

There is currently no mechanism for filing Forms 706, 706-NA, and 709 electronically; the returns must be paper filed with the appropriate Internal Revenue Service Center. Because the value of unmarketable assets reported on Forms 706, 706-NA, and 709 must be substantiated by appraisals, there are frequently multiple appraisal reports attached to the returns. Additionally, there are other documents that are required to be included with Forms 706, 706-NA, and 709.

Instructions to Form 706 direct the executor to attach the following:

- Decedent's will
- Death certificate
- Trust instruments for trusts created by the decedent
- Trust instruments for trusts not created by the decedent, but where the decedent possessed any power, beneficial interest, or trusteeship
- All gift tax returns filed by decedent during lifetime
- Real estate appraisals
- Business appraisals for business interests not publicly held
- Appraisals for art and other collectibles for which the value exceeds \$3,000

It is possible for the required attachments to comprise hundreds, if not thousands, of pages.

Technology has transformed the business and financial world, and communication relies less on the sharing of printed materials. It is common practice in business for reports to be furnished by electronic means, such as Portable Document Format ("PDF"). This has made communication much more efficient as electronic tools have become widespread and user-friendly.

Tax preparers have been e-filing federal income tax returns for clients for a number of years. In fact, tax return preparers who prepare more than 10 individual income tax returns are *required* to file the returns electronically.<sup>2</sup> (An individual income tax return is defined for this purpose as any income tax return for an individual, estate or trust.) Practitioners and taxpayers alike have embraced this technology, as it streamlines the filing of even complex returns with required PDF attachments. Tax preparers and tax software vendors have safeguards in place to ensure the security of the electronic filings and cloud-based systems.

At this time, it is not possible to e-file Forms 706, 706-NA, and 709 (and several related, separately filed forms). It would be in the interest of both taxpayers and the Internal Revenue Service to extend electronic filing to these forms.

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<sup>2</sup> Section 6011(e)(3). All references to "section" or "§" are to the Internal Revenue Code of 1986, as amended, and all references to "Treas. Reg. §" and "regulations" are to U.S. Treasury regulations promulgated thereunder.

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As described above, the executor is required to include many documents with Form 706 and Form 706-NA. Many of those documents are provided to the executor in electronic form, who is then required to reproduce multiple copies of those forms to include with federal and state filings. If the form was able to be filed electronically, those documents could be included in the electronic file as a PDF attachment, eliminating the necessity of reproducing voluminous reports. The donor faces similar issues when filing Form 709. With existing safeguards, not only would the filing process be streamlined for the executor and the donor, but it would also be more secure.

In addition to Forms 706, 706-NA, and 709, there are other tax forms for which e-filing currently is not available. The IRS should allow additional forms, including the Forms 1041-A, 3520, 3520-A, 4768, 5227, 8892, and 8971, to be e-filed.

AICPA requested the use of digital signatures and requests IRS permanently allow use of digital signatures.<sup>3</sup> While electronic signature relief is desperately needed during this filing season given COVID-19, a permanent solution is necessary. A permanent solution will allow taxpayers and their representatives to better embrace the digital and global environment and move away from manual, paper-based processing. The AICPA was pleased when the IRS issued news releases on August 28, 2020 ([IR 2020-194](#)) and September 10, 2020 ([IR 2020-206](#)) permitting the use of digital signatures on a number of the forms which cannot be filed electronically because of the distancing and safety concerns for tax professionals and taxpayers in light of the current COVID-19 pandemic. The AICPA thanks the IRS for its initiative and proactivity in this regard and hopes that it is a recognition on the part of the IRS that current technology is a tool that can be used efficiently and securely and will be available in the future as well. With the COVID-19 pandemic, taxpayers and practitioners and the IRS would benefit from e-filing of Forms 706 and 709 (and the other forms noted above) to streamline the compliance process, especially with many businesses and employers implementing policies and procedures to protect employees and clients in accordance to CDC Guidelines. Many of the policies restrict non-employees access to the office workplace. Additionally, many employees are finding it necessary to social distance and work remotely, further complicating the filing process.

While the AICPA does not have in-depth understanding of procedures within the IRS, it is reasonable to believe that the IRS would realize efficiencies in the processing, classification, review, and retrieval for requested copies of Forms 706, 706-NA, and 709 if they were electronically filed. Digital files could be easily shared among IRS staff in multiple locations and would eliminate the need to access paper copies of the returns and attachments that currently

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<sup>3</sup> See AICPA letters to IRS dated [March 26, 2020](#), regarding relief for taxpayers affected by ongoing Coronavirus Disease 2019 Pandemic; [April 7, 2020](#), regarding broad filing season relief for taxpayers and their advisors; [June 4, 2020](#), regarding IRS guidance for electronic signature program; and [August 19, 2020](#), regarding temporary IRS guidance for electronic signature program. AICPA also submitted a letter to IRS on [November 16, 2020](#), regarding permanent electronic submission options for accounting method changes.

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require the inconvenience and cost of IRS personnel traveling to an IRS campus. Electronic filing would also reduce the IRS expense of handling, shipping and storing paper returns and supporting documents that are needed by IRS estate tax auditors, valuation experts, and reviewers. In addition, submission of electronic returns would avoid possible clerical errors in any data from Forms 706, 706-NA, and 709 that may be required to be keypunched by IRS employees.

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The AICPA is the world's largest member association representing the accounting profession with more than 431,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses. We appreciate your consideration of these comments and welcome the opportunity to discuss these issues further. If you have any questions, please contact Eileen Sherr, AICPA Director – Tax Policy & Advocacy, at (202) 434-9256 or [Eileen.Sherr@aicpa-cima.com](mailto:Eileen.Sherr@aicpa-cima.com); or me at (612) 397-3071 or [Chris.Hesse@CLAconnect.com](mailto:Chris.Hesse@CLAconnect.com).

Sincerely,

A handwritten signature in blue ink that reads "Christopher W. Hesse". The signature is fluid and cursive, with a long horizontal stroke at the end.

Christopher W. Hesse, CPA  
Chair, AICPA Tax Executive Committee

cc: Ms. Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Adviser, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury