

# One of These Things Is Not Like the Other: The Ohio Estate Tax Return Versus the Federal Estate Tax Return

---

Erica E. McGregor, Esq.  
Tucker Ellis & West LLP  
Cleveland, Ohio

---

*Based on the author's presentation at the Cleveland Estate Planning Institute on October 23, 2009.*

With the federal estate tax applicable credit amount having substantially increased over the last decade, culminating in the repeal of the federal estate tax in 2010 (and still repealed as of March 1, 2010), practitioners in Ohio find themselves focused solely on the Ohio estate tax return as part of the estate administration process. There are important and significant differences in the Ohio estate tax return from its federal counterpart. The goal of this article is to review some of the most sig-

nificant differences, and attempt to illustrate why those differences are important in both the pre-death planning and post mortem administration process.

## **A. BASIC FILING REQUIREMENTS: WHO, WHAT, WHEN, WHERE AND WHY**

The Ohio estate tax return is required for all estates of decedents domiciled in Ohio at their death with a gross of estate of \$338,333 or more. O.R.C. § 5731.02(B). Nonresidents are also required to file if they own real or tangible property located in Ohio, or intangible personal property employed in carrying on a business in Ohio unless exempted under O.R.C. § 5731.34. O.R.C. § 5731.19.

The Ohio Estate Tax Return is due nine months from the decedent's date of death. O.R.C. § 5731.21. A six month extension is available. No form is required to be filed to obtain the extension, thus this is a six month automatic extension and all returns are due no later than fifteen (15) months from the decedent's date of death. All taxes are due nine (9) months from the decedent's date of death, however upon application there are extensions of time to pay available for hardship. See O.R.C. § 5731.25.

The Ohio estate tax return is filed with the probate court of the appropriate county (file duplicate originals). O.R.C. § 5731.21(A)(1)(a). File one original of the Ohio ET Form 22 with the return. O.R.C. § 5731.21(A)(1)(b).

A Federal estate tax return is filed by any citizen or resident of the United States. I.R.C. § 2001(a). At the time that this article is being written, there is no federal estate tax filing threshold and the federal estate tax has been repealed. However, for decedents who died in 2009, the filing threshold was a gross estate of \$3,500,000. For 2011, under current law, the filing threshold will be approximately \$1,000,000. I.R.C. § 2001(c).

The Form 706 is due no later than nine months from the date of decedent's death. I.R.C. § 6075(a). There is an automatic extension of time to file the return, but affirmative filing of the appropriate form is required to obtain that extension of time. All tax is due within nine months of the date of the decedent's death, unless an application for extension of time to pay is granted.

The basic laws of Ohio estate tax are found in Chapter 5731. Under O.R.C. § 5731.01(B), the federal law, including rulings and regulations of the internal revenue service and decisions of the federal courts, governing fair market value (FMV) are used in determining FMV for Ohio estate taxes, unless such laws are inconsistent

with Ohio law. O.R.C § 5731.01(B) also provides that Ohio can independently audit the estate tax return, thus it is not bound to the federal values actually determined on audit, unless there is a federal agreement in place.

## **B. ALTERNATE VALUATION VERSUS DATE OF DEATH**

In Ohio, the general rule is that the value of the gross estate may be determined by valuing all the property included in the gross estate on the alternate date, if any, provided in I.R.C. § 2032(a), even if no federal estate tax return is required. O.R.C. § 5731.01(D). No deduction may be taken if the result of the alternate valuation takes into account the deduction. The election is made on the estate tax return, is irrevocable, and cannot be made if the return is filed more than one year after the due date, including any extensions.

The federal rule is generally the same. Ohio references the general rules of I.R.C. § 2032 as the basis on which the alternate value is determined. One key element of the federal rule is that the election to use the alternate values must decrease both the gross estate and estate tax due. Note that neither the Ohio statute, nor the instructions to the Ohio return, contain a similar requirement.

The important difference is this: alternate values may be used on one return but not the other, as the Ohio return and the Federal return are separate from one another. Thus, for a very simplistic example, if a decedent died in 2009 with a trust that creates a non-marital Family Trust which is funded with the full amount of the federal applicable credit amount of \$3,500,000. With no marital deduction available over that property, there will be a tax due in Ohio on the difference between \$3,500,000 and \$338,333 (assuming (i) there are no other nonmarital gifts made at death and (ii) no other deductions against the tax available). Assume the alternate values are lower than the date of death values. While it is not possible to use the alternate valuation on the federal return, because no tax is due, it is possible to use it on the Ohio return to reduce the tax. One important impact of this scenario relates to income tax basis, as the federal income tax basis will be equal to the date of death values.

Another important consideration is the impact this valuation will have on the balance of the return. For example, if you are preparing both a federal return and an Ohio return, and use the alternate valuation on only the Ohio return, your marital deduction and/or charitable deduction calculations will be different, as the underlying

ing asset values on which they are based are different.

### C. ASSETS INCLUDED

The property included on the Ohio return may be different than that included on the federal return. In Ohio, the gross estate includes all property, real or personal, tangible or intangible, wherever situated, other than real property situated and tangible personal property having an actual situs outside of Ohio. O.R.C. § 5731.01(A).

The federal gross estate includes all property, real or personal, tangible or intangible, wherever situated. I.R.C. § 2031(a).

### D. REAL ESTATE

The primary difference with respect to real estate is location: property not located in Ohio will not be included on an Ohio estate tax return. As for valuation, however, there is not any substantial difference in the general standards for valuing real estate on the Ohio return and the federal return. Ohio specifically provides that the value is the price at which such property would change hands between a willing buyer and willing seller, neither being under any compulsion to buy or sell and both having reasonable knowledge of relevant facts. O.R.C. § 5731.01(B). In Ohio, rules for making an election to value qualified farm property are found in O.R.C. § 5731.011. For federal purposes, rules for making an election for qualified farm property or for property used in a closely held business are found in I.R.C. § 2032A.

### E. STOCKS AND BONDS

The assets reported on Schedule B of both returns are treated substantially the same under both Ohio law and federal law.

In general, Ohio directs that these assets be valued as provided in federal law. There is an exception in O.R.C. § 5731.01(C) for securities not traded on ordinary markets. Ohio also provides for valuation related to blockage discount in O.R.C. § 5731.01(C).

The federal rule, generally, is that if there is a market for stock or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the value is the mean between the highest and lowest quoted selling price on the valuation date. Treas. Reg. § 20.2031-2(b)(1). If there is no trading on the valuation date (for example, if a decedent dies on a holiday or weekend), the weighted average of the means between the highest and lowest sales on the nearest date before and after the valuation date are used. Treas. Reg. § 20.2031-2(b)(1).

### F. MORTGAGES, NOTES AND CASH

There are no substantial differences in the reporting of assets on Schedule C, mainly cash, mortgages, and notes. Indeed, again, Ohio relies on the federal valuation rules for reporting purposes. Those federal rules, generally, provide that assets reported include cash in the possession of the decedent, in the possession of another, or deposited with a bank is included in the gross estate. Bank accounts may be reduced by outstanding checks if (i) the checks are to discharge of bona fide legal obligations of the decedent, (ii) the checks are subsequently honored and charged to the decedent's account, and (iii) the debts paid by such checks are not claimed as deductions from the gross estate. Treas. Reg. § 20.2031-5.

### G. INSURANCE

The inclusion of life insurance in a decedent's gross estate for estate tax purposes is one of the most significant differences between the Ohio and the Federal estate tax return.

In Ohio, the gross estate includes the value of all property receivable by the decedent's estate as insurance under policies on the decedent's life. The gross estate does not include any amount receivable as insurance under policies on the decedent's life by beneficiaries other than the decedent's estate, whether paid directly to those beneficiaries, to a testamentary, inter vivos, or employee benefit trust for their benefit, or to a guardian or custodian for the benefit of an incompetent or minor. O.R.C. § 5731.12.

Insurance is received by a decedent's estate under many different scenarios. Examples of this include the following:

- If all beneficiaries named on a beneficiary designation are not living at the time of the decedent's death and the default taker is the decedent's estate.
- If the beneficiary designation forms are never completed.
- Named beneficiaries disclaim their interest and the default taker is the decedent's estate.

A beneficiary designation form that is not executed in compliance with the form's instructions may also lead to the estate becoming the beneficiary. It is critical to have properly executed and accurate beneficiary designation forms to avoid unnecessary Ohio estate tax.

The amount included is "amount receivable by the

decedent's estate," including interest earned on policy. Importantly, face value does not necessarily equal the amount receivable.

The federal rules are different. I.R.C. § 2042 provides that the gross estate for federal purposes includes the value of all property receivable by the executor as insurance under policies on the decedent's life. The gross estate also includes any amount receivable by all other beneficiaries as insurance under policies on the life of the decedent with respect to which the decedent possessed at his death any of the incidents of ownership, exercisable either alone or in conjunction with any other person. "Incident of Ownership" includes a reversionary interest if the value of such reversionary interest exceeded five percent (5%) of the value of the policy immediately before the decedent's death. "Reversionary Interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by the decedent.

These rules illustrate why irrevocable life insurance trusts are often used in estate planning. In general, the proceeds of life insurance policies owned by an irrevocable life insurance trust on the decedent's life are not included in the decedent's gross estate, assuming that the trust is written properly and does not accidentally bestow an "incident of ownership" or "reversionary interest" in the decedent, and that the decedent did not transfer the policy to the trust within three years of death.

## H. JOINT AND SURVIVORSHIP ASSETS

The rules governing the reporting of joint assets on the Ohio return are substantially similar to those that govern the federal return.

In Ohio, the gross estate includes all property owned by the decedent jointly with rights of survivorship with any person other than the decedent's surviving spouse in the full amount. O.R.C. § 5731.10(A). There is an exception to this rule for any part of the asset that can be proven to have originally belonged to other joint owner and never received or acquired by such person from the decedent for less than an adequate and full consideration in money or money's worth. This will need to be supported by documentation attached to the return. As for assets owned jointly with the surviving spouse, the gross estate includes all property owned by the decedent and the decedent's surviving spouse, but only one-half of the value is reported. O.R.C. § 5731.10(B).

O.R.C. § 5731.10(B) provides that when the property has been acquired by gift, bequest, devise, or inheritance by the decedent and any other person or persons as joint

owners and their interests are not otherwise specified or fixed by law, the amount includible in the gross estate is the value of a fractional part of the property determined by dividing the value of the property by the number of joint owners.

The federal return includes in the gross estate the value of all property owned by the decedent as a joint tenant with rights of survivorship in the full amount. I.R.C. § 2040(a). There is an exception for any part shown to have originally belonged to such other person and never to have been received or acquired by such other person from the decedent for less than an adequate and full consideration in money or money's worth.

## I. MISCELLANEOUS PROPERTY

Schedule F of both returns includes all property not reported on any other schedule. The instructions to Ohio Estate Tax Form 2 indicate Schedule F should include partnership interests, sole proprietorship or other business interests, claims of decedent, rights, royalties, reversionary or remainder interests, tax refunds, judgments, unpaid wages, household goods, personal effects, automobiles, trailers, farm products, machinery, stored and/or growing crops and collections (such as coins and stamps). Qualified terminable interest property (QTIP) is included in the surviving spouse's estate and reported on Schedule F. The valuation of these items in Ohio is based on the federal rules.

If a decedent died in Ohio and left a QTIP trust to a surviving spouse, and the surviving spouse dies as a resident of another state, Ohio does not tax the QTIP property.

The federal rules for purposes of valuation are found primarily in the Treasury Regulations for I.R.C. § 2031.

## J. TRANSFERS DURING DECEDENT'S LIFE

The rules governing transfers during the decedent's life present some of the most significant differences between the Ohio and the federal return in the form of the "contemplation of death" rules.

In Ohio, the general rule is that the gross estate includes the value of all property of which the decedent has at any time made a transfer, by trust or otherwise, in contemplation of death. O.R.C. § 5731.05(A). Pursuant to O.R.C. § 5731.05(B), any transfer, by trust or otherwise, made within three years of the decedent's death is made in contemplation of death, unless facts to the contrary are shown.

A transfer is not made in contemplation of death if it is: (i) a bona fide sale for an adequate and full consideration in money or money's worth; (ii) a transfer of property that would not be included in the decedent's gross estate if retained by the decedent until death; (iii) the first \$10,000 of the transfers that were made by the decedent to each transferee, other than the spouse of the decedent, in each calendar year, but only to the extent that those transfers qualify as present interests under I.R.C. § 2503(b) and (c) (this does not apply to any portion of a transfer that is treated as being made by the spouse of the decedent under I.R.C. § 2513); (iv) a transfer of property made to the spouse of the transferor, except as provided in O.R.C. § 5731.131; and (v) Federal or state gift taxes paid with respect to any includible transfer. O.R.C. § 5731.05(C).

The federal rules are very different. The gross estate includes any property that the decedent transferred (by trust or otherwise) or relinquished a power over, within three years of death, if the property would have otherwise been included in the decedent's gross estate under I.R.C. § 2036, 2037, 2038 or 2042, if the decedent had not made the transfer or relinquished the power. I.R.C. § 2035(a). The gross estate includes any gift tax paid by the decedent within three years of death. I.R.C. § 2035(b).

I.R.C. § 2035(c) provides additional assets that are also included if they are transferred within three years of death. The three-year transfer rule does not apply to marital deduction gifts or annual exclusion gifts, or any other transfers for which a gift tax return was not required to be filed. As mentioned above in the discussion regarding life insurance, this exception does not apply to transfers of life insurance made within three years of death. I.R.C. § 2035(c)(1)(3). Transfers made from a decedent's revocable trust treated under I.R.C. § 676 as owned by the decedent is treated as a transfer made directly by the decedent. I.R.C. § 2035(e).

The remaining rules in this area are substantially the same. In Ohio, transfers with retained enjoyment are governed by O.R.C. § 5731.06. The federal rules are found in I.R.C. § 2036(a). In Ohio, transfers with reversionary interests retained are governed by O.R.C. § 5731.07. The federal rules are found in I.R.C. § 2037(a). In Ohio, transfers "subject to change" are governed by O.R.C. § 5731.08. The federal counterpart is found in I.R.C. § 2038(a)(1).

One item that may most often be overlooked is the Ohio rule that includes in the gross estate any present interest gifts made in excess of \$10,000 in any calendar year made within three years of death, unless proof is

available that it was not made in contemplation of death. As this dollar amount is not tied to the federal gift tax annual exclusion amount, and is not otherwise similarly indexed for inflation as that amount is, as the federal gift tax annual exclusion has increased over the years (most recently to \$13,000), this limitation has not.

Further note this very important difference between the two returns: the federal return includes gift tax paid by the decedent or the decedent's estate for all gifts made within three years of death, but the Ohio return does not.

Another important difference between the Ohio return and the federal return is with respect to the inclusion of an interest in what is commonly called a "Section 529 Plan." The federal return does not include any interest of an owner in a § 529 Plan, unless it is during a period for which an election has been made to pro-rate contributions over a five-year period, and the decedent dies within the five-year period.

It is this author's understanding that the Ohio Department of Taxation takes the position that the Ohio gross estate includes the value of a § 529 plan owned by an Ohio decedent at the time of death, whether owned by that decedent individually or in a revocable estate planning trust. The amount included however is limited to percentage of the contributions made by that Account Owner to the § 529 Plan in light of total contributions made to the account. So, if a husband and wife split gifts, the portion attributed only to the deceased Account Owner spouse is included. Based on this rationale, the inclusion does not seem to be the power over the property itself (the Account Owner has the power to withdraw all the funds, change the beneficiary, etc.), but the retained power over gifts made to the account. It seems, then, that these accounts should be reported on Schedule G of the Ohio estate tax return.

## K. POWERS OF APPOINTMENT

The rules governing the inclusion of value of property over which the decedent has a general power of appointment are substantially similar. In Ohio, the inclusion and valuation rules are found in O.R.C. § 5731.11. The federal rules are found in I.R.C. § 2041 and the corresponding Treasury Regulations.

## L. ANNUITIES, PENSIONS, RETIREMENT AND OTHER EMPLOYER DEATH BENEFITS

It is in the area of reporting retirement assets that the

rules are again very different. In Ohio, the general rule is that the gross estate includes the value of an annuity or other payment receivable by a beneficiary by reason of surviving the decedent under any form of contract or agreement under which an annuity or similar payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another, for the decedent's life or for any period not ascertainable without reference to the decedent's death, or for any period which does not in fact end before the decedent's death. O.R.C. § 5731.09(A).

In Ohio, the gross estate includes only that part of the value of the annuity or other payment receivable under the contract or agreement as is proportionate to that part of the purchase price of the contract or agreement contributed by the decedent. The value of the gross estate does not include the part of the value of the annuity or other payment as is proportionate to the part of the purchase price of the contract or agreement contributed by the employer or former employer of the decedent, whether to an employee's trust or fund forming part of a pension, annuity, retirement, bonus, or profit-sharing plan or otherwise, if the contributions were made by reason of the decedent's employment. O.R.C. § 5731.09(A).

In Ohio, the gross estate does not include the value of a pension or annuity accruing to any person under federal employment, including service in the armed forces, or the value of an annuity or other payment from the Ohio police and fire pension fund under O.R.C. § 742.02, the Ohio public safety officers death benefit fund under O.R.C. § 742.62, the state highway patrol retirement system under O.R.C. § 5505.02, the public employees retirement system (OPERS) under O.R.C. § 145.03, the state teachers retirement system (STRS) under O.R.C. § 3307.03, and the school employees retirement system (SERS) under O.R.C. § 3309.03. O.R.C. § 5731.09(B).

The federal rules provide that the gross estate includes the value of an annuity or other payment receivable by any beneficiary by reason of surviving the decedent under any form of contract or agreement, if an annuity or other payment was payable to the decedent, or the decedent possessed the right to receive such annuity or payment, either alone or in conjunction with another for his life or for any period not ascertainable without reference to his death or for any period which does not in fact end before his death. I.R.C. § 2039(a). The general rule applies only to such part of the annuity or other payment receivable under such contract or agreement proportionate to that part of the purchase price contributed by the decedent. I.R.C. § 2039(b). Any contribution by the decedent's employer or former employer to the purchase

price of such contract or agreement (whether or not to an employee's trust or fund forming part of a pension, annuity, retirement, bonus or profit sharing plan) is considered to be contributed by the decedent if made by reason of his employment. I.R.C. § 2039(b).

A key difference between the Ohio and federal returns is that Ohio does not include employer contributions to a pension, annuity, retirement or profit sharing plan. The Federal return does. However, in Ohio, if assets in an employer sponsored retirement plan have been rolled over to an IRA, the exemption for the value attributable to the employer contributions is lost. This rule is the result of an Ohio Supreme Court case, *In re Estate of Roberts*, 94 Ohio St. 3d 311, 2002-Ohio-791, 762 N.E.2d 1001 2002.

## M. DEBTS AND ADMINISTRATIVE EXPENSES

The rules governing what may be deducted as a debt or an administrative expense are generally the same. The differences relate more to the reporting of these items on the returns. Ohio has only one schedule, Schedule J, on which these items are reported. The federal return includes Schedule J, Schedule K and Schedule L.

Permitted deductions in Ohio are found in O.R.C. § 5731.16. The federal guidelines are found in I.R.C. § 2053 and 2054.

It is not necessary for all deductions on one return to match the deductions on the other return. For example, you can choose to take deductions on the Ohio estate tax return to reduce the Ohio estate taxes due, but not take either all or any of those same deductions on the federal estate tax return. As a result, the estate will be able to take those expenses (to the extent permitted) as deductions for federal income tax purposes, but not for Ohio estate tax purposes.

Further, there are some expenses that cannot be taken on the Ohio estate tax return that can be taken on the federal estate tax return, such as mortgage debt on out of state real property.

## N. CHARITABLE DEDUCTIONS

This again is an area that provides substantially different rules between the Ohio and federal estate tax laws.

In Ohio, the general rule is that a deduction is permitted for the amounts passing to charitable organizations. O.R.C. § 5731.17(A). The amount of the charitable deduction is not reduced by the amount of any transfer taxes to be paid from the property. If any bequest, legacy,

devise, or transfer is dependent upon the performance of some act or the happening of a precedent event, no deduction is allowable unless the possibility that such bequest, legacy, devise, or transfer will not become effective is so remote as to be negligible.

The present value of a remainder, deferred payment or other limited interest shall be determined by the usual methods of valuation, including the use of tables of mortality and actuarial principles, under rules and regulations prescribed by the tax commissioner.

The federal rules provide a similar general rule in I.R.C. §2055(a) that a deduction is available for the amount of all bequests, legacies, devises, or transfer to certain charitable organization and entities. However, if any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this section, then the amount deductible under this section shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes. I.R.C. 2055(c).

The primary difference between the Ohio return and the federal return is this reduction of the amount passing to charity as the result of taxes imposed against the gift; a federal concept known as the interrelated charitable deduction. Ohio does not reduce the charitable deduction by any estate transfer taxes paid from the property passing to charity and no interrelated calculation is required. The federal return requires a reduction of the charitable amount by the amount of federal and state estate transfer taxes paid from the property. Each time the charitable interest is reduced by taxes, the charitable amount is further reduced, resulting in more tax. The calculation is circular and must be done multiple times until the final number is determined.

This issue is relevant to the drafting of and application of estate tax apportionment clauses in wills and trusts. The calculation of the charitable deduction, if there is tax applied against the gift, whether the gift is preresiduary or is part of the residue, will need to be done separately for each return, as the amount passing under the federal law and return will not be the same as the amount to be deducted on the Ohio return.

## O. MARITAL DEDUCTIONS

The basic rules governing the availability of a marital deduction under Ohio law and federal law are similar. However, it is the ability in Ohio to utilize a deduction

for the value of a surviving spouse's life estate in certain property that produces the most significant difference.

In O.R.C. § 5731.15(A), a marital deduction is allowed for the value of any interest in property that passes or has passed from the decedent to the surviving spouse, as long as that property is included in the value of the gross estate. O.R.C. § 5731.15(B) provides a marital deduction for a qualified terminable interest property (QTIP) deduction. QTIP property is defined in O.R.C. § 5731.15(B)(3).

The federal rules regarding the marital deduction are found in I.R.C. § 2056. The federal QTIP provisions are found at I.R.C. § 2056(b)(7). I.R.C. § 2056(d) governs the marital deduction for a surviving spouse who is not a United States citizen.

Ohio allows two marital deductions for QTIP eligible property: a life estate marital deduction plus a QTIP election for the remainder (after reducing the trust for the amount of the life estate marital deduction). O.R.C. § 5731.15(A) provides a deduction for any property that passes or has passed to the decedent to the surviving spouse. The surviving spouse's life income interest in the QTIP eligible property qualifies for a marital deduction under this provision. O.R.C. § 5731.15(B) provides that in addition to the marital deduction provided by O.R.C. § 5731.15(A), a QTIP election is available for eligible property. The proportionate amount of the trust which is deducted as a life estate marital deduction is not included in the surviving spouse's estate for Ohio estate tax purposes. Only that proportion of the trust which is elected for a QTIP marital deduction is included in the surviving spouse's estate for Ohio estate tax purposes. The amount of trust property that needs to be elected for the QTIP may be reduced further by the Ohio estate tax exemption amount, if that exemption is not otherwise being applied against other transfers made by the decedent to beneficiaries other than the surviving spouse.

This issue has been discussed, including providing calculations, in great detail many times in this publication. As such, rather than duplicating the analysis here, consider the following:

- a. Friedman, M., Ohio Department of Taxation Position on QTIP-Friendly Trusts, 12 PLJO 37 (Jan./Feb. 2002), (responding to Leonard, J., The Leveraged Exclusion Amount: A Powerful (but Short-Lived?) Technique for Ohio Estate-Tax Savings for Married Clients, 11 PLJO 93 (July/Aug. 2001)).
- b. Leonard, J. The Leveraged Exclusion Amount: Still the Best Way to Reduce Es-

tate Taxes For Married Clients, 14 PLJO 5A (Sept./Oct. 2003).

- c. Culler, M. Patricia, Not Your Father's State Death Taxes: The Ohio Marital Deduction Ten Years Later, The Ohio Sponge Tax and The State of State Death Taxes, Cleveland Bar Association 2003 Annual Estate Planning Institute.
- d. Cutler, K., Ohio's Life Estate Marital Deduction: A Greatly Under-Utilized Technique for Ohio Estate Tax Savings for Married Couples, 18 PLJO 181 (May/June 2008).

With respect to the QTIP election itself, note that on the Ohio estate tax return, the executor must affirmatively elect a QTIP marital deduction by checking a box on Page 2 of the return, under "Elections by the Executor" and then completing Schedule M, Part II. On the Federal return, the executor has to affirmatively elect out of QTIP treatment on Schedule M, line 3.

Finally, with respect to reductions to the marital deduction, federal law is clear that, if the property passing to the spouse pays any part of the federal and/or state estate transfer taxes, the amount passing to the spouse is reduced by that amount, which in turn increases the taxes due. The result is an interrelated calculation, similar to the one discussed with respect to charitable deductions. I.R.C. § 2056(b)(4). See also Treas. Reg. § 20.2056(b)-4. The instructions to Ohio Schedule M, Part I provide that if "provision has not been made in the decedent's will for the debts and expenses of administration, the spouse's interest in the residue could be reduced for these expenses."

## **P. FEDERAL SCHEDULES WITH NO CORRESPONDING OHIO SCHEDULE**

There are several schedules on the federal return which have no corresponding Ohio schedule. Those include Schedule A-1: Section 2032A Valuation, Schedule P—Credit for Foreign Death Taxes, Schedule R and R-1—Generation-Skipping Transfer Tax, and Schedule U—Qualified Conservation Easement Exclusion.

## **Q. CONCLUSION**

As identified in this article, the differences between the Ohio and federal estate tax returns are numerous and important. In particular, the laws that govern Ohio estate taxes with respect to life insurance, transfers made in contemplation of death, retirement assets, charitable de-

ductions and marital deductions offer opportunities for great successes in appropriately minimizing Ohio estate taxes. Most certainly, each of the Ohio and federal estate tax return is not like the other.

For more information about this publication, please visit [www.west.thomson.com](http://www.west.thomson.com)