

## **REBA Title Standard No. 3**

### **Federal Estate Tax Liens**

Title to land is not defective by reason of a federal estate tax lien ten years after death in any case and sooner:

(1) When there is an affidavit by the personal representative, executor or administrator, or if no probate then by the decedent's immediate successor in title or person in actual or constructive possession of the property, that the decedent's gross estate as defined in IRC § 2031 is less than the amount set forth in the Table below;

or

(2) When there is proof of payment of the amount shown due by the tax closing letter or the tax closing letter shows no amount due;

or

(3) Where there is proof of payment of the amount shown due, or the amount shown due is zero, on an account transcript issued by the IRS showing transaction code 421 and the explanation "Closed examination of tax return";

or

(4) When the IRS issues pursuant to IRC § 6325 a certificate of its discharge of the land or a certificate of release or non-attachment of the lien;

or

(5) When, in the case of non-probate property, there is a transfer to a "purchaser" or holder of a "security interest" as defined in IRC § 6323(h) if death was after November 2, 1966. In practice any transfer in an arm's length transaction is a transfer to a "purchaser" or holder of a "security interest" as so defined.

#### *Notes and Comments*

1. The estate tax lien is imposed by IRC § 6324(a)(1), arises automatically at death if there is estate tax liability and is lien upon the gross estate of the decedent for 10 years from the date of death. It is different from the general federal tax lien under IRC § 6321, notice of which is recorded in the registry of deeds.

2. As the gross estate under IRC § 2031 includes joint property and may include life insurance, certain gifts, trust funds and other non-probate property pursuant to IRC §§ 2032 to 2046, the fact that an estate is small does not justify the assumption that there is no estate tax lien.

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3. See REBA Form 32 for the suggested affidavit form referenced in Paragraph (1).

4. See REBA Form 32A for the suggested affidavit form when compliance with this Title Standard is accomplished by either Paragraph (2) or (3).

5. An account transcript referenced in Paragraph (3) issues after a Federal Estate Tax Return has been filed and reviewed. It is computer generated, issues for no charge, and has a much shorter turn-around period than requesting an Estate Tax Closing Letter. IRS Notice 2017-12 states that “an account transcript showing a transaction code of “421” serves as the functional equivalent of an estate tax closing letter.”

6. The documents referenced in Paragraphs (1), (2), (3) and (4) should be either recorded at the registry of deeds or filed in the decedent’s Probate Case (if any). The documents for Paragraphs (1), (2) and (3) relate to the value or tax status of the decedent’s assets rather than refer to a particular property and therefore it is sufficient if the document is recorded in any county where the decedent owned property without the requirement that the document is recorded in each county where the decedent owned property, and further it is sufficient if the document is recorded only in the unregistered land system even if the decedent’s only property in that county is within the registered land system.

7. Paragraph (5) is based on IRC § 6324(a) (2) and relates to non-probate property includable in the decedent’s gross estate under IRC §§ 2034 to 2042.

See also comments after the table below.

**Table**

<b>Year of Death</b>	<b>Gross Estate</b>
2006-2008	\$2,000,000.00
2009	\$3500,000.00
2010	\$5,000,000.00 (see comment below)
2011	\$5,000,000.00
2012	\$5,120,000.00
2013	\$5,250,000.00
2014	\$5,340,000.00
2015	\$5,430,000.00
2016	\$5,450,000.00
2017	\$5,490,000.00
2018	\$11,180,000.00

The above exclusion amounts are reduced by the sum of (1) the decedent’s adjusted taxable gifts made after 1976 and (2) any specific gift tax exemption allowed under former IRC § 2521 for gifts made between September 8, 1976 and December 31, 1976. See IRC §§ 2001, 2010, 6018 and 6324.

## Comments on Table

*Regarding deaths occurring in 2010: prior to enactment of the Tax Relief, Unemployment Insurance Reauthorization and Job Creation Act of 2010, on December 17, 2010 (“Act of 2010”), estates of persons dying in 2010 were not subject to estate tax, but were instead subject to a modified carry-over basis regime, in which assets passing from the decedent would not receive a step-up in cost basis (subject to certain adjustments and elective cost basis allocation allowances). The Act of 2010 retroactively imposed a \$5,000,000 exclusion amount on estates of persons dying in 2010, but allowed the personal representative of any such estate to elect to pay no federal estate tax and instead be subject to the modified carry-over basis regime. With respect to the estates of persons who died in 2010 if the gross estate exceeded the \$5,000,000 exclusion amount, and if the personal representative failed to elect out of the application of estate tax, a federal estate tax lien may exist. In the absence of evidence of such election, the conveyancer must presume that the \$5,000,000 exclusion amount applies, and a release must be obtained.*

*Regarding deaths occurring in 2011 and 2012: The American Tax Payer Relief Act of 2012 (“Act of 2012”) adopted a \$5 million exemption for deaths in 2011 indexed for inflation for 2012, resulting in an exemption amount of \$5,120,000 for 2012. The Act of 2012 established a base exemption amount of \$5,250,000 for 2013, indexed for inflation for subsequent years. The Tax Cut and Jobs Act of 2017 established a base exempt amount of \$10,000,000.00, indexed for inflation for subsequent years.*

*The amounts set forth in the Table in this Standard are accurate as of the date of the most recent amendment of this Standard. For years after the most recent amendment of this Standard, a conveyancer should review appropriate sections of the IRC (e.g., IRC s. 2010 (c) (3)) or IRS publications (such as the “Which Estates Must File” section of the “Instructions for Form 706”) to determine what the federal threshold filing amount is for a particular year of death.*

### Caveat

*If a conveyancer participated in a transfer of property from an estate of a 2010 decedent prior to the adoption of the Act of 2010 in reliance on there being no federal estate tax, the conveyancer should ascertain if the estate exceeded the exclusion amount, or if an election to pay no federal estate tax has been made, as there may be a federal estate tax lien in force on such property if no such election has been made.*

Adopted November 27, 1972

Amended November 14, 1977 (to reflect TRA of 1976)

Amended May 15, 1982 (to reflect ERTA of 1981)

Amended September 1, 1982 (removed reference to pre-1966 deaths)

Amended November 4, 2002 (to reflect changes in the table of taxable gross estates)

Amended November 14, 2011 (to reflect the Act of 2010)

Amended November 2, 2015 (to reflect the Act of 2012)

Amended November 5, 2018 (to reflect the Tax Cut and Job Act of 2017 and IRS Notice 2017-12)