

Choice of value

The standard rule for valuing estate assets is to use the fair market value on the date of death. If the value is high enough, a federal estate tax will be due. A long-standing choice permits an estate's assets to be valued instead at an *alternate valuation date*, six months after the individual's date of death. It's a decision that an executor makes on the federal estate return, and it can be essential during down markets, such as we have experienced recently. Paying a death tax on evaporated gains on stocks or real estate can be just about impossible, because selling the assets may not yield enough to cover the taxes due.

But it's not a "pick and choose" option. For instance, if the estate's stock portfolio has dropped in value while an art collection has risen, the same valuation date must apply to both.

What happens when the alternate date is chosen, but an asset has been sold (or otherwise disposed of) before the end of the six months? The estate tax value is then established on the date of the sale or disposition.

What if a privately held company is reorganized during that six-month period? There's been no sale, but the estate may have exchanged its holdings for new shares or a new class of shares. In a recent case, the Tax Court held that the reorganization must be respected for estate tax purposes.

The IRS, worried about the potential for abuse, recently proposed new regulations that restrict the alternate date valuation election to situations where the change in value is the result of events beyond anyone's control, such as changes in the financial markets. Estate planners are concerned that the new rules are ambiguous and overly broad.

The moral of this story? You really don't want to have an amateur settling your estate if there is any chance of exposure to death taxes.

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