

BACK TO BASICS

ADMINISTRATION

PART 1:
Your client died.
Now what do you do?

About me

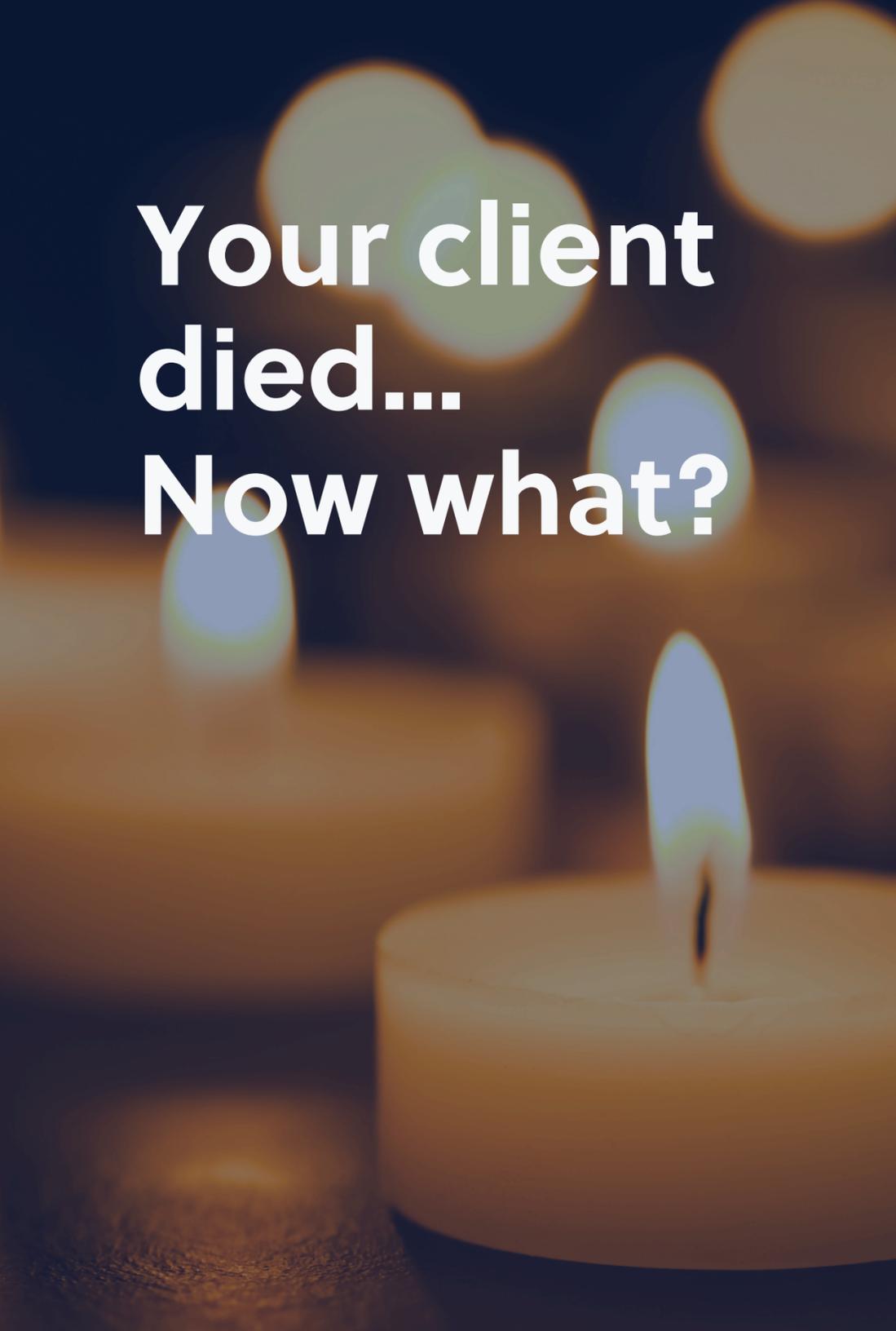


Leah Del Percio, Esq.

Founder and CEO,  trustate

- Settled **hundreds** of estates, nationwide.
- Administered over **\$50B** via estate administrations.
- **12+ years experience** as estate attorney (JD & LLM) with multi-jurisdictional estate/trust admin practice.
- Learn more: trustate.com





Your client died... Now what?

Today we will learn:

- ✓ How to engage with the family
- ✓ A framework for bringing in trust administration work
- ✓ What to ask for clients to bring
- ✓ The proper processes to employ for a successful engagement
- ✓ Fees - what to charge, how to determine pricing, who to charge, when to charge
- ✓ Estate Tax Returns - when needed
- ✓ Preparation and Filing Process for Form 706
- ✓ QTIP Elections: Benefits and Procedures

Overview

Definition of Trust Administration: Estate Administration and Revocable Trust Administration - used synonymously here as both are “post-death administration”

Importance for Estate Lawyers

- ✔ Where the majority of revenue comes from in a mature practice
- ✔ Makes you a better planner
- ✔ Not chasing estate plans for the rest of time

Key Responsibilities and Tasks

6 Phases of Estate Administration

- ① Estate Opening
- ② Asset and Liability Discovery
- ③ Asset and Liability Management
- ④ Payment and Taxes
- ⑤ Distributions
- ⑥ Estate Closure, Settlement, and Final Distributions



Consultation

Client Expectation is NOT reality

A “will reading” is NOT a meeting with multiple family members.

For Attorney-Client Privilege preservation, your initial consult on the estate administration should ONLY be with the underlying client you plan to represent (i.e. the “would-be” Fiduciary named in the testamentary document).

If the potential client would like for you to have other family members/interested parties in attendance, then you can have them there, but be clear that you do not represent them and inform them of their right to separate and independent counsel.

In this meeting, you WILL need to be able to explain to the client how things are going to pass under the testamentary document in their specific set of circumstances.

Your Meeting Prep:

- ✔ Review the Documents (even if you drafted them!)
- ✔ Draw an outline of what happens and how the assets pass in the particular circumstances (who is dead, who survived, who can act, who cannot, etc.)
- ✔ Issue Spot
- ✔ Memo the file.
- ✔ Client HW MUST BE DONE

Admin Client Pre-Meeting Consultation Checklist

Prep Work

Request the client bring and/or provide

- Client identification
 - Verify the identity of your client and any other parties involved.
- Client's legal relationship to the deceased
- Copy of the Death Certificate
- Original Will, Codicils, Trust, and any amendments/restatements
- Inventory of Assets and Liabilities

Before you go

- Run a  TruSuite search (if surviving spouse), retirement search, bank quick search



Trust Admin Client Pre-Meeting Consultation Checklist

Estate Assets

- Real Estate:** Real estate holdings, including location, value, and any mortgages
- Bank Accounts:** Bank accounts with current balances
- Investments:** Inventory stocks, bonds, mutual funds, and other investments
- Personal Property:** Valuable personal property items (e.g., jewelry, art, vehicles)
- Life Insurance:** Life insurance policy, beneficiaries, and payout amounts
- Retirement Accounts:** Retirement accounts, including IRAs, 401(k)s, and pensions

Estate Liabilities

- Mortgages and Loans:** Mortgages, personal loans, and other debts
- Credit Cards:** Credit card debts
- Utilities and Bills:** Outstanding utility bills or service charges
- Taxes:** Potential estate tax liabilities and any unpaid income taxes

NOTE ON Data Gathering

Acknowledge that it is a lot and that initial ballparks are acceptable.





What happens at this meeting?

Establishment of rapport, guided overview of the process

You will need to guide them through what happens. What is typical, what might be needed, what might not - above all this is about managing expectations

6 Phases of Estate Administration

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Admin Client Consultation Checklist

Consultation

Understanding the Will and Trust

- Review:** Read and interpret the Will and Trust with the client
- Executor/PR:** Confirm the appointment and willingness of the trustee, executor or personal representative to serve
- Beneficiaries:** Identify all beneficiaries named in the Will/Trust and any specific bequests to them
- Special Instructions:** Note any special instructions regarding the disposition of the estate/trust





How to package & price your Admin work

Flat Fee vs. Hourly

It is the age-old “It depends” 🧑

Flat fee can be used when you NARROWLY limit the scope of the engagement. (i.e., preparation of forms to appoint the successor trustee and gain control of trust assets, can itemize and list out assets or cap the number of assets where you’d assist in administering / preparation of probate forms and instructions on what to do, preparation and filing of an IRS Form 706)

For more open-ended work, use an hourly fee.

Why hourly fee?

- ▶ Avoidance of Pandora’s Box
- ▶ Can’t always estimate client behavior unless you know them really well. (i.e. amount of hand holding needed and “moods”)

Admin Client Consultation Checklist

Estate Assets v. Trust Assets

Determine what is a probate asset versus what is in the trust or is otherwise non-probate

- What assets was the trust funded with during their lifetime
- What assets operationally pass to the trust upon death (i.e. trust as designated beneficiary)
- What assets are neither - and pass through the probate estate

Legal and Administrative steps

- Determine if Probate Process Necessary:** If so, outline timelines and key steps
- Tax Filings:** Requirements for filing the final income tax return for the deceased and any estate/trust tax returns
- Notices to Creditors:** Process for notifying creditors and settling debts
- Closing Liabilities and Paying Expenses:** Closing out any open and/or ongoing bills and expenses of the Decedent and their estate, and how that protects the client from future liability down the road
- Distribution of Assets:** Process for distributing assets to beneficiaries
- Final Accounting:** Necessity of preparing a final accounting for the estate and/or ongoing accountings for the trust



Admin Client Consultation Checklist

Other Considerations

- Disputes:** Potential disputes among beneficiaries or challenges to the Will
- Ongoing Communication:** Expectations for ongoing communication and updates

Memo

- Summary of Next Steps:** Next steps and any immediate actions required
- Deadlines and Timelines:** Where the client will be needed, and where you will step in to assist them in making sure they comply with any open items in the appropriate timeframe
- Fees and Costs:** Estimate of legal fees and other costs related to the estate administration
- Questions and Concerns:** Address any remaining questions or concerns the client may have

Documentation

- Engagement Letter:** Prepare an engagement letter outlining the scope of services, fees, and other terms
- Checklist and Documents Received:** Document the checklist and any documents received from the client

This checklist aims to cover the essentials of trust administration but may need to be adapted based on the specific laws of the jurisdiction and the unique aspects of each case.



Next STEPS:

- Create Estate Dashboard
 - Upload docs received
 - Add / hide custom tasks
 - Mark new deadlines and add to calendar
 - Assign work internally
 - Share w client to collaborate on bal sheet

Push tasks to Trustate!

****suggested first tasks****

- if not appointed - probate application
- if appointed - EIN



Form 706

- ✔ **What is an Estate Tax Return?**
 - A snapshot of someone's net worth as of their date of death
- ✔ **Why do they seem so scary?**
 - Questionable valuations are where there are typically issues.



706s

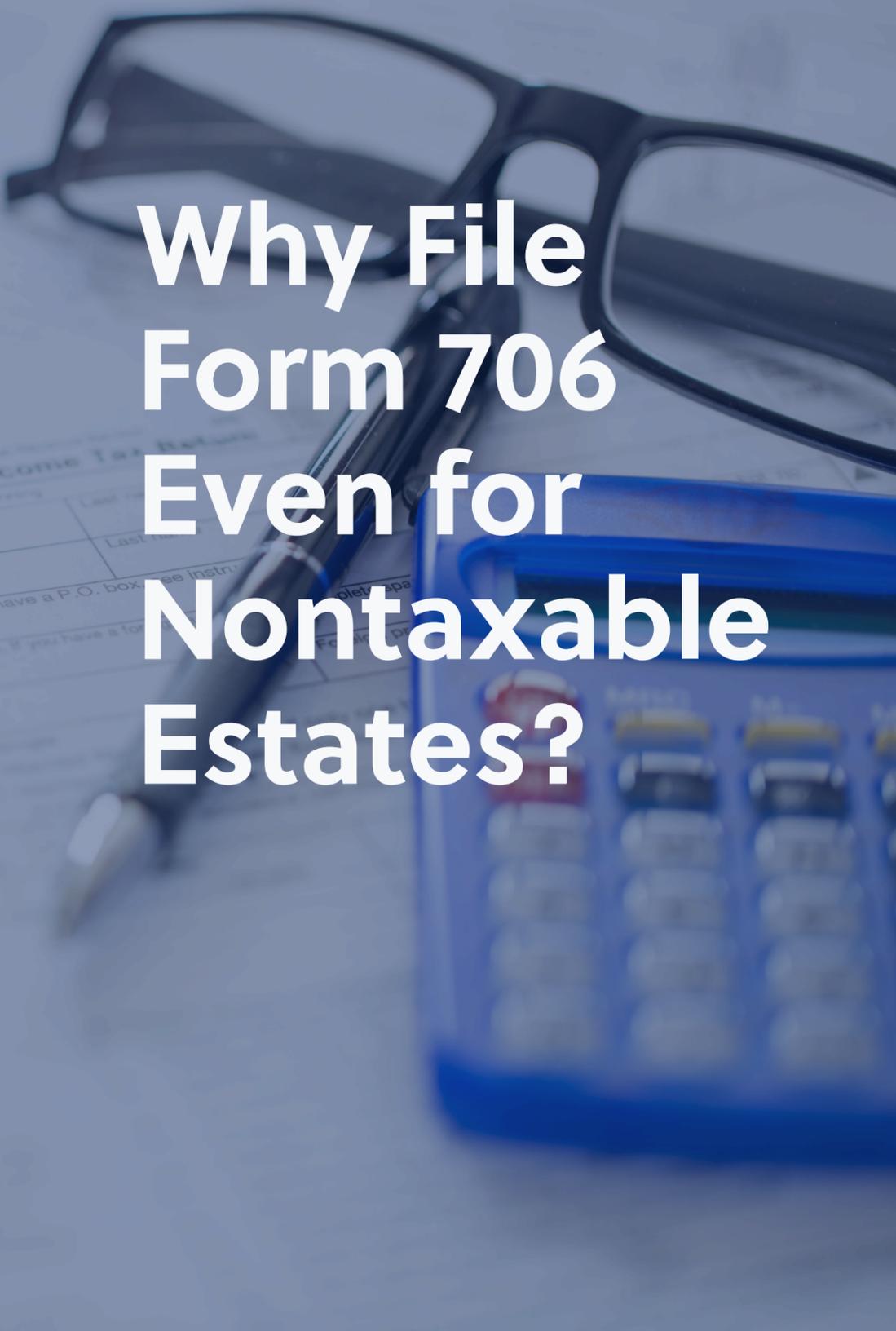
When necessary?
Are they scary?

Reasons to Complete and File a 706

- ✔ Taxable Estate
- ✔ Near Taxable Estate
- ✔ Electing Portability
- ✔ Running SOL
- ✔ Clayton QTIP Elections

Context of a 706: What is the point of it?

- ▶ Snapshot of values at death for IRS's tally.



Why File Form 706 Even for Nontaxable Estates?

Reasons to file for nontaxable estates:

- ✔ To Make Elections
 - QTIP
 - Portability of Deceased Spousal Unused Exclusion (DSUE)
- ✔ Audit Protection
- ✔ Documentation and Record-Keeping Benefits
- ✔ Potential Future Tax Law Changes

 **Pro-Tip**
When it comes to appraisers, make sure the executor hires good people and obtain **qualified appraisals**.

What is a qualified appraisal?

- › Requiring a qualified appraiser who specializes in “hard to value” assets is a must for an estate with non-traditional assets.
- › The appraiser must conduct a qualified appraisal that meets the criteria outlined by the IRS.
- › Multiple appraisers with different specialties may be needed for an estate with a variety of assets.

Technonology can help!

With respect to certain types of artwork and assets, there are now appraisers who can work with you remotely, even on tangible assets.

Tools like Trustate can be used to obtain date of death values

We'll show you how to do this at the end



What is a QTIP Election?

A process under the U.S. tax code that allows a person to leave assets ("QTIP property") to their spouse in a trust that qualifies for the marital deduction ("QTIP Trust"), thereby deferring estate taxes until the death of the surviving spouse.

For the QTIP trust to qualify and the election be properly made, certain requirements must be met.

- (1) Trust Terms: The surviving spouse must have the right to receive all the income from the trust annually, and no one else can have access to the principal during the spouse's lifetime.
- (2) The executor of the estate must make an election to treat the trust as a QTIP trust on the estate tax return.



Situations Appropriate for Making a Clayton QTIP Election

- High Net-Worth Estates
- Complex Family Dynamics
 - When it doesn't make sense to split trusts up and allocate one thing to one trust and another asset to another (think family businesses and rental real estate)

****Trustate Estate Planning Docs HAVE CLAYTON FLEXIBILITY!!****



Clayton QTIP Election

An Overview

Allows for a partial QTIP election, where part of a trust can be treated as QTIP property and the remaining part can be directed elsewhere, often to a bypass trust or family trust.

Reasons to Make a Clayton QTIP Election

- ✔ Flexibility in Estate Planning
- ✔ Deferring Estate Taxes
- ✔ Optimizing Marital and Family Trust Benefits
- ✔ Case Studies and Examples

Feature	Normal QTIP Election	Clayton QTIP Election
Decision Timing	At death of the first spouse	After death of the first spouse
Flexibility	Limited once made	High flexibility for executor
Tax Planning	Defers estate tax until surviving spouse's death	Optimizes estate tax planning
Suitability	Standard marital deduction use	Complex estates, uncertain tax future

Allocation of assets to different trusts

Feature	QTIP Trust Allocation	Bypass Trust Allocation
Tax Optimization	<p>Income-producing assets to defer taxes</p> <p>Examples of income producing assets that don't typically appreciate in value at the same rate as they produce income: Rental Properties, Real Estate Investment Trusts (REITs), Bonds, Certificates of Deposit (CDs), Dividend Stocks, Franchises, Savings and Annuities, Royalties, Loans and Lending</p>	<p>Appreciating assets to avoid future estate taxes</p> <p>Examples of appreciating assets: Vacant Land, Growth Stocks, Alternative investment funds (private equity, RE funds, hedge funds, VC), Fine Art, Antiques, Classic Cars, Rare Coins and Stamps, Gold and Silver, Luxury Residential Properties, direct interest in private companies, Cryptocurrencies, Certain Intellectual Property, Development Land</p>
Asset Protection	Stable assets for income	High risk assets for creditor protection
Estate Planning Goals	Ensure income for spouse	Specific needs of other beneficiaries
Flexibility	Fixed once elected	Adaptable based on current needs and laws



What is a QTIP Election?

How to make it:

✔ Schedule M

- The QTIP election is made on Schedule M of IRS Form 706, which is dedicated to the "Bequests, etc., to Surviving Spouse."

✔ Identify QTIP Property:

- On Schedule M, list the property for which you are making the QTIP election.
- Ensure that each piece of property is clearly identified and valued.
 - This includes cash, securities, real estate, and other assets.

✔ Indicate QTIP Election:

- For each item listed on Schedule M, there is a column where you must indicate if the QTIP election is being made.
- Place a checkmark or "X" in the "QTIP election" column for each property for which you want to make the election.

✔ Required Statement:

- Attach a written statement to Form 706 indicating that the executor is making a QTIP election under Section 2056(b)(7) of the Internal Revenue Code.
- This statement must clearly specify the property for which the election is being made.



How to Make the Clayton QTIP Election on Form 706

Required Statement

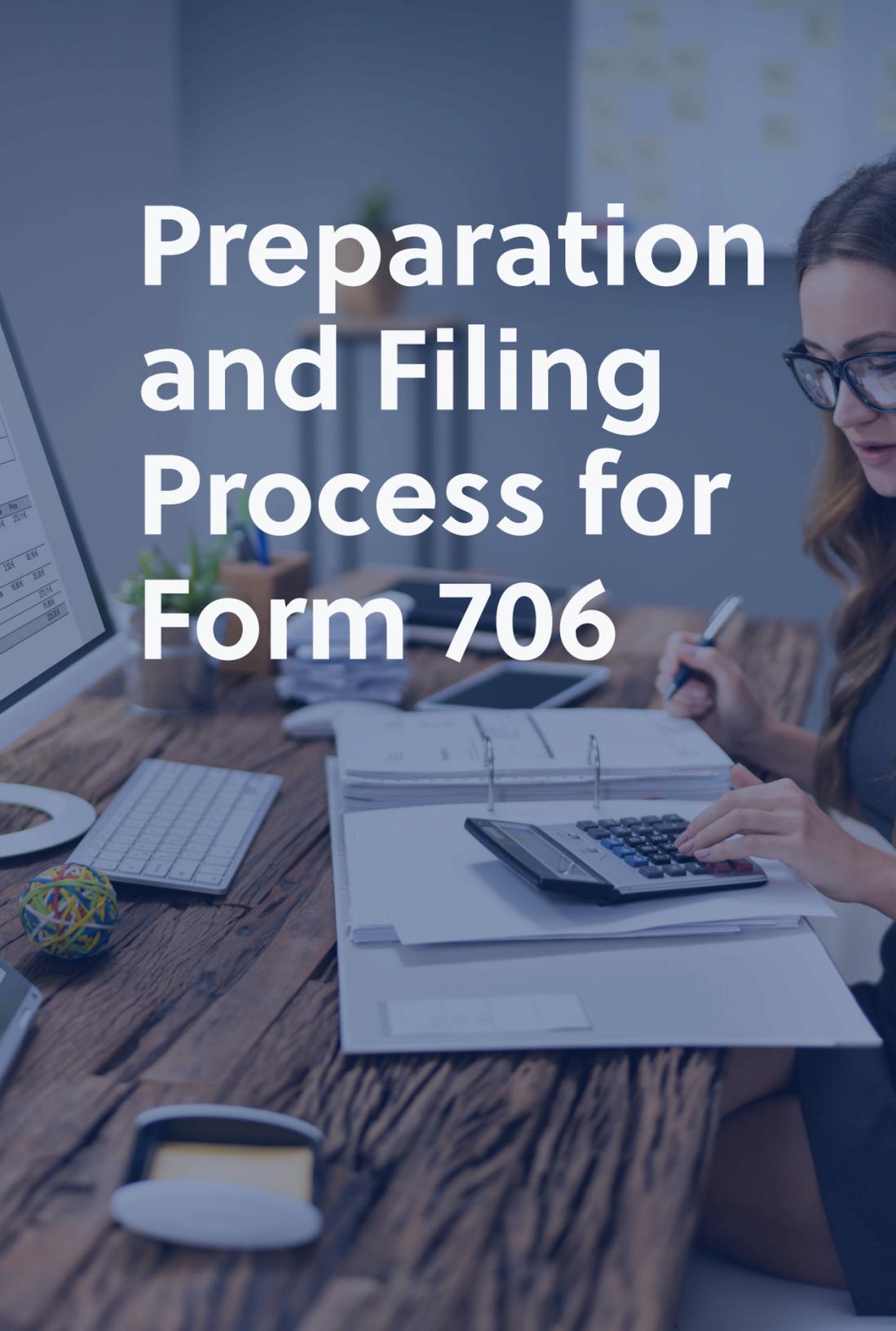
SAME AS a regular QTIP election – **EXCEPT** the language in the written statement. Two examples of the written statement:
(For illustration purposes only)

Example 1: Regular QTIP Election Statement

- ▶ "The executor elects to treat the property listed on Schedule M, specifically items 1, 2, and 3, as Qualified Terminable Interest Property (QTIP) under Section 2056(b)(7) of the Internal Revenue Code. This election is intended to qualify the property for the marital deduction."

Example 2: Clayton QTIP Election Statement

- ▶ "The executor elects to treat \$600,000 of the trust listed on Schedule M, item 1, as Qualified Terminable Interest Property (QTIP) under Section 2056(b)(7) of the Internal Revenue Code. This election is intended to qualify this portion of the property for the marital deduction. The remaining \$400,000 of the trust is not subject to the QTIP election and will be directed to a bypass trust."



Preparation and Filing Process for Form 706

- Valuation of Assets Obtaining DOD values
- Completing the Form
- Filing Deadlines 9 months from date of death - 6 month extension available (AND ALMOST ALWAYS TAKEN)
- Common Pitfalls and Mistakes - Valuation Errors and Disputes**



Resources



Follow Trustate on [LinkedIn](#) for tips and updates.



Visit Trustate's [website](#) to explore subscription options and start streamlining estate planning, trust funding, and administration for all your estates today.



Email info@trustate.com with questions.



Come back for Part 2 of this Back to Basics webinar: Wednesday, January 29, 2025 @ 1 pm ET

