The Three “R’s” of Estate Settlement: Responsibilities, Risks and Rewards

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May 9, 2023
2pm ET

GUEST SPEAKER

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Robert M. Maxwell is an Adjunct Professor at the Villanova's Charles Widger School of Law where he teaches Decedents' Estates and Trusts as well as Wealth Tax, and Fundamentals of Testamentary Planning in the Villanova Law Graduate Tax program.

In addition to teaching at Villanova, he is currently working for Schnader Harrison Segal & Lewis LLP preparing estate, inheritance and gift tax returns for their Philadelphia and New York offices. Prior to March of 2023, Mr. Maxwell worked at The Glenmede Trust Company, N.A. for over 23 years, where he most recently served as Director of Estate and Trust Settlement in Glenmede's Philadelphia office for the last nine years. He was responsible for oversight of all aspects of estate administration for estates where Glenmede served as executor including preparation of death tax returns, post-mortem planning, and management of the court accounting group that prepares accountings for trusts and estates as required by the Courts.

LEARNING OPPORTUNITIES

RECENT

Unlocking the Power of Pricing
This paper denotes our view that organic growth improvements are imperative for most firms, and that pricing—and, more precisely, fee realization—improvements are a best bet. Not only do most firms have opportunities to do better, but pricing improvements also provide controllable, high-impact, and incremental margin growth.

It's Payday! Responding to Rising Compensation Expenses
Competition for talent, a wave of advisor retirements, and stronger sales cultures are contributing to rising compensation expenses. In this white paper, we describe how bank wealth managers and trust companies must avoid or offset sustained increases in the cost of their most valuable resource: people.

TODAY

The Three "R's" of Estate Settlement: Responsibilities, Risks and Reward

Date: Tuesday, May 9th at 2:00 p.m. Eastern, 1:00 p.m. Central, 11:00 a.m. Pacific
Speaker: Robert Maxwell
Registration link: https://us06web.zoom.us/webinar/register/WN_NeiWZON5TgWvC8D0tzGzXQ

UPCOMING

Delivering on the Unique Nuances of the Special Needs Trust
Date: Wednesday, June 21st at 2:00 p.m. Eastern, 1:00 p.m. Central, 11:00 a.m. Pacific
Speaker: Michelle Diamond, Chief Development Officer at Cumberland Trust
Registration link: https://us06web.zoom.us/webinar/register/WN_n5W8qgZNSZq88zNFg7TPAw

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WISE

Disclaimer

- The hypothetical fact pattern discussed uses sections of the purported Will of actor James Gandolfini that I found on the internet. This is for illustrative purposes only. I did not work on the James Gandolfini estate, nor am I in any way involved in the administration of the estate. The estimates of taxes and my supposition about how the estate may have been administered is conjecture based on information that I gleaned from the internet. Amounts and fact patterns are purely hypothetical and meant to illustrate the risks and responsibilities of estate administration.

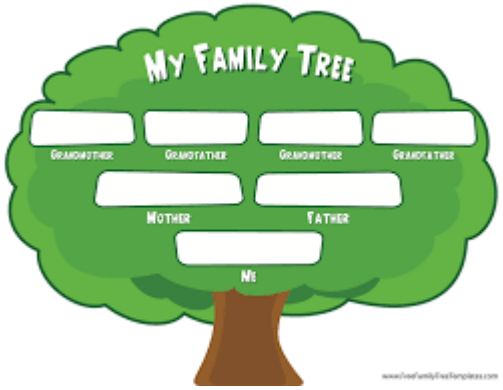
James Gandolfini Family Tree

Marcy Wudarski ≠ James Gandolfini = Deborah Lin

Married March of 1999 Married 8/30/2008

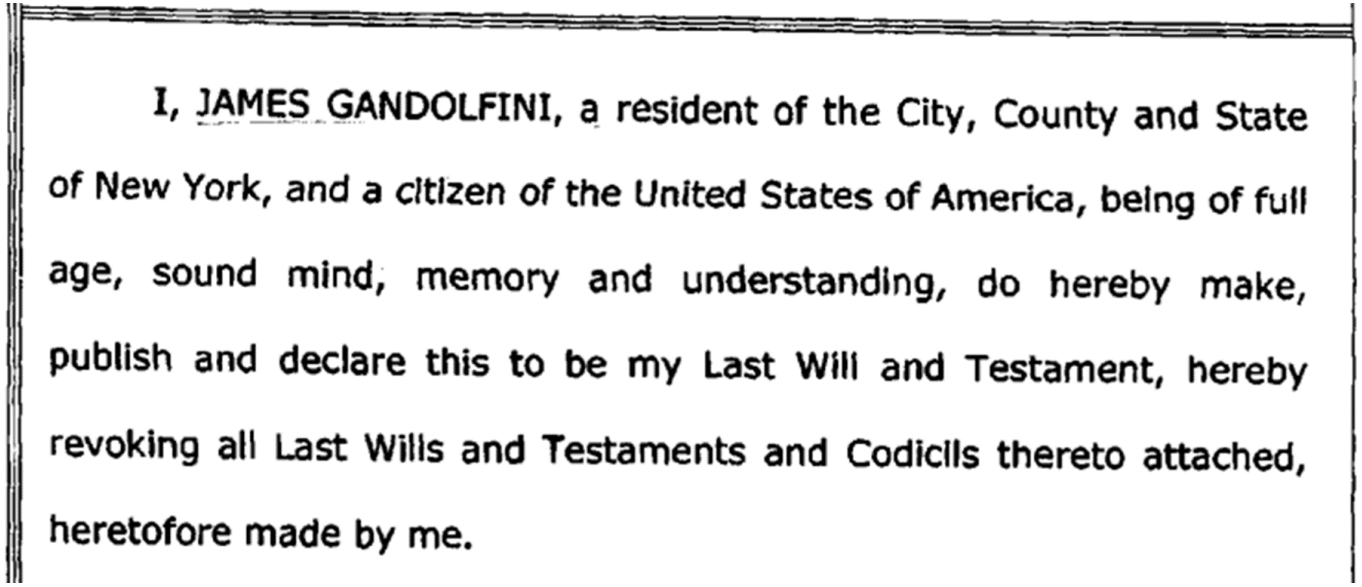
Divorced December 2002

Michael – born May 10, 1999 Liliane born October 2012



Would you serve as James Gandolfini's executor?

- What would you do?
- How hard can this be?
- What would you get paid?



I, JAMES GANDOLFINI, a resident of the City, County and State of New York, and a citizen of the United States of America, being of full age, sound mind, memory and understanding, do hereby make, publish and declare this to be my Last Will and Testament, hereby revoking all Last Wills and Testaments and Codicils thereto attached, heretofore made by me.

Would you serve as James Gandolfini's executor? Review Draft Will

- Challenging Assets:
  - Real Estate, Business Interests, Partnerships, Patents, Royalties

- Challenging Disposition of Assets
  - Unequal Distributions
  - Personal Property
  - Disinherited Beneficiaries

- Provisions about executor compensation

NY Condo and Parking Space Number 9 – Trust for Son Michael

FIFTH: I direct my Executors to and I give and grant to the Trust which I have created for the benefit of my beloved son, MICHAEL GANDOLFINI, a first option to purchase all my right, title and interest in Condominium Unit No. 5C, together with Parking Space Number 9, located at 429 Greenwich Street, New York, New York at its fair market value. In the event that said trust does not purchase from my estate Condominium Unit No. 5C, together with Parking Space Number 9, located at 429 Greenwich Street, New York, New York then the same shall be a part of my residuary estate and be disposed of in accordance with the provisions hereinafter contained in this my, Last Will and Testament, regarding the disposition of my residuary estate.

Italian Villa in trust for Son and Daughter

SEVENTH: I give, devise and bequeath to my Trustees, hereinafter named, IN TRUST NEVERTHELESS, all of my right, title and interest in and to the house and land which I own in Italy. My Trustees shall hold the same for the benefit of my son, Michael Gandolfini and my daughter, Liliana Ruth Gandolfini. The interest of my son, Michael Gandolfini in this Trust shall be fifty (50%) percent and the interest of my daughter, Liliana Ruth Gandolfini shall be fifty (50%) percent. Upon both beneficiaries of this trust reaching the age of twenty-five (25) said property shall be transferred to them in such percentages. It is my hope and desire that they will continue to own said property and keep it in our family for as long as possible.

Other provisions for wife and son

SIXTH: I have provided for my wife, DEBORAH LIN, as set forth in Articles Third and Eighth (B) herein. I have also made other provisions for DEBORAH LIN and therefore, I am not making any further provisions for her under this, my Last Will and Testament.

NINTH: I have in mind my beloved son, MICHAEL GANDOLFINI, but I am not providing for him other than as set forth in this my Last Will and Testament because I have made other provisions for him.

Residue – Not all to wife

EIGHTH: A) I give, devise and bequeath all the rest, residue and remainder of my estate, of whatsoever nature and wheresoever situate, including any lapsed legacies, bequests and devises, (sometimes referred to herein as my "residuary estate") as follows:

i) Thirty Percent (30%) to my sister, LETA GANDOLFINI;

ii) Thirty Percent (30%) to my sister, JOHANNA ANTONACCI;

iii) Twenty Percent (20%) to my wife, DEBORAH LIN;

iv) Twenty Percent (20%) to my daughter, LILIANA RUTH GANDOLFINI.

James dies June 19, 2013
Would you serve as James Gandolfini's executor?

- Review Will?
  - Challenging Assets
  - Challenging Disposition of Assets
  - What would you get paid?

- Review Assets?
  - Do we need to probate Will – are there probate assets?
  - Can we manage a Villa in Italy?

- Business Opportunity?
  - Continuing Accounts or Trusts

What do you do as Executor?

- Probate Will
- Gather (and preserve estate assets)
- Pay debts, expenses, taxes and claims
- Prepare and file tax returns
  - Federal Estate Tax Return and State
  - Final Personal Income Tax Return
  - Estate Income Tax Return
- Distribute the balance to beneficiaries

Hire an Attorney for the Estate

- Hourly Rate?
- Percentage of Estate?
- Sliding Scale?
- GET AN ENGAGEMENT LETTER FROM THE ATTORNEY

Probate the Will with NY Surrogate's Court

- Attorney
- Original Will
  - Vault
  - Attorney's Office
  - Safe Deposit Box – may need a Court Order to get into box
- Probate Fees
- Bond for Executor to Serve
  - Waiver of Bond in Will
    - Out of state

CO-EXECUTORS

SERVE WITHOUT BOND

FOURTEENTH: A) I hereby nominate, constitute and appoint my wife, DEBORAH LIN, my sister, LETA GANDOLFINI, and my attorney and friend, ROGER S. HABER, as Co-Executors of this, my Last Will and Testament. In the event that DEBORAH LIN or LETA GANDOLFINI or ROGER S. HABER shall predecease me, fail to qualify, resign or cease to act as Executor for any reason whatsoever, then I direct that the remaining Co-Executors or sole remaining Co-Executor may continue to act as such without the necessity of appointing substitute or successor Co-Executors in the others place and stead. I direct that my Co-Executors, whether acting together or singly or in any combination, shall not be required to furnish any bond or other security for the faithful performance of their duties in any jurisdiction whatsoever, any law to the contrary notwithstanding.

Collection of Assets

- Probate Assets
  - Assets that pass under the Will
    - Bank Accounts, Stocks, Real Estate, Cash, Coins, Cars, etc.
  - Executor collects, values, distributes to beneficiaries

- Non-probate assets
  - IRAs, Life Insurance with Named Beneficiaries
  - Joint Accounts, Pay on Death Accounts
  - Tax reporting

Collection of Assets

- Decedent's Files (Paper and Electronic)
- Decedent's Income Tax Return

SCHEDULE B (Form 1040A or 1040)

Department of the Treasury Internal Revenue Service (99)

Interest and Ordinary Dividends

► Attach to Form 1040A or 1040. ► See instructions on back.

OMB No. 1545-0074

2011

Attachment Sequence No. 08

Name(s) shown on return: Joseph G. and Anna R. Taxpayer

Your social security number: 123 45 6789

Part I Interest

(See instructions on back and the instructions for Form 1040A, or

1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see instructions on back and list this interest first. Also, show that buyer's social security number and address ►

	Amount
Citi Bank	5497 42
Navy Federal Credit Union	1049 21
E-trade	65 41
Mike Jones	2000 00

Note. If line 4 is over $1,500, you must complete Part III.

Part II Ordinary Dividends

(See instructions

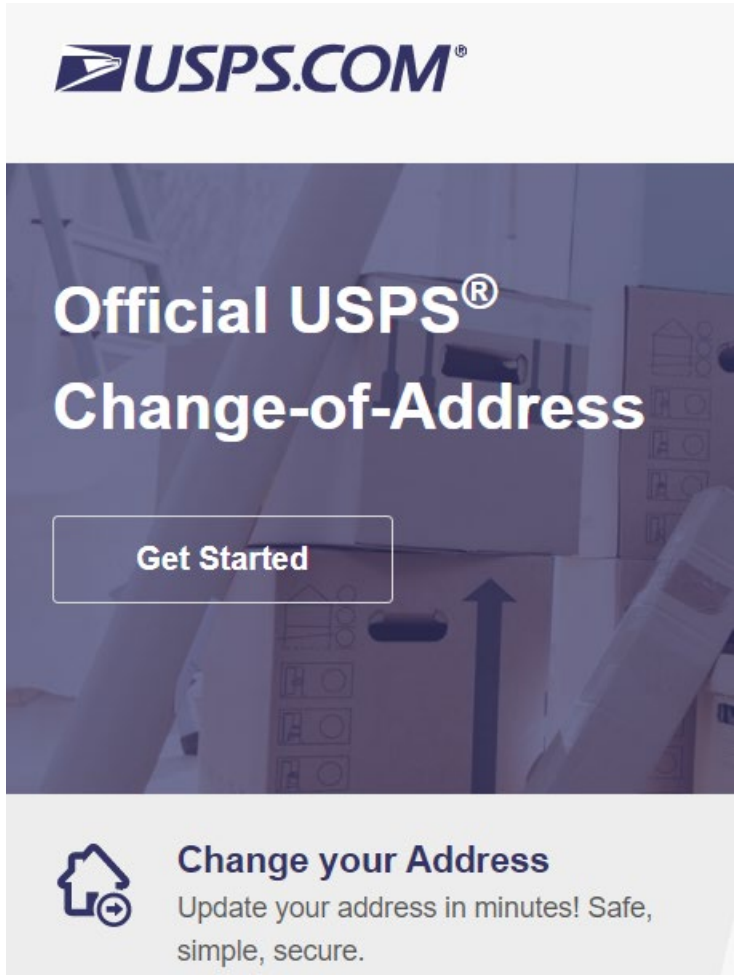
5 List name of payer ►

	Amount
Dow Chemical	1421 12
New York Community Bank	75 22
Pepsi Co.	856 50
AT&T	1420 28

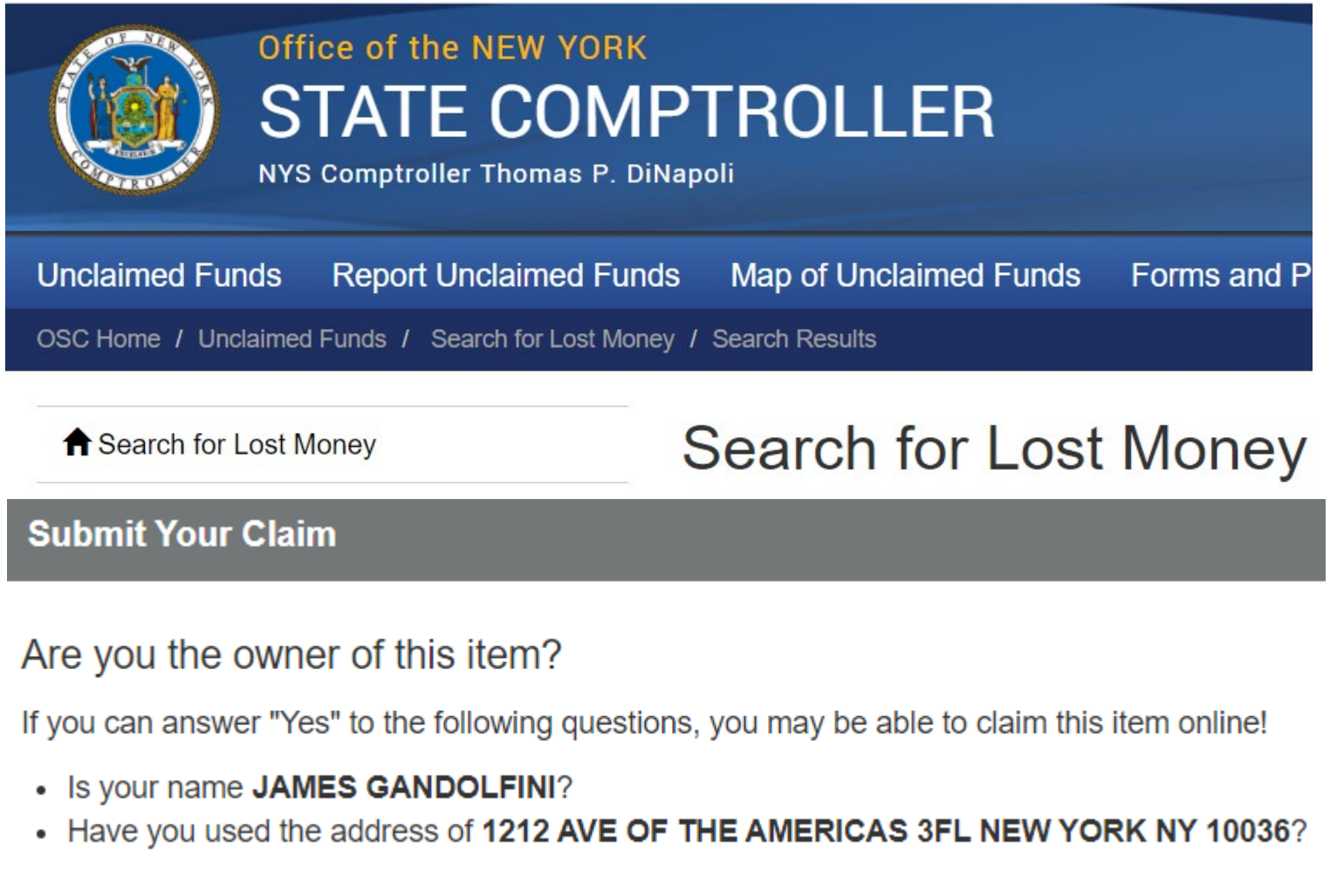
Assets (and Liabilities)

- Monitor Paper Mail
  - Bank statements
  - Brokerage statements
  - Bills

- Electronic Mail
  - “Envelope”
  - “Contents”



Unclaimed Property



Item Details

Owner Name

JAMES GANDOLFINI

Owner Address

1212 AVE OF THE AMERICAS 3FL NEW YORK NY 10036

Reported By

SESAME WORKSHOP

Reported As

ATTA BOY INC FSO J

Number of Owners

2

Type of Property

OUTSTANDING CHECKS ISSUED TO VENDORS

OUF Code	Year Reported
069889507	2017

Estimated $70,000,000 Estate Cash Requirements -- $33,384,000

CASH REQUIREMENTS				
	FEDERAL ESTATE TAX			$17,000,000
	NY ESTATE TAX			$9,000,000
	EXECUTOR FEES			$1,434,000
	ATTORNEY FEES			$350,000
	CASH BEQUESTS TO			
		TRIXIE FLYNN		$200,000
		FATIMA BAE		$50,000
		LAURA ANTONACCI		$500,000
		JENNA ANTONACCI		$500,000
		ROBERT PARISH		$100,000
		THOMAS RICHARDSON		$200,000
		DOUG KATZ		$50,000
	PERSONAL INCOME TAX			$2,000,000
	DEBTS			$1,000,000
	ADMINISTRATION			$500,000
	ACCOUNTANT			$500,000
	CASH REQUIREMENTS			$33,384,000

Raising Cash / Investments

- Cash Needed: $34,000,000

- Assets: $70,000,000
  - Real Estate $30,000,000
  - Personal Property $1,000,000
  - Cash $1,000,000
  - Brokerage: Securities $38,000,000

  - Liquidate Brokerage Account? Raise Cash?

Executor fee

TOTAL PROBATE ESTATE ESTIMATE				$70,000,000
5%	on the first	$100,000		$5,000
4%	on the next	$200,000		$8,000
3%	on the next	$700,000		$21,000
2.50%	on the next	$4,000,000		$100,000
2%	on the amount over	$5,000,000		$1,300,000
	ESTIMATED EXECUTOR FEE			$1,434,000

Death Tax Clause of Will – on all assets

SECOND: I direct that all inheritance, estate, transfer, succession and other death taxes and duties (including any interest or penalties thereon) imposed by any jurisdiction whatsoever by reason of my death (exclusive of any tax imposed as a result of any generation-skipping transfer under the Internal Revenue Code of 1986 as amended or a corresponding provision of state law) upon or with respect to any property includible in my estate for the purpose of any such taxes or duties, whether such property passes under or outside, or has passed outside the provisions of this Will or any Codicil hereto, be paid from the principal of my residuary estate without apportionment.

PAY DEATH TAX ON ALL ASSETS

VS.

PAY ON ONLY PROBATE ITEMS

-LIFE INSURANCE
-TRUSTS
-IRA BENES
PAY DEATH TAX SHARE

Debts, Funeral, Administration Expenses

- Debts
  - Credit Card, Utilities, Unpaid Taxes, Loans
  - Creditor Period – Claims filed within 7 months of appointment
- Funeral
  - Funeral Home, Cemetery, Organist, Rabbi, Priest, Bagpipes
- Administrative Expenses
  - Executor
  - Attorney
  - Appraisers – Real Estate, Business, Personal Property
  - Real Estate, Personal Property – utilities, upkeep, shipping

Distribute Personal Property – jewelry, furniture, cars, artwork, books, clothes, etc.

- Clothing and Jewelry to Son, Michael

THIRD: A) I give all my clothing and jewelry to my son, MICHAEL GANDOLFINI, to be his absolutely, if he survives me, and which property he may distribute in his sole determination, and if he

- All other personal property to wife:

B) I give all my other tangible personal property (other than currency) to my wife, DEBORAH LIN, to be hers absolutely, if she survives me, and which property she may distribute in her sole

Pay Specific Bequests

$200,000 TO TRIXIE FLYNN

$50,000 TO FATIMA BAE

$500,000 TO LAURA ANTONACCI

$500,000 TO JENN ANTONACCI

FOURTH: I give, devise and bequeath the following:

A) To my assistant, PAULETTE FLYNN BOURNE a/k/a TRIXIE FLYNN, the sum of Two Hundred Thousand ($200,000.00) Dollars, provided she shall survive me;

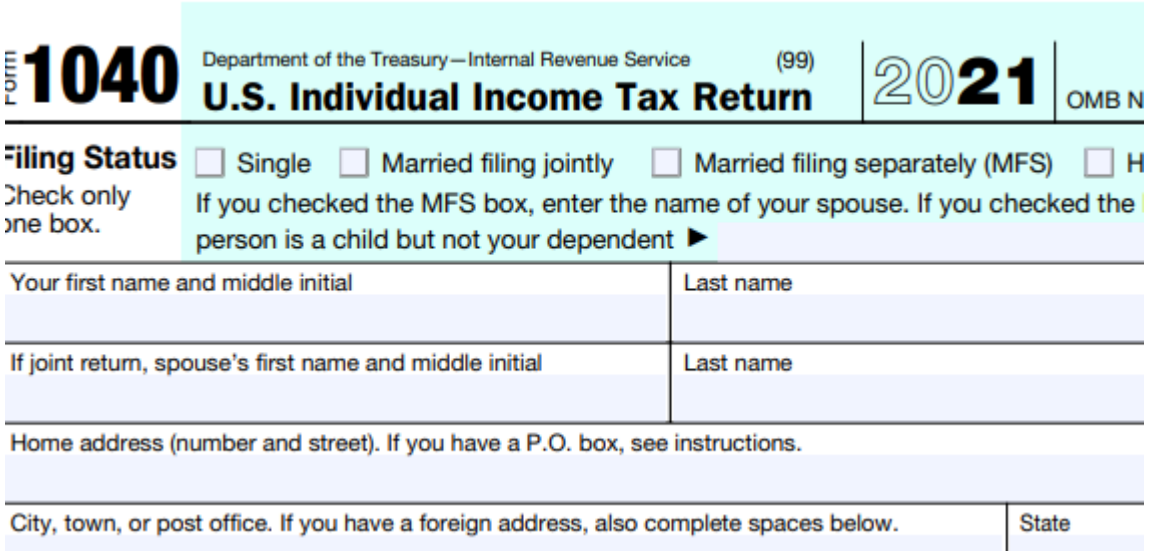
B) To my friend, FATIMA BAE, the sum of Fifty Thousand ($ 50,000.00) Dollars, provided she shall survive me;

C) To my niece, LAURA ANTONACCI, the sum of Five Hundred Thousand ($500,000.00) Dollars, provided she shall survive me;

D) To my niece, JENNA ANTONACCI, the sum of Five Hundred Thousand ($500,000.00) Dollars, provided she shall survive me;

Personal Income Tax Returns

- James Died June 19, 2013
- Executor Responsibilities:
  - “Life Period” Income Tax Return 1/1/2013 to 6/19/2013
  - Unfiled / extended returns – Did he file 2012 Form 1040?
  - Open Returns – Statute of Limitations has not run:
    - 3 years: 2012, 2011, 2010
    - 6 years: 2009, 2008, 2007
- Return Copies
  - Client’s papers
  - Accountant
  - IRS Form 4506



Form **1040** Department of the Treasury—Internal Revenue Service (99) **U.S. Individual Income Tax Return** 2021 OMB N

Filing Status Check only one box. ☐ Single ☐ Married filing jointly ☐ Married filing separately (MFS) ☐ H

If you checked the MFS box, enter the name of your spouse. If you checked the person is a child but not your dependent ►

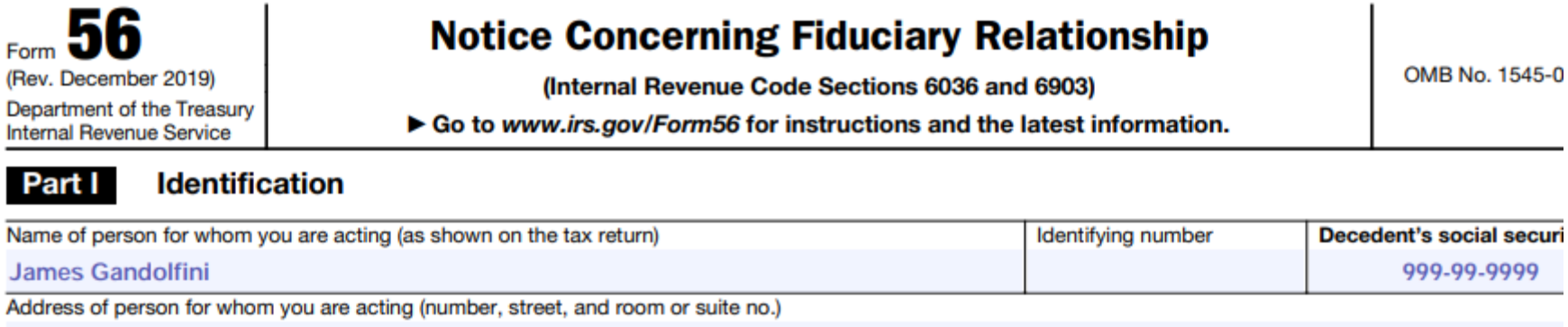
Your first name and middle initial	Last name
If joint return, spouse’s first name and middle initial	Last name

Home address (number and street). If you have a P.O. box, see instructions.

City, town, or post office. If you have a foreign address, also complete spaces below. | State

Personal Income Tax Returns

- Form 56 – Notice Concerning Fiduciary Relationship



Form **56**
(Rev. December 2019)
Department of the Treasury
Internal Revenue Service

Notice Concerning Fiduciary Relationship

(Internal Revenue Code Sections 6036 and 6903)

► Go to *www.irs.gov/Form56* for instructions and the latest information.

OMB No. 1545-0

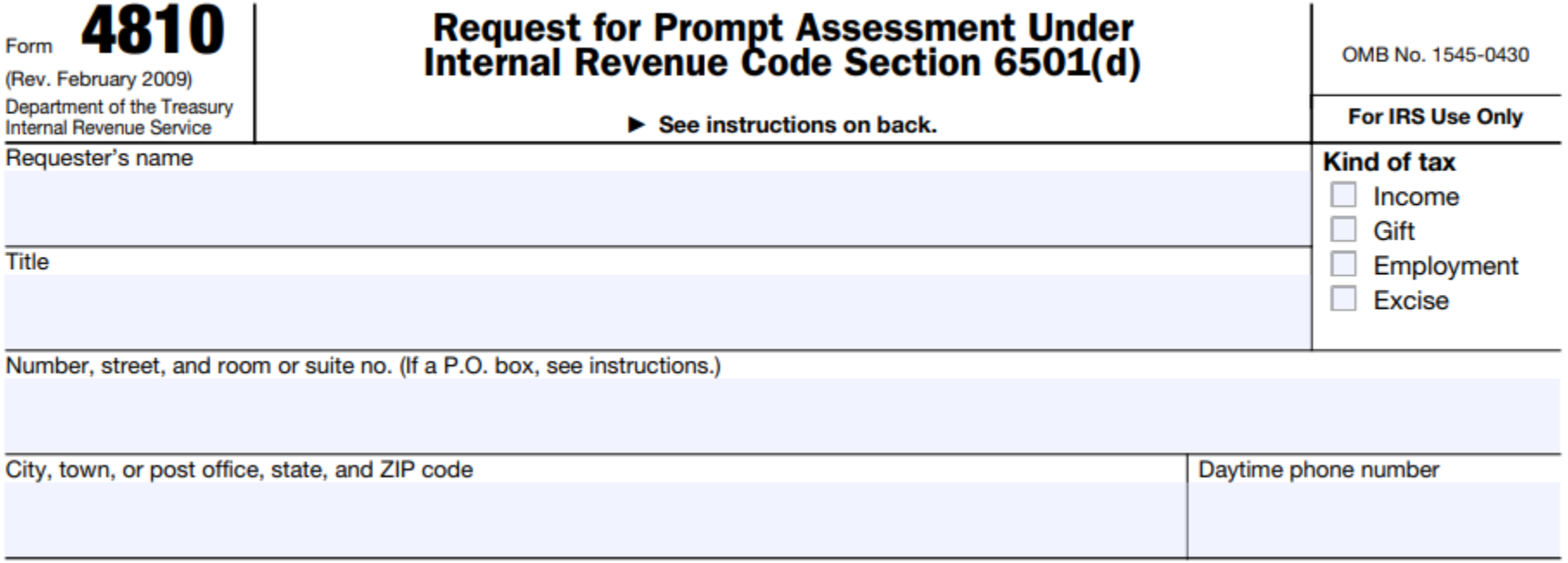
Part I **Identification**

Name of person for whom you are acting (as shown on the tax return)	Identifying number	**Decedent's social securi**
James Gandolfini		999-99-9999

Address of person for whom you are acting (number, street, and room or suite no.)

Personal Income Tax Returns

- Form 4810 – Request for Prompt Assessment
- Shortens IRS Statute from 3 years to 18 months



Form **4810**
(Rev. February 2009)
Department of the Treasury
Internal Revenue Service

Request for Prompt Assessment Under Internal Revenue Code Section 6501(d)

► **See instructions on back.**

OMB No. 1545-0430

For IRS Use Only

Requester's name

Title

Kind of tax
- ☐ Income
- ☐ Gift
- ☐ Employment
- ☐ Excise

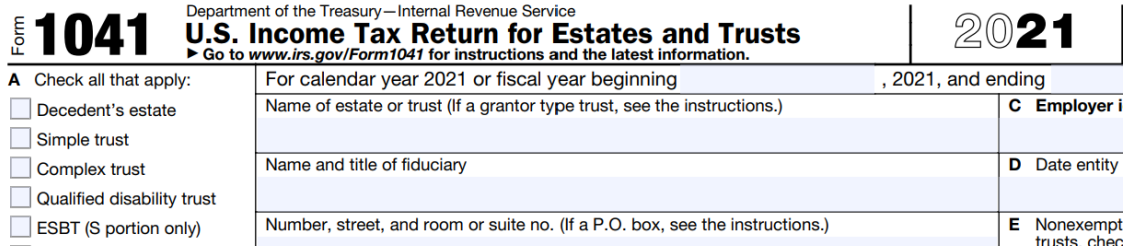
Number, street, and room or suite no. (If a P.O. box, see instructions.)

City, town, or post office, state, and ZIP code

Daytime phone number

Fiduciary Income Tax Returns

- James died 6/19/2013
- Form 1041 – US Income Tax Return for Estates and Trusts
  - State Returns



Form **1041** Department of the Treasury—Internal Revenue Service
U.S. Income Tax Return for Estates and Trusts
▶ Go to *www.irs.gov/Form1041* for instructions and the latest information.
2021

A Check all that apply:
- ☐ Decedent's estate
- ☐ Simple trust
- ☐ Complex trust
- ☐ Qualified disability trust
- ☐ ESBT (S portion only)

For calendar year 2021 or fiscal year beginning , 2021, and ending

Name of estate or trust (If a grantor type trust, see the instructions.) — **C** Employer i

Name and title of fiduciary — **D** Date entity

Number, street, and room or suite no. (If a P.O. box, see the instructions.) — **E** Nonexempt trusts, chec

- Fiscal Year 6/19/2013 – 5/31/2014
- Calendar Year
- Return due 15th day of 4th month after year end

- Estate pays tax on income and capital gains
  - Except – Beneficiaries taxed on taxable income distributed to them
  - Final year return – residuary beneficiaries pay tax on income and capital gains

Gift Tax Returns – Form 709

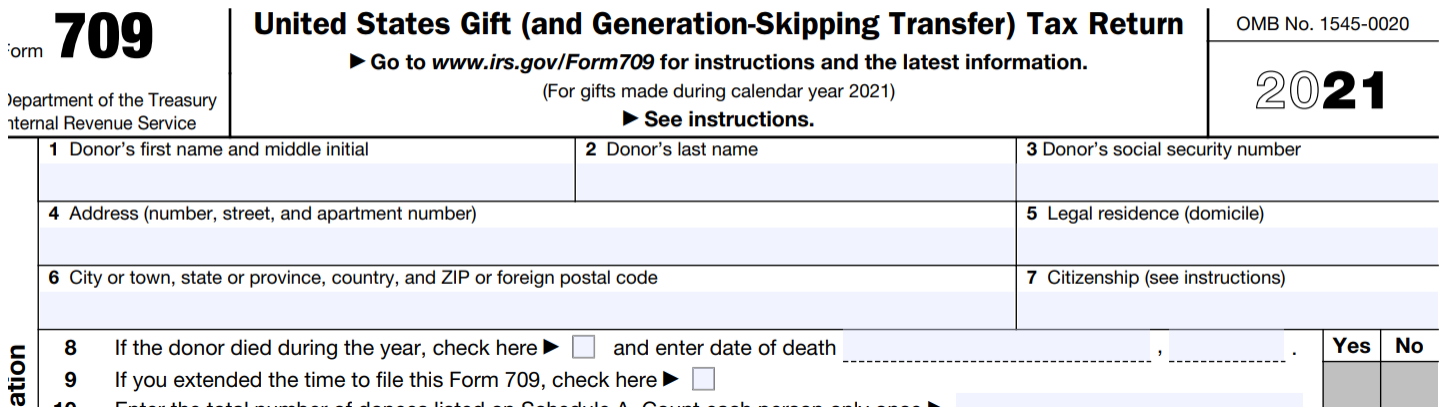
- 2012 Annual gift tax exclusion = $13,000 per person
- 2013 Annual gift tax exclusion = $14,000 per person
- 2022 Annual gift tax exclusion = $16,000 per person
- 2023 Annual gift tax exclusion = $17,000 per person

- Did client file gift tax returns?

- Should client have filed gift tax returns?
  - Reasonable inquiry
  - Review bank statements, brokerage accounts

Gift Tax Return for year of Death

- Due the EARLIER of:
  - Federal Estate Tax Return due date (9 months after death), OR
  - April 15th of year following death.



Form **709**

Department of the Treasury
Internal Revenue Service

United States Gift (and Generation-Skipping Transfer) Tax Return

▶ **Go to *www.irs.gov/Form709* for instructions and the latest information.**

(For gifts made during calendar year 2021)

▶ **See instructions.**

OMB No. 1545-0020

2021

1 Donor's first name and middle initial	2 Donor's last name	3 Donor's social security number

4 Address (number, street, and apartment number)	5 Legal residence (domicile)

6 City or town, state or province, country, and ZIP or foreign postal code	7 Citizenship (see instructions)

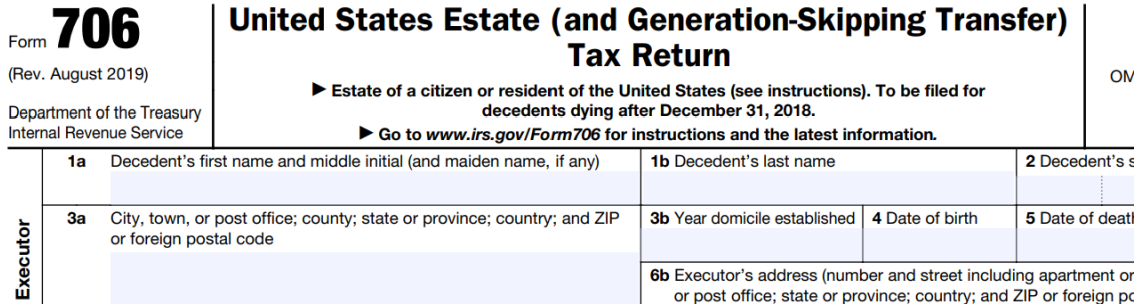
		Yes	No
8	If the donor died during the year, check here ▶ ☐ and enter date of death _____, _____.		
9	If you extended the time to file this Form 709, check here ▶ ☐		

Federal Estate Tax Return – Do I file?

- Basic exclusion amount for 2013: $5,250,000
  - James Gandolfini's assets > $70,000,000

- 2022 Deaths: Required for estates where:
  - Gross estate, PLUS
  - Adjusted taxable gifts
- Exceeds $12,060,000

- 2023 amount $12,920,000



Form **706**
(Rev. August 2019)
Department of the Treasury
Internal Revenue Service

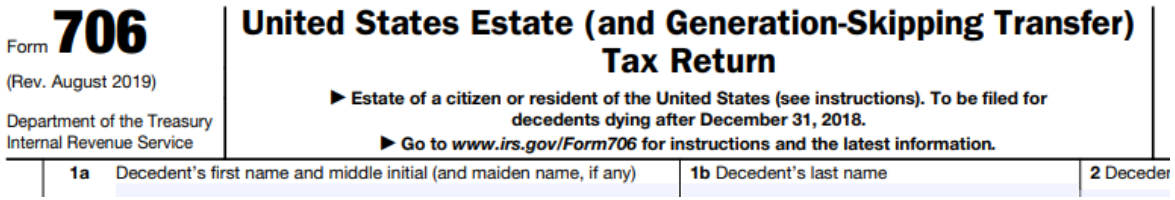
United States Estate (and Generation-Skipping Transfer) Tax Return

▶ **Estate of a citizen or resident of the United States (see instructions). To be filed for decedents dying after December 31, 2018.**
▶ **Go to *www.irs.gov/Form706* for instructions and the latest information.**

OM

Executor	**1a** Decedent's first name and middle initial (and maiden name, if any)	**1b** Decedent's last name		**2** Decedent's s
	3a City, town, or post office; county; state or province; country; and ZIP or foreign postal code	**3b** Year domicile established	**4** Date of birth	**5** Date of deatl
		6b Executor's address (number and street including apartment or or post office; state or province; country; and ZIP or foreign pc		

Federal Estate Tax Return



Form **706**
(Rev. August 2019)
Department of the Treasury
Internal Revenue Service

United States Estate (and Generation-Skipping Transfer) Tax Return

▶ **Estate of a citizen or resident of the United States (see instructions). To be filed for decedents dying after December 31, 2018.**

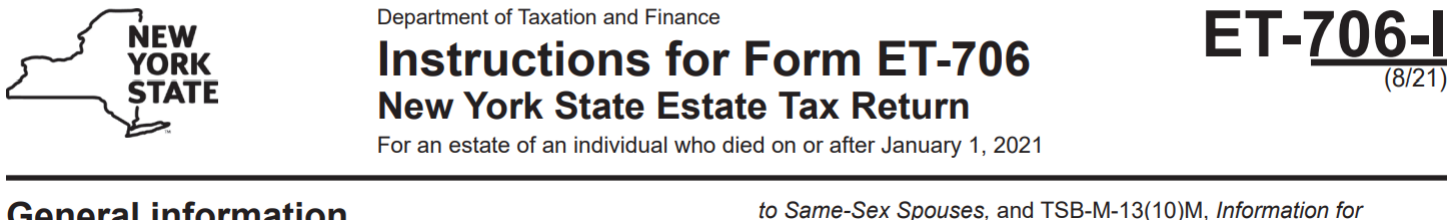
▶ **Go to *www.irs.gov/Form706* for instructions and the latest information.**

1a	Decedent's first name and middle initial (and maiden name, if any)	1b Decedent's last name	2 Decede

- James Gandolfini dies 6/19/2013
- Federal Estate Tax Return due 9 months later: 3/19/2014
  - 6 month extension: 9/19/2014
- $17,000,000 (estimated) Federal Estate Tax due 9 months after death: 3/19/2014
  - Extension for 6 months to a year, payment plans for business interests
- IRS review of Returns:
  - 1 year (now 2 years) to decide to approve or audit return
  - Federal Estate Tax Closing Letter

Does the Estate Owe State Death Taxes?

- Gandolfini's estate:
- Estimated New York Estate Tax: $9,000,000
- Due 9 Months from Date of Death



Does the Estate Owe Foreign Death Taxes?

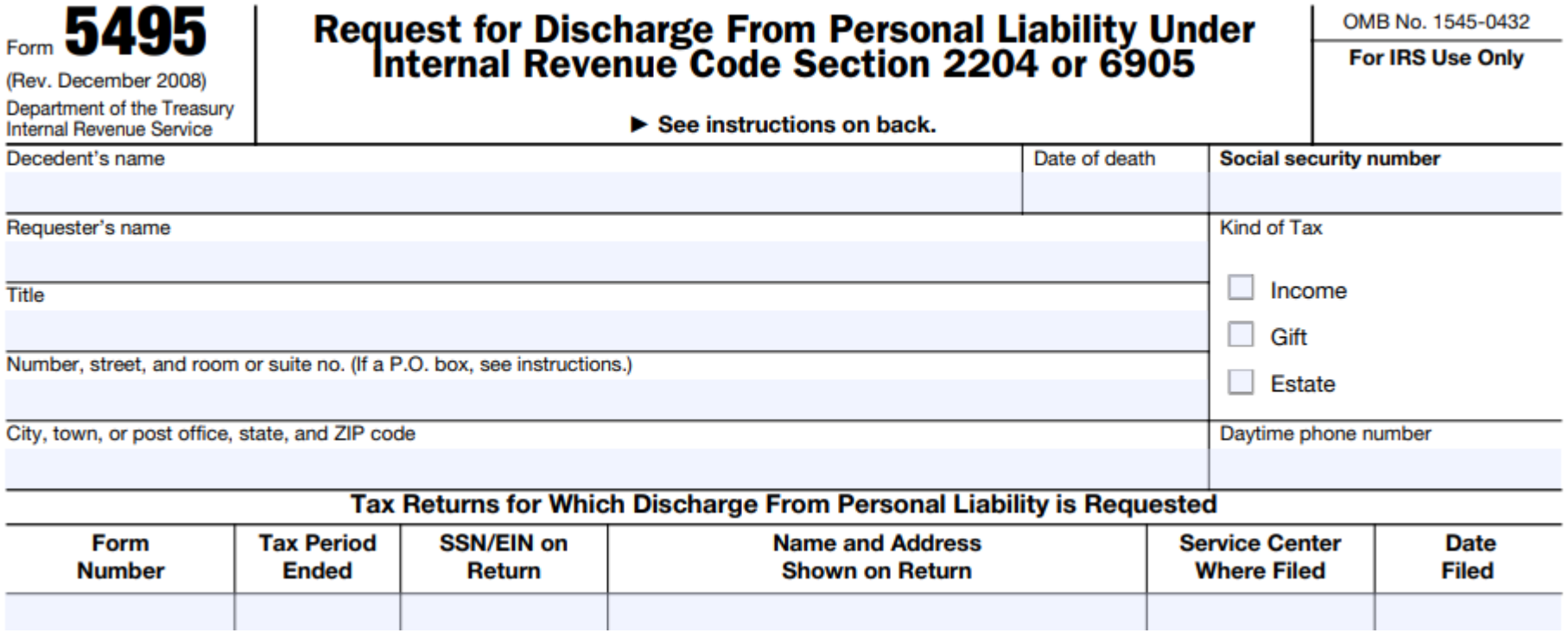
- Italian Villa IN TRUST for Michael (14) and Liliane (1) until age 25
  - At age 25 – 50% share to them
  - “My hope that they will use and keep in family as long as possible
- Can your company act in Italy?

- Inheritance Estate Tax due to Italy on Italian Villa?
  - 4% spouse, 6% children

- Italian Heirship
  - Wife has interest in possibly 25%
  - Italian Will

Discharge from Executor Personal Liability

- Income, Gift, Estate Tax



Form **5495**
(Rev. December 2008)
Department of the Treasury
Internal Revenue Service

Request for Discharge From Personal Liability Under Internal Revenue Code Section 2204 or 6905

► **See instructions on back.**

OMB No. 1545-0432
For IRS Use Only

Decedent's name	Date of death	**Social security number**

Requester's name

Title

Number, street, and room or suite no. (If a P.O. box, see instructions.)

City, town, or post office, state, and ZIP code

Kind of Tax

- ☐ Income
- ☐ Gift
- ☐ Estate

Daytime phone number

Tax Returns for Which Discharge From Personal Liability is Requested

Form Number	Tax Period Ended	SSN/EIN on Return	Name and Address Shown on Return	Service Center Where Filed	Date Filed

Advance Distributions

- $70,000,000 Estate (Date of Death Value 6/19/2013)
- ($1,600,000) Specific Bequests Paid 9/19/2013
- ($17,400,000) Federal Estate Tax Paid 3/19/2014
- ($ 9,000,000) New York Estate Tax Paid 3/19/2014
- ($ 7,000,000) Administration Expenses, Debts
- $35,000,000 RESIDUE

Advance Distributions

- $35,000,000 RESIDUE

- Distribute $30,000,000
- $9,000,000 TO LETA (30%)
- $9,000,000 TO JOHANNA (30%)
- $6,000,000 TO DEBORAH (20%)
- $6,000,000 TO LIA (20%)
- $5,000,000 RESERVE

EIGHTH: A) I give, devise and bequeath all the rest, residue and remainder of my estate, of whatsoever nature and wheresoever situate, including any lapsed legacies, bequests and devises, (sometimes referred to herein as my "residuary estate") as follows:

i) Thirty Percent (30%) to my sister, LETA GANDOLFINI;

ii) Thirty Percent (30%) to my sister, JOHANNA ANTONACCI;

iii) Twenty Percent (20%) to my wife, DEBORAH LIN;

iv) Twenty Percent (20%) to my daughter, LILIANA RUTH GANDOLFINI.

Advance Distributions

- $5,000,000 RESERVE

Dear Executor, Your return has been selected for audit. Please provide the following information within 10 days of the date of this letter.

Has any estate item been sold?

Provide information on how you valued the LLC Interest…..

Closing out the Estate to the Residuary Beneficiaries

Accounting

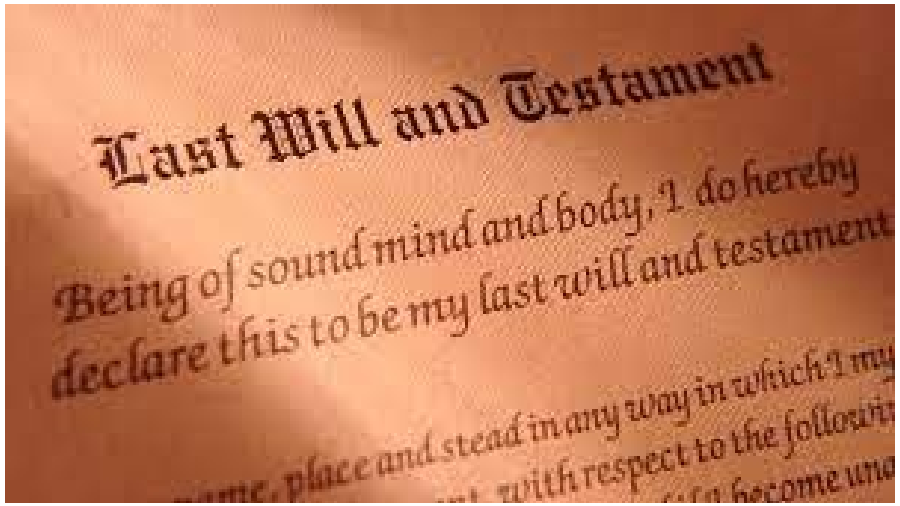
Receipt, Release and Indemnification

Court Adjudication

Charities involved?

Partners Along the Way

Responsibilities



- Probate Will
- Gather (and preserve estate assets)
- Pay debts, expenses, taxes and claims
- Prepare and file tax returns
  - Federal Estate Tax Return and State Inheritance and/or Estate Tax Return
  - Final Personal Income Tax Return(s)
  - Estate Income Tax Return
- Distribute the balance to beneficiaries

Risks

- **Assets**
- **Personalities**
- **Market Risk – raising cash**
- **Taxes – Audits**
- **Advance Distributions**

Rewards

- $1,500,000 Executor Fee
- Continuing Business
  - Trust for son and daughter (under 21)
  - Other Beneficiaries
- Satisfaction of a job well done!
- Contact me: Robert M. Maxwell

  (215) 500-6142 rmm400@comcast.net