

Deadline Extended for Form 8939 and Penalty Relief for Beneficiaries of 2010 Decedents' Estates

September 2011

Kathleen A. Ryan, Esq.

Lawrence D. Hunt, Esq.

The IRS recently announced that the due date for filing Form 8939 (Allocation of Increase in Basis for Property Acquired from a Decedent) has been extended from November 15, 2011 to January 17, 2012. IRS Notice 2011-76, issued on September 13, 2011, is the latest in a series of notices which clarify filing deadlines for 2010 decedents' estates. The Notice provides executors of decedents' estates until January 17, 2012 to file Form 8939 to elect carry-over basis treatment, to opt out of the estate tax system, and to allocate additional basis. The filing may be amended or revoked on or before that date. No further extension of time to file Form 8939 or to make or amend the carry-over basis election will be allowed.

If an executor decides not to elect carry-over basis by filing a Form 8939, the estate may be required to file a Form 706 (U.S. Estate Tax Return). The IRS recognizes that executors may not have sufficient time to decide whether to make the election and to complete the required filings, so an automatic 6-month extension to file a Form 706 and pay tax will be granted for those estates which file a Form 4768 before the deadline for filing the Form 706. For estates of decedents who died between December 17, 2010 and December 31, 2010, Form 4768 must be filed within 9 months of the date of death. Executors of estates of decedents who died between January 1, 2010 and December 16, 2010 were required to have filed the Form 4768 by September 19, 2011. Interest will

continue to accrue on estate taxes from the original due date for the return, but late filing and late payment penalties will not be imposed.

Notice 2011-76 also provides penalty relief for beneficiaries of 2010 decedents' estates who received property from the decedent and disposed of the property in 2010. When filing income tax returns, a recipient of such property will be held to a good faith estimate in reporting basis information. If a tax increase results by reason of the executor's elections on the Form 8939, the IRS will not impose failure to pay and underpayment penalties. The deadlines for filing income tax returns for beneficiaries are unchanged.

LINKS TO OTHER CLIENT ALERTS ABOUT FORM 8939

"Guidance for Executors of 2010 Decedents' Estates; Due Date for Form 8939", August 2011

"Form 8939, Where Art Thou?", July 2011

"2010 Tax Relief Act: Important Elections for 2010 Decedents' Estates", January 2011