



# Death of a Taxpayer

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## Death of a Taxpayer

When a taxpayer dies, there are certain returns that still need to be filed, a responsibility that falls on the personal representative.

### Personal Representative

Under state law, a personal representative is the person appointed by a court to administer an estate. The term includes both executors (appointed when the decedent has a will) and administrators (appointed in the absence of a will). A personal representative nominated in a will has no authority over estate assets unless appointed by a court.

### Duties of Personal Representative

Duties include collecting all of the decedent's property, paying any creditors, and distributing assets to beneficiaries. In addition, the representative is responsible for filing various tax returns and seeing that the taxes owed are properly paid.

### No Court-Appointed Representative

When there is no probate and no appointed representative, the IRS will allow a "person charged with property of the decedent" to file the decedent's income tax returns and claim refunds. IRS written guidance does not specify who this person should be. If there is a surviving spouse, he or she usually files a joint final Form 1040 and any other required returns. If there is no surviving spouse, the person who files is commonly:

- The trustee of the decedent's revocable trust,
- The personal representative nominated in the will who would have been appointed if probate was required, or
- A beneficiary receiving nonprobate assets who undertakes the work.

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The IRS uses the term "personal representative" to refer to anyone filing for a decedent, whether or not court appointed.

### Decedent's Tax Returns

The personal representative is responsible for the following returns when required.

- **Form 1040.** Final return for year of death (gross income of a decedent from January 1 until the date of death is reported on the decedent's final income tax return).
- **Form 1041.** Income tax returns for the probate estate (required if income greater than \$600 is received after death by the decedent's estate).
- **Form 706.** Estate tax return (required if decedent's estate exceeds the estate tax exclusion (\$12,920,000 in 2023) or if portability election is made).
- **Form 709.** Gift tax for year of death (required if the decedent gave more than the annual exclusion (\$17,000 for 2023) to any one person in the year of death or failed to file any prior year gift tax returns).
- Returns not filed by the decedent for prior years—Form 1040, Form 1040-X, or Form 709.
- State income tax and estate tax returns. Some states do not have an estate tax, but several states have annual estate tax exclusions that are significantly less than the federal exclusion.

A personal representative may be personally liable for unpaid tax if he or she distributed assets, the estate is insolvent as a result, and the personal representative had notice of the tax claim.