

## **Filing a Final Income Tax Return For a Deceased Family Member**

By **Thomas Corley**

Filing a final income tax return for the year in which a family member dies presents many unique and challenging tax rules. When someone dies they are referred to as the "Decedent". The decedent's final income tax return includes income and deductions through the date of death. It is the responsibility of the decedent's executor or personal representative to file the final form 1040 for the deceased. The purpose of this article is to highlight some of the unique tax rules that family members need to be aware of.

### Summary of Tax Rules:

1. **Tax Year** - Although a decedent's tax year ends on the date of death, the actual due date of the final return is April 15th of the following year;
2. **Filing Status** - A joint return may be filed for a decedent and their surviving spouse as long as the surviving spouse has not remarried at the end of the year of death and the personal representative and surviving spouse both agree to file a joint return;
3. **Income in Respect of Decedent** - Accrued, but unpaid, income as of the date of death is called "income in respect of decedent" (IRD). IRD is excluded from the decedent's final income tax return. This income is typically included in the estate income tax return of the deceased (Form 1041);
4. **Medical Expenses** - Medical costs paid from the decedent's estate within one year of the day following the date of death can be deducted either on the final tax return (Schedule A) or on the estate tax return (Form 706);
5. **No Personal Representative** - If there is no court-appointed personal representative of the deceased and no surviving spouse, Form 1310 and a copy of the death certificate must be attached to the final return in order to claim an income tax refund;
6. **Final Tax Return** - A final individual income tax return (Form 1040) must be filed for the year of a death;
7. **Method of Accounting** - Generally, the cash method is the method of accounting to be used. This method treats all income received before date of death and all deductible expenses paid before date of death as part of the final income tax return;
8. **Self-Employment Income** - The distributive share of all income received or constructively received by a decedent from a sole proprietorship, S Corporation or Partnership must be included in the decedent's final income tax return;
9. **Losses** - Net operating losses and capital losses attributable to a decedent cannot be carried over and used by the decedent's estate, nor can they be used in future years by the decedent's surviving spouse. These losses expire unused;
10. **Passive Losses** - Unused passive activity loss carry forwards are deductible on the final tax return to the extent they would have been deductible had the family member not passed away. Any unused passive activity losses not deductible on the final income tax return expire unused at the date of death. There is a special rule regarding the use of these losses on stepped up assets, but this issue is beyond the scope of this article;
11. **Credits** - Tax credits that applied to the decedent before death can be claimed on the final income tax return. Credits not used on the final income tax return expire unused;

12 Return Heading/Signature - The words "DECEASED" need to be written across the top of the decedent's final income tax return. If there is no personal representative, the surviving spouse must include in the decedent's return signature space "Filing as Surviving Spouse".

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