

# Estate Tax Closing Letters



## ATTORNEYS

John Bryan

## RELATED PRACTICE AREAS

Estate Planning, Administration & Wealth Transfer

## RELATED INDUSTRIES

Families, Individuals & Estates

John Bryan

*BKK Wills, Trusts & Estates Newsletter*

November 2015

Traditionally, an important event in the life of estates with potential estate tax exposure has been receipt of a closing letter from the IRS. The estate tax return is filed and upon acceptance, the IRS sends a closing letter saying that the estate tax return has been accepted by the IRS and that, absent material or intentional misstatement, no additional estate or gift taxes are due. While the closing letter does not extend to income taxes that may be assessed or due, the closing letter represents a crucial piece in administration process, allowing fiduciaries (typically executors) to distribute an estate without minimal risk of personal liability for unpaid estate taxes.

With establishment of portability of the estate tax exemption – whereby a surviving spouse can elect to claim the unused estate tax exemption available to the deceased spouse - the number of estate tax return filings has increased dramatically, often for the sole purpose of making the portability election (which requires filing of an estate tax return). The IRS apparently felt that the additional burden accompanying these additional returns justified changing the closing letter rules.

Against this backdrop, the IRS has announced that for estate tax returns filed after June 15 2015, the closing letter will only be issued after a formal request. The guidance goes on to provide that for estates below the filing threshold, closing letters generally will not be issued if the portability election was denied due to a late filing.

Further guidance has not been issued but the initial indication is that this request should be delayed until 4 months after the return is filed to allow processing. If the return is not audited and does not contain other errors or other “special circumstances,” the IRS says that the closing letter should be issued within 4-6 months after filing.

While the new IRS policy still allows executors to obtain a closing letter for an estate in most circumstances, it will add another item to an executor’s checklist to ensure timely administration of an estate.