Ancillary Probate and the Administration of a Nonresident Decedent's United States Assets under State Law, Section 2203, Form 706-NA, the Transfer Certificate and the Estate Tax Conventions

An Adviser's Guide to the two conditions on which the release of a nonresident non-citizen decedent's United States assets depends, the authority recognized by the situs state and the clearance of the federal estate tax; to the assets that require a United States proceeding and those that a foreign representative may collect without one; to ancillary administration in Florida, New York, California, the District of Columbia, Maryland and Virginia; to the position of the foreign executor and the statutory executor of section 2203; to Form 706-NA, its threshold, deadlines, deductions and treaty disclosure; to the lien of section 6324 and the transfer certificate; to the fifteen estate tax conventions and what each leaves the United States to tax; to the income tax, withholding and FIRPTA matters of the administration; to the sequencing of a multi-jurisdiction administration; and to the practice points that follow

A decedent domiciled in Munich leaves a condominium in Miami and a brokerage account in New York; a decedent domiciled in Lyon leaves United States Treasury obligations and shares of American corporations held in a Paris custody account; a decedent domiciled in Zurich leaves an interest in a Delaware limited liability company and a house in California. In each case the succession is administered abroad, by a Nachlassgericht, a notaire or an executor under a foreign grant, and in each case a person without any American appointment must obtain the release of American assets from institutions, title insurers and recording offices that act only on an authority they recognize.[1]

The release depends on two conditions that have nothing to do with each other in law and everything to do with each other in practice. The first is authority: the situs state's court must have appointed or recognized a representative, or a statute of that state must permit the foreign representative to act without letters. The second is tax: the federal estate tax reaches the United States situs assets of a nonresident non-citizen above $60,000, the tax is a lien on the gross estate from the moment of death, and the regulations tell every corporation, transfer agent, bank and custodian that it avoids liability only by demanding a transfer certificate from the Internal Revenue Service before it releases anything.[2] *Authority without tax clearance moves nothing, and tax clearance without authority moves nothing.*

The mistake this article exists to prevent is the treatment of the United States administration as a single proceeding to be opened once the succession at the domicile has been settled. Three things remain true. First, the two conditions are satisfied by different authorities on different timetables: the situs state grants letters or recognizes the foreign representative within weeks or months of a complete petition, while the Service issues the transfer certificate only after it has reviewed a filed Form 706-NA,

[1] The examples are composites. The German proceeding issues an Erbschein (§ 2353 BGB) or a Testamentsvollstreckerzeugnis (§ 2368 BGB); the French succession is proved by an acte de notoriété drawn by a notaire (Code civil art. 730-1); the European Certificate of Succession produces its effects in the Member States of the European Union only (Regulation (EU) No 650/2012, arts. 62(1), 69(1)).

[2] I.R.C. §§ 2101(a), 6018(a)(2), 6324(a)(1); Treas. Reg. §§ 20.6325-1(a), 301.6324-1(a).

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publishes no processing period for that route and states twelve to eighteen months for the affidavit route available to estates below the filing threshold.[3] Second, the duty to file the return and to pay the tax arises at death and attaches, where no executor has been appointed in the United States, to every person in actual or constructive possession of the decedent's property, so that the heirs, the foreign executor and the custodians are "executors" for federal purposes whether or not anyone ever petitions an American court; the return is due nine months after death.[4] Third, for a decedent domiciled in one of the fifteen treaty countries the convention, not the Code, decides what tax the administration is securing: a German or French domiciliary's shares and accounts are not taxable by the United States at all, a Swiss or Italian domiciliary's shares are taxable with a proportionate share of the citizen's credit, and in every case the return and the certificate remain, because the filing duty and the custodian's demand attach to the gross estate as the Code defines it.[5]

This article sets out the two conditions and the sequence in which they are met (Part I); the assets that require a United States proceeding and those that a foreign representative may collect without one (Part II); ancillary administration in Florida, New York, California, the District of Columbia, Maryland and Virginia (Part III); the position of the foreign executor and the statutory executor of section 2203 (Part IV); Form 706-NA (Part V); the lien of section 6324 and the transfer certificate (Part VI); the estate tax conventions, with a map of the fifteen treaty countries (Part VII); the income tax, withholding and FIRPTA matters that arise during the administration (Part VIII); the sequencing of a multi-jurisdiction administration (Part IX); and the practice points that follow (Part X). Statutes, regulations, treaty texts, forms, state statutes and dollar amounts are stated as of this writing in October 2026, the Form 706-NA as revised in August 2025 with instructions revised in September 2025 and the dollar figures as published for 2026; confirming them against the facts and the law in effect at the relevant time is part of any real engagement.

Summary

1. The release of a nonresident non-citizen decedent's United States assets depends on two conditions: the authority of a representative appointed or recognized under the law of the situs state, and the clearance of the federal estate tax, which is a lien on the gross estate for ten years from death and which custodians secure by demanding the transfer certificate of the Internal Revenue Service. The two conditions are met by different authorities on different timetables and are pursued in parallel from the first month.

2. Not every asset requires a United States proceeding. Real property almost always does, because title passes under the law of the situs state and title insurers require a chain of title

[3] Internal Revenue Service, Transfer certificate filing requirements for the estates of nonresidents not citizens of the United States (page last reviewed May 5, 2026), Parts A and B; Treas. Reg. § 20.6325-1(c).

[4] I.R.C. §§ 2203, 6075(a); Treas. Reg. § 20.2203-1; Instructions for Form 706-NA (Rev. Sept. 2025), Who Must File.

[5] German Convention Art. 9; French Convention Art. 8; Swiss Convention Art. III; Italian Convention Arts. III, IV; I.R.C. §§ 2102(b)(3)(A), 6018(a)(2); Treas. Reg. § 301.6114-1(a)(1); Instructions for Form 706-NA (Rev. Sept. 2025), Death tax treaties. The conventions are cited in full in Part VII.

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through a recognized representative; financial assets are released by institutions on their own documentation, and New York, the District of Columbia, Maryland and Florida, like the Uniform Probate Code states, permit a representative appointed abroad to collect personal property without local letters on stated conditions, while California does not. Each custodian's written requirements are obtained before any proceeding is opened.

3. State law decides who may be appointed. Florida admits a nonresident only if related to the decedent in specified ways and excludes holographic wills of nonresidents; New York admits a non-domiciliary noncitizen only with a New York resident co-fiduciary; California admits a nonresident of the United States only if named as executor in the will; the District of Columbia and Maryland exclude any non-citizen who is not a lawful permanent resident; Virginia admits a nonresident on consent to service and bond with surety. The petitioner is a planning decision taken before the petition is drafted.

4. Under section 2203, where no executor has been appointed, qualified and acting in the United States, every person in actual or constructive possession of the decedent's property is the executor for federal purposes. The heirs, the foreign executor and the custodians therefore owe the return, the payment and the requests for the certificate from the date of death, with personal liability for payments made before the tax.

5. Form 706-NA is required where the United States situs gross estate, increased by adjusted taxable gifts after 1976 and by the specific exemption for gifts made after September 8, 1976, exceeds $60,000; it is due nine months after death, Form 4768 grants an automatic six-month extension of time to file and an executor abroad may request more, but the tax is due at nine months and interest runs; the credit is $13,000, the rate 40 percent above $1,000,000, and expenses and debts are deductible only pro rata and only if the worldwide gross estate is disclosed on the return. The redesigned return is filed at Kansas City; a treaty position is disclosed by statement and Form 8833.

6. The transfer certificate is issued when the Service is satisfied that the tax has been fully discharged or provided for. Where a return was required, a copy of the filed Form 706-NA is faxed to the Service; where none was required, an affidavit with the will, the death certificate and the foreign death tax returns is faxed instead, and the Service states twelve to eighteen months for that route and no period for the other. No certificate is required for property administered by an executor appointed, qualified and acting in the United States, which gives ancillary letters a tax function as well as a title function.

7. The conventions change the result for the clients of this readership. The domicile-type conventions with Germany, France, the United Kingdom, the Netherlands, Austria and Denmark leave the United States only real property and business property situated here, and France also tangible movables, so that shares and accounts of a domiciliary of those countries are not taxable; Germany, France and Canada grant a pro rata unified credit and marital relief for what remains taxable; the situs-type conventions leave shares taxable with a proportionate exemption in most cases. The return and the certificate remain in every case, and the home-country credit for the United States tax is claimed within the convention's own period.

8. The administration is run as one calendar on three lines of work: information, with a worldwide inventory valued once to the stricter standard; tax, with Form 706-NA prepared from

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the first month and the certificate requested for every custodian's assets in one submission; and authority, with the custodian canvass, the apostilled and translated domiciliary record and the ancillary petition in the situs state, opened as soon as that record exists and never deferred to the end of the foreign administration.

Part I. The two conditions and the order in which they are met

The first condition is authority. Title to real property passes under the law of the state where the land lies, deeds are recorded only if executed by a person the recording system recognizes, and the title insurer that underwrites the next conveyance will not insure a chain of title that runs through a foreign will never admitted in the situs state or through heirs never recognized by its courts.[6] Financial institutions act on the same principle for a different reason: their protection against the claims of other claimants rests on a release given by a representative whose authority they can verify, and their protection against the federal estate tax rests on the transfer certificate. Some of them release to a foreign representative on his own documents where state law permits; others require letters issued by a court of the state regardless of what the law permits. In either case the authority must be shown by exemplified or authenticated copies of the foreign record, apostilled under the Hague Convention of October 5, 1961, to which the United States acceded with effect from October 15, 1981, and translated into English.[7]

The second condition is tax. The estate tax of a nonresident non-citizen is imposed on the transfer of the taxable estate, which is the part of the gross estate situated in the United States less the deductions of section 2106, and it is a lien on the gross estate for ten years from the date of death unless sooner paid or unenforceable by lapse of time, divested only as to the part used for court-allowed charges and expenses of administration.[8] If the tax is not paid when due, the spouse, transferee, trustee, surviving tenant, person in possession under a power of appointment or beneficiary who receives or holds property included in the gross estate under sections 2034 to 2042 is personally liable to the extent of its value, and a like lien attaches to that person's own property.[9] The regulations draw the consequence for the institutions that hold the assets: no domestic corporation or transfer agent should transfer stock registered in the name of a nonresident decedent without a transfer certificate, except shares submitted by a duly qualified executor or administrator

[6] N.Y. EPTL § 3-5.1(b)(1) (disposition of real property governed by the law of the situs); Cal. Prob. Code §§ 7000, 7001 (title passes at death to devisees or heirs subject to administration); Fla. Stat. § 734.104(4) (a foreign will admitted to record is as effectual to pass title to real property as a will admitted to probate in Florida).

[7] Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, Oct. 5, 1961, arts. 2 to 5; HCCH status table (United States: accession Dec. 24, 1980, in force Oct. 15, 1981; Germany: in force Feb. 13, 1966; France: Jan. 24, 1965; Switzerland: Mar. 11, 1973; United Kingdom: Jan. 24, 1965). New York requires authentication in the manner prescribed by the CPLR (SCPA § 1614; CPLR 4542); the District of Columbia and Maryland require authentication pursuant to 28 U.S.C. § 1738 for a representative appointed in another state and accept apostilled copies for a representative appointed abroad (D.C. Code § 20-341(b); Md. Code, Est. & Trusts § 5-504(a)(1)(ii); District of Columbia Courts, Foreign Estate Proceedings).

[8] I.R.C. §§ 2101(a), 2103, 2106(a), 6324(a)(1). The lien attaches at the date of death to every part of the gross estate whether or not the property comes into the possession of a qualified executor (Treas. Reg. § 301.6324-1(a)).

[9] I.R.C. § 6324(a)(2).

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appointed and acting in the United States, and corporations, transfer agents, banks, trust companies and other custodians in actual or constructive possession of a nonresident decedent's property "can insure avoidance of liability for taxes and penalties only by demanding and receiving transfer certificates before transfer of property of nonresident decedents."[10] The custodian's demand is therefore not a matter of policy that can be negotiated away; it is the custodian's only statutory protection, and it is made whether or not any American court is involved. The same regulation supplies the one exception that matters for this article: a certificate is not required for property that is being administered by an executor or administrator appointed, qualified and acting within the United States, so that ancillary letters, obtained for reasons of title, also serve as the release document for the assets within the ancillary estate, the lien and the personal liability of the representative continuing.[11]

The two conditions are independent in law and coupled in practice. The ancillary court may require evidence that the tax is in hand before it authorizes distribution; the custodian requires both the authority and the certificate; the closing agent on a sale of real property requires the deed from a recognized representative, the certificate or the ancillary letters, the release of any state estate tax lien and the FIRPTA documentation on the same day. The administration is therefore designed from the first month around obtaining both conditions in the shortest total time, which means that the tax work begins before the authority work is complete and never waits for the end of the proceeding at the domicile.

Part II. The assets that require a United States proceeding and those that do not

The analysis begins with the asset list, not with the courthouse, and the question put to each asset is what that asset requires before it will move. United States real property is the clear case. Title passes under the law of the situs state; the deed must be executed by a person the recorder and the title insurer recognize; and the routes by which a foreign-domiciled decedent's real property can be conveyed are those the situs state provides. In Florida a nonresident's will devising Florida real property may be admitted to record, without administration, where two years have elapsed since death or the domiciliary representative has been discharged, no Florida administration is pending, the will was executed as chapter 732 requires and it has been admitted to probate in the proper court of another state or country; once admitted to record it passes title as if probated in Florida.[12] In the District of Columbia and in Maryland a foreign personal representative is not required to obtain local letters; after filing an authenticated copy of the appointment and of the will, publishing notice and allowing the creditors' period to run or posting bond, the foreign representative may lease or convey local real property, and the court may order the transfer if the representative fails to make it.[13] In Virginia the will proved abroad is admitted on an authenticated copy of the will and of the certificate of probate, as a will of real estate only if executed so as to be valid as to Virginia real

[10] Treas. Reg. § 20.6325-1(a).

[11] Treas. Reg. § 20.6325-1(c); Internal Revenue Service, Transfer certificate filing requirements for the estates of nonresidents not citizens of the United States (May 5, 2026) ("A transfer certificate is not required for property administered by an executor or administrator appointed, qualified and acting within the United States").

[12] Fla. Stat. § 734.104(1) to (4).

[13] D.C. Code §§ 20-341, 20-342, 20-343(a), (c), (d), 20-344; Md. Code, Est. & Trusts §§ 5-501, 5-502(a), (b), 5-503(b), (c), 5-506.

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property under Virginia law, and the representative qualifies before the clerk under the nonresident rules.[14] In New York and California the real property passes only through ancillary administration or original probate in the situs court, subject in California to the petition for a primary residence of $750,000 or less and in New York to no small-estate alternative for real property.[15] Everywhere, the structure created before death, a revocable trust, an entity or a survivorship form of title, removes the real property from the probate estate and from these routes, and leaves the tax condition intact.

Financial assets are released by institutions, not by courts, and the question is whether the institution will accept the foreign representative's own documentation. Where the state has enacted Article IV, Part 2 of the Uniform Probate Code, a person holding the decedent's personal property may, sixty days after death, pay or deliver it to the domiciliary foreign personal representative on proof of appointment and an affidavit that no local administration is pending, with a full discharge, and a representative who files authenticated copies of his appointment and bond with a local court may exercise the powers of a local representative until a local administration is applied for.[16] New York permits any foreign fiduciary of a non-domiciliary decedent who is authorized by the law of the domicile to receive personal property to be paid or delivered New York personal property without a court order, the fiduciary's receipt discharging the payor unless the payor has written notice of a New York appointment or reason to believe the property will not reach those entitled; the provision is not confined to fiduciaries appointed in other states.[17] The District of Columbia and Maryland give the foreign representative the powers of a local representative on the filings described above.[18] Florida permits a debtor of the estate or a holder of the decedent's personal property who has received no written demand from a representative appointed in Florida to pay or deliver to the foreign personal representative, a term the code defines to include the representative of a foreign country, after ninety days from that representative's appointment; the provision presupposes an appointment abroad, which a civil-law succession by operation of law does not produce.[19] California, by contrast, confines the affidavit collection of personal property without ancillary administration to sister state personal representatives, gives a domiciliary representative priority for appointment only where the decedent died domiciled in a sister state, and provides for distribution of the ancillary estate to the domiciliary representative only for sister states; a representative appointed in a foreign nation has none of these rights, and a foreign-domiciled decedent's California personal property is collected either by the successors under the small-estate affidavit, where the California property does not exceed $208,850 for deaths on or after April 1, 2025, or through ancillary administration with distribution to

[14] Va. Code §§ 64.2-443(A), 64.2-450, 64.2-1426(A).

[15] N.Y. SCPA §§ 1601, 1602, 1604, 1607; Cal. Prob. Code §§ 12510, 12520 to 12524, 13150, 13151(a).

[16] Uniform Probate Code §§ 4-201 to 4-206, as enacted, for example, in Idaho Code §§ 15-4-201 to 15-4-206 and Ariz. Rev. Stat. § 14-4201 (the official text was not retrievable from the Uniform Law Commission's site as of this writing; the enactments cited track it); § 4-206 terminates the foreign representative's powers on an application for local administration and § 4-207 makes Article III govern the local proceeding.

[17] N.Y. EPTL § 13-3.4(a), (b). EPTL § 13-3.5, which permits suits by foreign representatives without ancillary letters, is confined to representatives of other states and territories of the United States.

[18] D.C. Code §§ 20-341, 20-342, 20-343(b); Md. Code, Est. & Trusts §§ 5-501, 5-502(a).

[19] Fla. Stat. §§ 731.201(17), 734.101(4).

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the beneficiaries.[20] Florida provides a short-form ancillary administration for a nonresident's testate estate whose Florida property does not exceed $50,000, on an authenticated transcript of the foreign proceedings filed within two years of death, and a summary administration for estates whose Florida property, less exempt property, does not exceed $150,000 or where the decedent has been dead for more than two years, the summary threshold having been raised from $75,000 with effect from July 1, 2026.[21]

The statutes describe what the institution may do, not what it will do. Many custodians release to a foreign representative on a certified death certificate, the apostilled and translated appointment or proof of heirship, a letter of direction executed as the account is titled, their own indemnities, the tax forms of the recipients and the transfer certificate; others require letters of a court of their state in every case; a minority accept less than the law allows them to require. The first weeks of the administration are therefore a canvass in writing of every institution for its requirements, and the decision which proceedings to open is taken on the answers, not on an assumption about American procedure in general. Two further observations govern everything that follows. The tax condition applies whether or not any proceeding is opened: the custodian that is prepared to pay a foreign executor will nevertheless hold the account until the certificate arrives, or until a statement under the regulations shows that the United States gross estate did not exceed $60,000.[22] And the civil-law succession has no representative in the American sense: the heirs are vested at death, the acte de notoriété or the Erbschein proves their title, and the notaire is not a fiduciary of the estate, so that the person who deals with the American custodian is an heir or a Testamentsvollstrecker whose powers the custodian must be shown, not a court-appointed administrator.[23]

Part III. Ancillary administration in six states

Ancillary administration is a dependent proceeding. The main succession runs at the domicile, and the situs state grants an authority confined to the local assets, ordinarily on the strength of the domiciliary record. New York states the principle in terms: ancillary administration is granted only where there is an actual administration in the domiciliary jurisdiction, and the article applies only to the wills and estates of non-domiciliaries.[24] The petitioner assembles the foreign will and the foreign grant or its civil-law equivalent in exemplified or authenticated form, apostilled and translated; the petition is filed in the court of the county where the property lies; notice issues to the persons the statute names; the court admits the foreign will, or recognizes the intestate succession, and issues letters to the representative. Where the will has already been admitted at the domicile, the situs court generally admits it on the exemplified record without relitigating validity: New York admits a will admitted to probate at the domicile and not contested there, and confines any contest to those conditions; California admits a will admitted or established in a foreign nation if the

[20] Cal. Prob. Code §§ 12502, 12503, 12513, 12540 to 12542, 12570 to 12573, 13100 (the amount of $166,250 as adjusted under § 890; Judicial Council Form DE-300 (Rev. Apr. 28, 2025) states $208,850 for deaths on or after April 1, 2025).

[21] Fla. Stat. §§ 734.1025(1), (2), 735.201(1), (2) (as amended by ch. 2026-57, Laws of Fla., approved Apr. 29, 2026, effective July 1, 2026).

[22] Treas. Reg. § 20.6325-1(a), (b)(1)(i), (b)(3).

[23] Code civil arts. 724, 730-1, 730-3, 730-4; §§ 1922, 2353, 2365, 2368 BGB.

[24] N.Y. SCPA §§ 1601, 1616.

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foreign determination rests on a finding of domicile there, interested parties had notice and an opportunity to contest and the determination is final, with a reservation for judicial systems that do not provide impartial tribunals; Virginia raises a rebuttable presumption of due execution from the certificate of probate.[25] The formal validity of a will executed abroad is tested in Florida, New York, California, Maryland and Virginia by a savings statute, but the statutes differ in a way that matters to European clients: Florida excludes holographic wills from the rule that a nonresident's will valid where executed is valid in Florida, so that a French testament olographe or a German eigenhändiges Testament without attesting witnesses does not pass Florida real property; New York, California and Maryland accept a will valid under the law of the place of execution or the testator's domicile without that exclusion; Virginia's savings rule covers personal property only, so that a holographic will operates on Virginia real property only if it is wholly in the testator's handwriting and proved as Virginia law requires; and the District of Columbia has no savings statute other than the Uniform International Wills Act, so that a foreign will must satisfy the District's own execution requirements or that Act.[26]

The eligibility of the representative is the second point of difference, and it decides who petitions. Florida permits a person not domiciled in Florida to qualify as personal representative only if the person is a legally adopted child or adoptive parent of the decedent, is related to the decedent by lineal consanguinity, is a spouse, brother, sister, uncle, aunt, nephew or niece of the decedent or a lineal relative of such a person, or is the spouse of a person so qualified; the executor named in the will who is a friend or a professional is therefore ineligible while the decedent's child is not, and the statute fixes the order in which ancillary letters issue when the designated or foreign representative is not qualified.[27] New York denies letters to a non-domiciliary noncitizen except one who serves with one or more co-fiduciaries at least one of whom is a New York resident, the appointment of both being in the court's discretion, and permits the domiciliary fiduciary to designate an eligible person to receive ancillary letters by an acknowledged instrument.[28] California denies competence to a person who is not a resident of the United States unless that person is named as executor or successor executor in the decedent's will, and permits the court to require a bond of a nonresident personal representative notwithstanding a waiver.[29] The District of Columbia and Maryland go further than any of the three: the District denies letters to an alien who has not been lawfully admitted for permanent residence and to a nonresident who has not filed an irrevocable power of attorney designating the Register of Wills as agent for notices and process, and Maryland denies letters to a person who is not a citizen of the United States unless the person is a permanent resident and the decedent's spouse, ancestor, descendant or sibling, and to a nonresident who has not filed an irrevocable designation of a Maryland resident as agent for service of process.[30] In both jurisdictions, therefore, a German or French heir who is not a permanent resident of the United States cannot be appointed at all, and local administration,

[25] N.Y. SCPA § 1602(1), (2); Cal. Prob. Code §§ 12521, 12523(a), (b), 12524; Va. Code § 64.2-450.

[26] Fla. Stat. § 732.502(1), (2); N.Y. EPTL § 3-5.1(c); Cal. Prob. Code § 6113; Md. Code, Est. & Trusts § 4-104; Va. Code §§ 64.2-403, 64.2-407, 64.2-450; D.C. Code §§ 18-103, 18-702(a).

[27] Fla. Stat. §§ 733.304, 734.102(1).

[28] N.Y. SCPA §§ 707(1)(c), 1608(1), (4).

[29] Cal. Prob. Code §§ 8402(a)(4), (b), 8481(b), 8570, 8571.

[30] D.C. Code § 20-303(b)(5), (7); Md. Code, Est. & Trusts § 5-105(c)(4), (6).

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where it is needed, is conducted by a resident fiduciary, usually counsel; the foreign-representative route described in Part II is available only where a representative was appointed by a court at the domicile, which a French succession by saisine does not produce. Virginia imposes no citizenship or residence condition but requires of every nonresident fiduciary a written consent that process and notices may be served on the clerk or on a Virginia resident named in the consent, and bond with surety in every case unless a resident fiduciary qualifies at the same time or surety is waived for an estate not exceeding $35,000.[31] The bond and resident agent rules of each state complete the analysis and are summarized in Table 1: Florida requires bond unless waived by the will or the court and a resident agent for every personal representative who is not a Florida-resident member of the Florida Bar or a corporate fiduciary; New York fixes the ancillary fiduciary's bond in such sum as the court considers just and may dispense with it where there is no New York creditor and no New York estate tax; the District and Maryland require bond unless excused by the will or by all interested persons, Maryland requiring in every case a nominal bond for the debts and the inheritance tax.[32]

The third point of difference is where the ancillary estate goes. New York directs the ancillary fiduciary, after payment of New York creditors as the court directs, to transmit the remaining assets to the state or country where domiciliary letters were granted unless the court directs otherwise, and bars transmission or distribution until seven months after ancillary letters where a contest is possible at the domicile.[33] Florida permits the court, after expenses and claims, to order the remaining property transferred to the foreign personal representative or distributed to the beneficiaries.[34] California provides for distribution to a domiciliary representative only in sister-state cases, so that the ancillary estate of a foreign-domiciled decedent is distributed to the beneficiaries under the general provisions, and California's statutory compensation of the personal representative and the attorney, four percent of the first $100,000 of the estate accounted for and declining percentages above, applies to the ancillary estate.[35] The timetables also differ: Virginia requires an inventory within four months of qualification and a first account within sixteen months; California requires a petition for final distribution or a status report within one year of letters, or eighteen months where a federal estate tax return is required; California's four-month claims period runs from the issuance of letters and Florida's three-month period from the first publication of the notice to creditors.[36] Each of the six also has its own death tax position, which bears on the sale or distribution of real property: New York and the District of Columbia tax a nonresident's local real and tangible property where the estate exceeds $7,350,000 and $4,988,400 respectively for deaths in 2026, with returns due nine and ten months after death and, in New York, a release of lien required to transfer real property or a cooperative apartment; Maryland imposes an inheritance tax of ten percent of the clear value of a nonresident's Maryland real and tangible property passing to persons other than the spouse, lineal relatives, the spouses of lineal descendants and siblings, and an estate tax above $5,000,000 where the

[31] Va. Code §§ 64.2-1426(A), 64.2-1411(A).

[32] Fla. Stat. §§ 733.402(1), (4), 733.403; Fla. Prob. R. 5.110(b), (c), (f); N.Y. SCPA §§ 801(1)(c), 1608(2), (3); D.C. Code § 20-502(a); Md. Code, Est. & Trusts § 6-102(a), (b)(1).

[33] N.Y. SCPA §§ 1603, 1610(2) to (4).

[34] Fla. Stat. § 734.102(6).

[35] Cal. Prob. Code §§ 12530, 12540 to 12542, 10800, 10810.

[36] Va. Code §§ 64.2-1300(A), 64.2-1304(A); Cal. Prob. Code §§ 9100(a), 12200; Fla. Stat. §§ 733.702(1), 734.102(5).

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estate includes such property, both administered through the register of wills; Florida, California and Virginia impose none, Virginia levying a probate tax of ten cents per $100 of value on estates above $15,000.[37] Table 1 sets out the six states.

Table 1: Ancillary administration of a foreign-domiciled decedent's assets in six states (as of October 2026)

State	Who may be appointed; agent; bond	Foreign will	Routes without full ancillary administration	Death tax on a nonresident's property
Florida	Nonresident only if adopted child or parent, lineal relative, spouse, sibling, uncle, aunt, nephew, niece or lineal relative of such person, or spouse of a qualified person (§ 733.304); priority for ancillary letters in § 734.102(1); resident agent (Fla. Prob. R. 5.110); bond unless waived by will or court (§ 733.402)	Nonresident's will valid if valid where executed, holographic and nuncupative wills excepted (§ 732.502(2)); will admitted to probate elsewhere admitted to record for real property after two years or discharge of domiciliary representative (§ 734.104)	Payment or delivery of personal property to a foreign personal representative ninety days after its appointment absent a Florida demand (§ 734.101(4)); short-form ancillary administration for testate estates with Florida property of $50,000 or less (§ 734.1025); summary administration up to $150,000 or after two years (§ 735.201, from July 1, 2026); admission of foreign will to record (§ 734.104)	None (Fla. Const. art. VII, § 5; §§ 198.02 to 198.04)

[37] N.Y. Tax Law §§ 960(a), (b), 971(a)(2), 972, 976(a)(1); N.Y. Department of Taxation and Finance, Estate tax (basic exclusion amount for dates of death on or after January 1, 2026 through December 31, 2026: $7,350,000) and Release of lien of estate tax (Form ET-117); D.C. Code §§ 47-3701(12A), (14)(D), 47-3703(a), (b-1), 47-3705(a)(1); D.C. Office of Tax and Revenue, Notice of October 1, 2025 tax changes and 2026 Form D-76 instructions (zero bracket amount $4,988,400); Md. Code, Tax-Gen. §§ 7-202, 7-203(b)(2), (f), 7-204(b), 7-214, 7-302(2), 7-305, 7-309(b)(3)(i)6; Md. Code, Est. & Trusts §§ 5-504, 5-505; Fla. Const. art. VII, § 5(a); Fla. Stat. §§ 198.02 to 198.04; Cal. Rev. & Tax. Code §§ 13301, 13302; Va. Code §§ 58.1-901, 58.1-902, 58.1-1712, 58.1-1713.

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State	Who may be appointed; agent; bond	Foreign will	Routes without full ancillary administration	Death tax on a nonresident's property
New York	Non-domiciliary noncitizen only with a New York resident co-fiduciary, in the court's discretion (SCPA § 707(1)(c)); domiciliary fiduciary may designate an eligible person (§ 1608(1)); bond as the court directs, dispensable where no New York creditor and no New York estate tax (§§ 801(1)(c), 1608(2), (3))	Will probated at the domicile admitted on proof of that probate; contest confined (§ 1602); formal validity under the law of New York, the place of execution or the domicile (EPTL § 3-5.1(c))	Payment or delivery of personal property to any foreign fiduciary authorized by the law of the domicile, without court order (EPTL § 13-3.4); transmission of the ancillary estate to the domicile (§ 1610(4))	Nonresident's New York real and tangible property where the federal gross estate with includible gifts exceeds $7,350,000 (2026); return at nine months; Form ET-117 release of lien (Tax Law §§ 960, 971(a)(2), 972)
California	Nonresident of the United States not competent unless named executor or successor executor in the will (§ 8402(a)(4), (b)); court may require bond of a nonresident notwithstanding waiver (§§ 8481(b), 8571); no priority for a foreign nation representative (§ 12513)	Will admitted in a foreign nation admitted on an authenticated copy if based on a finding of domicile, with notice and finality, subject to the due process reservation (§§ 12521, 12523); formal validity under § 6113	Small-estate affidavit by the successors for California property up to $208,850 (§ 13100); primary residence up to $750,000 by petition (§ 13151); foreign nation representative may not use the affidavit route (§§ 12570 to 12573); distribution to the beneficiaries (§§ 12540 to 12542)	None (Rev. & Tax. Code §§ 13301, 13302); 3 1/3 percent withholding on real property sales by nonresidents (§ 18662)
District of Columbia	No letters to an alien not lawfully admitted for permanent residence or to a nonresident who has not designated the Register of Wills as agent (§ 20-303(b)(5), (7)); bond unless excused by will or all interested persons (§ 20-502)	Execution under § 18-103 (two attesting witnesses) or the Uniform International Wills Act (§ 18-702); no general savings statute	Foreign personal representative needs no District letters; files authenticated appointment and will, publishes notice, transfers personalty and realty after the six-month claims period or on bond (§§ 20-341 to 20-344); small estates up to $80,000 (§ 20-351)	Nonresident's property with District situs, prorated, above $4,988,400 (2026); return within ten months (§§ 47-3701(12A), (14)(D), 47-3703, 47-3705)

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State	Who may be appointed; agent; bond	Foreign will	Routes without full ancillary administration	Death tax on a nonresident's property
Maryland	No letters to a non-citizen unless a permanent resident and the decedent's spouse, ancestor, descendant or sibling, or to a nonresident without a Maryland resident agent for service (Est. & Trusts § 5-105(c)(4), (6)); bond unless excused, nominal bond for debts and inheritance tax in every case (§ 6-102)	Will executed outside Maryland valid if executed under § 4-102, the law of the domicile or the law of the place of signing (§ 4-104)	Foreign personal representative needs no Maryland letters; may convey Maryland real property after publication for three weeks and the claims period; files appointment, authenticated will and application with the register to fix the inheritance tax (§§ 5-501 to 5-506); small estates up to $50,000 (§ 5-601)	Inheritance tax of 10 percent on Maryland real and tangible property passing to non-exempt takers (Tax-Gen. §§ 7-202 to 7-204); estate tax above $5,000,000 where the estate includes Maryland real or tangible property (§§ 7-302(2), 7-305, 7-309)
Virginia	Nonresident may qualify on written consent to service on the clerk or a Virginia resident; bond with surety in every case unless a resident fiduciary qualifies or surety is waived (assets of $35,000 or less) (§§ 64.2-1426(A), 64.2-1411(A))	Will proved elsewhere admitted on authenticated copy and certificate of probate, as to real estate if valid under Virginia law (§ 64.2-450); nonresident's will under domicile law valid as to personal property only (§ 64.2-407)	Small asset affidavit up to $75,000 after sixty days, unavailable where any representative has been appointed anywhere (§ 64.2-601); inventory within four months, account within sixteen months (§§ 64.2-1300, 64.2-1304)	None since July 1, 2007 (§§ 58.1-901, 58.1-902); probate tax of ten cents per $100 above $15,000 (§ 58.1-1712)

Part IV. The foreign executor and the statutory executor of section 2203

For federal estate tax purposes the term "executor" means the executor or administrator of the decedent or, if there is no executor or administrator appointed, qualified and acting within the United States, "any person in actual or constructive possession of any property of the decedent."[38] The regulation adds that the persons in actual or constructive possession include, among others, the decedent's agents and representatives, safe-deposit companies, warehouse companies and other custodians of property in this country, brokers holding the decedent's securities as collateral and debtors of the decedent in this country.[39] The definition has three consequences for a cross-border administration. The duty to file the return and to pay the tax does not wait for anyone to seek American letters: the instructions to Form 706-NA state that where no executor is appointed, qualified and acting in the United States, every person in actual or constructive possession of any of the decedent's property is considered an executor and must file a return, that each listed

[38] I.R.C. § 2203.

[39] Treas. Reg. § 20.2203-1.

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executor is responsible for the return and that one co-executor's signature suffices.[40] A foreign executor under an English or German grant, the heirs vested by a French or German succession and, in principle, the New York custodian itself are therefore executors for this purpose from the date of death, and the foreign representative who treats the estate as "being handled abroad" while the nine months run has made the characteristic error of this field. The second consequence is liability. A representative of an estate who pays any part of a debt of the estate before paying a claim of the United States is personally liable to the extent of the payment, and that liability, like the liability of transferees, is assessed and collected under the procedures of section 6901.[41] The heirs who receive the property are personally liable under section 6324(a)(2) to the extent of its value, and the lien follows the property into their hands except as against a purchaser or holder of a security interest.[42] The third consequence is the limit of the protection available. An executor may apply in writing for a determination of the tax and a discharge from personal liability, and the Service must notify the executor of the amount within nine months of the application or, where the application is made before the return is filed, within nine months of the filing of the return, but not after the period for assessment under section 6501 has expired, payment of which discharges the executor from personal liability for any later deficiency; the parallel discharge for a fiduciary other than the executor is expressly unavailable to a fiduciary in respect of the estate of a nonresident decedent.[43]

The practical duties of the statutory executor follow from the definition. The return is prepared and filed, the tax is paid or its payment extended, the transfer certificate is requested for every asset the custodians hold, and the foreign representative obtains an employer identification number for the estate, which the return itself does not require but which every custodian, closing agent and income tax filing will.[44] The estate of a nonresident non-citizen is a foreign estate for income tax purposes, taxed as a nonresident alien individual not present in the United States, and it documents itself to the custodians on Form W-8BEN-E, checking "Estate" as its chapter 3 status, while each individual foreign beneficiary who is the beneficial owner of a payment furnishes Form W-8BEN.[45] The custodian's file is built as the custodian requires it, with the apostilled and translated death certificate and proof of authority, a letter of direction executed exactly as the account is titled, the institution's own affidavits and indemnities, the tax forms of the estate and of the recipients, and the transfer certificate or, below the threshold, the statement that none is required. The securities

[40] Instructions for Form 706-NA (Rev. Sept. 2025), Who Must File, Executor; I.R.C. §§ 2002, 6018(a)(2).

[41] 31 U.S.C. § 3713(a)(1)(B), (b); I.R.C. § 6901(a)(1)(A)(ii) (transferees), (a)(1)(B) (fiduciaries), (h) (the term transferee includes an heir, legatee, devisee or distributee and any person personally liable under § 6324(a)(2)).

[42] I.R.C. § 6324(a)(2), (c)(1); Treas. Reg. § 301.6324-1(a).

[43] I.R.C. § 2204(a), (b).

[44] Form 706-NA (Rev. Aug. 2025), Part I, line 2 (the decedent's social security number, individual taxpayer identification number previously used, or Internal Revenue Service number, or blank); Instructions for Form 1040-NR (2025), Identifying Number (an estate or trust filing Form 1040-NR enters its employer identification number and must apply for one if it has none); Form SS-4 (Rev. Dec. 2025), line 9a (Estate), and Instructions for Form SS-4 (Rev. Dec. 2025) (international applicants may apply by telephone at 267-941-1099 or by fax at 855-215-1627 from within and 304-707-9471 from outside the United States).

[45] I.R.C. §§ 641(b), 7701(a)(30)(D), (a)(31)(A); Form W-8BEN-E (Rev. Oct. 2021), Part I, line 4; Instructions for Form W-8BEN-E (Rev. Oct. 2021) ("The beneficial owner of income paid to a foreign estate is the estate itself"); Instructions for Form W-8BEN (Rev. Oct. 2021).

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intermediary may be expected to restrict the account on notice of the death and to apply its own compliance procedures; nothing in the federal rules compels it to release before the certificate, and the regulation gives it every reason not to.[46]

Where the civil-law succession produces no representative at all, the identification of the statutory executor is itself a decision. The French heirs are vested at death and prove their title by the acte de notoriété; a French exécuteur testamentaire has limited powers over movables for a limited period and, in the absence of heirs entitled to a reserved share, may be given power over immovables; a mandataire à effet posthume or a court-appointed mandataire successoral may administer the estate; and in Germany the Testamentsvollstrecker, where one was appointed, administers the estate under the Testamentsvollstreckerzeugnis while the heirs hold title.[47] For the American side one of these persons is designated in writing, at the outset, as the person who files the return, signs the requests for the certificate, obtains the employer identification number and gives the custodians their instructions, so that the nine-month period is not consumed by the question who is to act.

Part V. Form 706-NA

The return is required whenever that part of the gross estate which is situated in the United States exceeds $60,000, the amount being reduced by the adjusted taxable gifts made by the decedent after December 31, 1976 and by the specific exemption allowed under former section 2521 for gifts made after September 8, 1976.[48] It is due within nine months after the date of death.[49] Form 4768, filed by the due date with an estimate of the tax, obtains an automatic six-month extension of time to file; the regulation states the automatic extension for Form 706 and the instructions to Form 4768 extend it to Form 706-NA, and an executor who is abroad may apply on a second Form 4768, with a written explanation, for an additional extension beyond the six months, a possibility the statute reserves to taxpayers abroad.[50] An extension of time to file is not an extension of time to pay: the tax is due at the time fixed for filing the return determined without regard to any extension, interest runs from that date, and an extension of time to pay is available for reasonable cause for up to twelve months and, for reasonable cause shown, for up to ten years from the original due date, on a written application filed on or before the date fixed for payment.[51] The late filing and late payment penalties of section 6651 apply absent reasonable cause.[52]

The computation follows the citizen's rate schedule without the citizen's credit. The tax is the tentative tax under section 2001(c) on the sum of the taxable estate and the adjusted taxable gifts, less the tentative tax on the adjusted taxable gifts, the rates rising from 18 percent on the first $10,000 to 40 percent of the amount over $1,000,000; the credit is $13,000, which shelters a taxable estate of $60,000, and

[46] Treas. Reg. § 20.6325-1(a), (b)(3).

[47] Code civil arts. 724, 730-1, 730-3, 812, 813-1, 1025, 1029 to 1031; §§ 1922, 2197, 2205, 2353, 2368 BGB.

[48] I.R.C. § 6018(a)(2), (3).

[49] I.R.C. § 6075(a).

[50] I.R.C. § 6081(a); Treas. Reg. § 20.6081-1(a), (b), (c); Instructions for Form 4768 (Rev. Feb. 2020), Part II; Instructions for Form 706-NA (Rev. Sept. 2025), When To File. Form 4768 is filed with the Internal Revenue Service Center, Attn: Estate & Gift, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915.

[51] I.R.C. §§ 6151(a), 6161(a)(1), (a)(2)(A); Treas. Reg. §§ 20.6081-1(e), 20.6161-1(a), (b), (c)(2) (the regulation still describes the ten-year extension in terms of undue hardship; the statute, as amended in 1976, requires reasonable cause).

[52] I.R.C. § 6651(a)(1), (2); Instructions for Form 706-NA (Rev. Sept. 2025), Penalties.

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the credits for pre-1977 gift tax and for tax on prior transfers apply, while the credit for foreign death taxes under section 2014 does not.[53] The gross estate is the part of the decedent's gross estate situated in the United States, and the situs rules decide what that part contains: real property and tangible personal property located here; shares of stock issued by a domestic corporation, "irrespective of the location of the certificates," so that the Paris custody account does not remove American shares from the base; debt obligations of United States persons and governments, other than those the statute excludes; and property transferred within the reach of sections 2035 to 2038 if situated here at the transfer or at death.[54] Excluded are bank deposits whose interest would not have been taxable to the decedent, deposits with foreign branches of domestic banks, debt obligations whose interest would qualify as portfolio interest, the proceeds of insurance on the decedent's life and works of art imported solely for exhibition and on loan to a public gallery or museum at death; the look-through rule for shares of regulated investment companies expired for decedents dying after December 31, 2011, so that shares of American mutual funds are United States situs property in full.[55] Neither the statute nor the regulations fix the situs of an interest in a partnership or a limited liability company; the Delaware limited liability company interest of the Swiss decedent in the opening example is reported on a reasoned position, and for a decedent domiciled in a treaty country the convention usually resolves the question by allocating intangibles to the domicile state.[56]

The deductions are the point at which the return reaches into the foreign administration. Expenses, losses, indebtedness and taxes under sections 2053 and 2054 are deductible only in the proportion that the United States situs gross estate bears to the entire gross estate wherever situated, and neither that deduction nor the charitable deduction is allowed unless the executor includes in the return the value at death of the part of the gross estate not situated in the United States.[57] The charitable deduction is confined to transfers to the United States and its subdivisions, to domestic corporations organized and operated exclusively for charitable purposes and to trustees and fraternal organizations for use within the United States, so that a bequest to a French or German charity earns no deduction unless a convention provides otherwise.[58] The marital deduction is allowed under the principles of section 2056 for property situated in the United States, which means that it is denied where the surviving spouse is not a citizen of the United States unless the property passes in a qualified domestic trust or is transferred or irrevocably assigned to one before the return is filed, or unless the spouse becomes a citizen before the return is filed after residing in the United States continuously since the death.[59] State death taxes paid on property included in the United States gross estate are deductible in proportion.[60] The return therefore requires the worldwide inventory, valued at death or at the

[53] I.R.C. §§ 2001(c), 2101(b), 2102(a), (b)(1), (b)(4).

[54] I.R.C. §§ 2103, 2104(a), (b), (c); Treas. Reg. § 20.2104-1(a)(1), (2), (5), (7), (b).

[55] I.R.C. § 2105(a), (b)(1) to (3), (c), (d)(3); Treas. Reg. § 20.2105-1(f), (g), (j), (k).

[56] Treas. Reg. §§ 20.2104-1, 20.2105-1 (silent on partnership and limited liability company interests); German Convention Arts. 8, 9; French Convention Arts. 6, 8.

[57] I.R.C. § 2106(a)(1), (a)(2), (b). The condition is confined to paragraphs (1) and (2) of § 2106(a); the marital deduction and the deduction for state death taxes are not subject to it.

[58] I.R.C. § 2106(a)(2)(A)(i) to (iii); German Convention Art. 10(2) and French Convention Art. 10 extend the deduction to qualifying organizations of the other state on conditions.

[59] I.R.C. §§ 2106(a)(3), 2056(d)(1), (2), (4).

[60] I.R.C. § 2106(a)(4).

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alternate valuation date, with the schedule of debts and expenses, before the pro rata deduction can be computed, and the instructions require the foreign death tax return or, where none was filed, the inventory and the schedule of debts filed in the foreign proceeding to be attached in support.[61]

The return was redesigned in 2025. Form 706-NA (Rev. August 2025) has five Parts, the decedent, executor and attorney in Part I, the tax computation in Part II, general information in Part III, the taxable estate in Part IV and the gross estate in the United States in Part V, in place of the former Schedules A and B; the instructions are Rev. September 2025.[62] It is filed with the Department of the Treasury, Internal Revenue Service Center, Kansas City, MO 64999, or by private delivery service at 333 W. Pershing, Kansas City, MO 64108, with a certified copy of the will, the death certificate, English translations of every document in another language, the appraisals, the balance sheets and five years' earnings statements for closely held stock, copies of any United States gift tax returns and the foreign death tax return or inventory supporting the worldwide figures.[63] Line 2 of Part I calls for the decedent's social security number or an individual taxpayer identification number previously used on a United States return, failing which the Service assigns its own number; the estate's employer identification number is not a requirement of the return.[64] Where any item is reported on the basis of a death tax convention, the instructions require a statement attached to the return that the return position is treaty based, with a reference to the regulation under section 6114, which itself requires a fully completed Form 8833 and requires a return to be filed for the disclosure even where none would otherwise be due; the conservative practice is to attach both, and the penalty for an undisclosed treaty position is $1,000 for each failure.[65] The unified credit on Part II, line 7 is the smaller of the gross estate tax and $13,000 unless a convention requires more, in which case section 2102(b)(3)(A) applies; the instructions name Australia, Canada, Finland, France, Germany, Greece, Italy, Japan and Switzerland as the conventions containing such provisions.[66] After filing, an estate tax closing letter is issued only on request through Pay.gov, for a user fee of $56 for requests received after May 20, 2025 and $76 for requests received after October 26, 2026, and not before nine months after filing unless transaction code 421 already appears on the account transcript, which the Service accepts in lieu of the letter; the procedure applies to Form 706-NA as it does to Form 706.[67] For the nonresident estate, however, the closing letter is not the document

[61] Instructions for Form 706-NA (Rev. Sept. 2025), Part IV, lines 1 to 10 (line 2, gross estate outside the United States; line 5, the ratio; line 6, the deduction for expenses and claims); I.R.C. § 2032 and Form 706-NA (Rev. Aug. 2025), Part V, line 1 (the alternate valuation election).

[62] Form 706-NA (Rev. Aug. 2025), Parts I to V; Instructions for Form 706-NA (Rev. Sept. 2025), What's New.

[63] Instructions for Form 706-NA (Rev. Sept. 2025), Where To File; Attachments; Part IV, line 2.

[64] Form 706-NA (Rev. Aug. 2025), Part I, line 2; Instructions for Form 706-NA (Rev. Sept. 2025), Part I, line 2.

[65] Instructions for Form 706-NA (Rev. Sept. 2025), Death tax treaties; I.R.C. §§ 6114(a), 6712(a); Treas. Reg. § 301.6114-1(a)(1)(i), (ii), (d)(1). Form 8833 (Rev. Dec. 2022) names the estate and gift tax conventions among the treaties it covers but does not mention Forms 706 or 706-NA.

[66] Instructions for Form 706-NA (Rev. Sept. 2025), Part II, line 7; I.R.C. § 2102(b)(3)(A), (B).

[67] Treas. Reg. § 300.12(b), (d) (T.D. 10031, 90 Fed. Reg. 21412 (May 20, 2025), adopted by T.D. 10038, 90 Fed. Reg. 55041 (Dec. 1, 2025)); T.D. 10055, 91 Fed. Reg. 60801 (Sept. 25, 2026) (effective Oct. 26, 2026; applicable to requests received after that date); Internal Revenue Service, Frequently asked questions on the estate tax closing letter (Aug. 19, 2026); Notice 2017-12, 2017-5 I.R.B. 742.

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that opens the accounts; the transfer certificate is.

Part VI. The lien of section 6324 and the transfer certificate

The transfer certificate is "a certificate permitting the transfer of property of a nonresident decedent without liability."[68] It is issued when the Service is satisfied that the tax imposed on the estate, if any, has been fully discharged or provided for; the tax is considered fully discharged only when the investigation has been completed and the tax, including any deficiency finally determined, has been paid, and where the liability has not been fully discharged certificates may issue for particular items on the filing of such security as the Service requires.[69] The procedure is published on the Service's web page for the estates of nonresidents not citizens, last reviewed on May 5, 2026, and it distinguishes two cases.[70] Where Form 706-NA was required, a copy of the filed return and of all sheets reporting the United States property is faxed to the Service at 855-201-8011 from within the United States or 304-707-9970 from outside; no mailing address is given, and the page states no processing period for this route.[71] Where Form 706-NA was not required because the United States gross estate did not exceed $60,000, the estate faxes copies of the will and codicils, one copy of each death or inheritance tax return filed with a foreign authority, the death certificate, each with an English translation, and an affidavit of the executor, administrator or other personal representative stating the decedent's date and country of birth, the date of any naturalization or that the decedent was never naturalized, a list of all United States assets with their values at death and the account numbers of bank and investment accounts, the decedent's citizenship and residence at death and whether any United States bank account was used in connection with a trade or business in the United States; for this route the Service states a processing time of twelve to eighteen months from receipt of all necessary documentation, warns that a Form 706-NA filed when not required will delay the certificate, and issues correspondence stating that no certificate is required where the documents show that no return was due.[72] The regulation adds that a custodian incurs no liability for transferring without a certificate if, having no information to the contrary, it first receives from the executor or other responsible person a statement of the facts showing that the United States gross estate did not exceed $60,000, so that for a small estate a sworn statement to the custodian may substitute for the certificate where the custodian accepts it.[73]

Three features of the procedure govern the planning. The first is time. For the estate that must file, the certificate follows the Service's review of the return, and the Service publishes no period for that review; the twelve to eighteen months it states for the affidavit route is the only official indication of the pace at which Campus Estate and Gift, located at the Cincinnati campus with its correspondence address in Florence, Kentucky, processes international estates, and the administration is planned on the assumption that the certificate will not issue within the first year after the

[68] Treas. Reg. § 20.6325-1(a).

[69] Treas. Reg. § 20.6325-1(c).

[70] Internal Revenue Service, Transfer certificate filing requirements for the estates of nonresidents not citizens of the United States (page last reviewed or updated May 5, 2026).

[71] Id., Part A. The page still refers to "Schedule A" and to the form's two pages, terminology that the August 2025 redesign replaced with Part V and three pages.

[72] Id., Part B.

[73] Treas. Reg. § 20.6325-1(b)(1)(i), (b)(3).

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return is filed.[74] The second is completeness. The certificate covers the property shown to the Service; an asset omitted from the return or the affidavit is not covered, and a second submission is required for it, so that every custodian's holdings, including accounts discovered late, are listed in one submission, and the common causes of correspondence from the Service, missing appointment documents, missing translations and valuations without support, are eliminated before filing.[75] The third is the exception for property under United States administration. No certificate is required for property administered by an executor or administrator appointed, qualified and acting in the United States, and a domestic corporation may transfer shares submitted by such a representative without one.[76] Where ancillary letters have issued, the ancillary representative may therefore collect the assets within the ancillary estate on the letters, the tax being secured by the lien and by the representative's personal liability rather than by the certificate; the point is raised with the custodian, which is entitled to rely on the regulation, and it weighs in favor of ancillary letters where the custodians are many and the certificate is distant. The instruments and what each of them permits are set out in Table 2.

Table 2: The instruments of the administration and what each permits

Instrument	What it is	What it permits
Ancillary letters (or the equivalent qualification in Virginia)	Appointment by the court of the situs state on the exemplified or authenticated domiciliary record, apostilled and translated; eligibility, agent and bond rules of the state (Table 1)	Authority over the local assets; the deed and the title insurance for real property; release by custodians that require letters; release without a transfer certificate of property administered by the United States-appointed representative (Treas. Reg. § 20.6325-1(c))
Foreign grant or proof of heirship, authenticated	Erbschein, Testamentsvollstreckerzeugnis, acte de notoriété, European Certificate of Succession or Commonwealth grant, apostilled under the Hague Convention of 1961 and translated	The basis of the ancillary petition; direct release of personal property by custodians under N.Y. EPTL § 13-3.4, D.C. Code §§ 20-341 to 20-343, Md. Code, Est. & Trusts §§ 5-501 to 5-503, Fla. Stat. § 734.101(4) and the Uniform Probate Code states, and by custodians that accept it as a matter of practice

[74] Internal Revenue Manual 5.5.7.4.2(1), (4) (Apr. 2, 2024) (Campus Estate and Gift is located at the Cincinnati Campus and monitors international estate tax accounts to provide transfer certificates once the tax is paid in full and the review of the return is complete); Instructions for Form 706-NA (Rev. Sept. 2025), Transfer Certificates (information from the Internal Revenue Service, Attn: E&G, Stop 824G, 7940 Kentucky Drive, Florence, KY 41042-2915). The designation "Form 5173" by which practitioners refer to the certificate appears neither on the Service's page nor in the instructions.

[75] Treas. Reg. § 20.6325-1(a) (certificate "covering all of the decedent's stock of the corporation"), (c); Internal Revenue Service, Transfer certificate filing requirements (May 5, 2026), Part B (list of all United States assets).

[76] Treas. Reg. § 20.6325-1(a), (c).

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Instrument	What it is	What it permits
Form 706-NA (Rev. Aug. 2025)	The nonresident estate tax return, due nine months after death where the United States situs gross estate exceeds $60,000; automatic six-month extension on Form 4768; payment at nine months (I.R.C. §§ 6018(a)(2), 6075(a), 6151(a))	The pro rata deductions, the treaty position and the pro rata credit are claimed on it; its filing starts the review that ends in the transfer certificate; a treaty position requires it even below the threshold (Treas. Reg. § 301.6114-1(a)(1)(ii))
Transfer certificate	The Service's certificate that the tax has been fully discharged or provided for, issued after review of the filed return (Part A) or of the affidavit and documents of an estate below the threshold (Part B, twelve to eighteen months) (Treas. Reg. § 20.6325-1(c))	Release of the decedent's shares, accounts and other property by corporations, transfer agents, banks and custodians without liability (Treas. Reg. § 20.6325-1(a))
Statement of the executor below $60,000	A statement of the facts showing that the United States gross estate did not exceed $60,000, given to the custodian (Treas. Reg. § 20.6325-1(b)(1)(i), (b)(3))	Release without a certificate by a custodian that accepts the statement and has no information to the contrary
Employer identification number and tax forms	Form SS-4 for the estate; Form W-8BEN-E of the estate and Forms W-8BEN of individual beneficiaries; Form 1040-NR of the foreign estate; Forms 8288 and 8288-A on a sale of real property	Account retitling and collection, the correct withholding on United States source income, the income tax compliance of the administration and the FIRPTA compliance of any sale
Estate tax closing letter or account transcript	Letter 627 on request through Pay.gov ($56; $76 for requests received after October 26, 2026), not before nine months after filing, or the account transcript showing transaction code 421 (Treas. Reg. § 300.12; Notice 2017-12)	Evidence that the return was accepted or the examination concluded; not the release document for the nonresident estate

Part VII. The estate tax conventions

For the clients of this readership the statutory analysis of Part V is the residual case. The United States has estate tax conventions in force with fourteen countries, Australia, Austria, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, the Netherlands, South Africa, Switzerland and the United Kingdom, and Article XXIX B of the income tax convention with Canada contains estate tax provisions; the conventions with Sweden and Norway ceased to have effect on January 1, 2008 and January 1, 2015.[77] The conventions are of two kinds, and the kind decides the administration. The conventions with Germany, France, the United Kingdom, the Netherlands, Austria and Denmark allocate taxing rights by the decedent's domicile. The state of domicile taxes the whole estate; the other state may tax only real property situated there and the business property of a permanent establishment or fixed base there, with partnership interests to the extent attributable to such property under the

[77] Internal Revenue Service, Estate & Gift Tax Treaties (International) (page last reviewed Sept. 8, 2026); Instructions for Form 706-NA (Rev. Sept. 2025), Death tax treaties; U.S. Department of the Treasury, press release HP-463 (June 15, 2007) (Sweden; termination effective Jan. 1, 2008). The termination of the Norwegian convention with effect from Jan. 1, 2015 is stated from secondary reproductions of the Norwegian notice of June 6, 2014.

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German and Dutch texts; all other property, wherever situated, is taxable only in the state of domicile.[78] The French convention grants the situs state more than the others in two respects: tangible movable property other than currency is taxable where it is situated, so that the furniture and works of art in the Miami apartment of a French domiciliary are taxable there, and since the Protocol of 2004 shares and participations in an entity at least fifty percent of whose assets consist of real property situated in a contracting state are treated as real property situated there.[79] For a decedent domiciled in one of these six countries who was not a citizen of the United States, the consequence is that shares of American corporations, mutual funds, bonds, bank and brokerage accounts and the interest in a Delaware limited liability company that holds no United States real property or permanent establishment are not taxable by the United States, whatever sections 2104 and 2105 provide, and only the condominium, the business property and, for France, the tangible movables remain in the base.[80]

Two qualifications determine whether a decedent is within that protection. The first is the saving clause: the German and French conventions reserve the taxation of United States citizens, of persons domiciled in the United States within the meaning of the convention and, for ten years, of former citizens and long-term residents whose loss of status had the avoidance of tax among its principal purposes; the Austrian, Danish and Netherlands conventions reserve the taxation of citizens in differing terms, and the British convention withholds its protection from a national of the United States and where the domicile state's tax is not paid.[81] A citizen of the United States domiciled in Munich or Lyon therefore files Form 706 on the worldwide estate, obtains relief through the credit articles and requires a transfer certificate under the companion procedure for nonresident citizens, for which the Service states six to nine months on the

[78] German Convention Arts. 5, 6, 8, 9; French Convention Arts. 5, 6, 8; British Convention Arts. 5(1)(a), 6(1), 7(1); Netherlands Convention Arts. 6, 7, 8; Austrian Convention Arts. 5, 6, 7(1); Danish Convention Arts. 5, 6, 8(1). The instruments: Convention between the United States of America and the Federal Republic of Germany for the Avoidance of Double Taxation with Respect to Taxes on Estates, Inheritances, and Gifts, signed Dec. 3, 1980, as amended by the Protocol signed Dec. 14, 1998, in force Dec. 14, 2000 (the German Convention); Convention between the United States of America and the French Republic for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Estates, Inheritances and Gifts, signed Nov. 24, 1978, as amended by the Protocol signed Dec. 8, 2004, in force Dec. 21, 2006 (the French Convention); Convention between the United States and the United Kingdom with respect to Taxes on Estates of Deceased Persons and Inheritances and on Gifts, signed Oct. 19, 1978 (S.I. 1979/1454) (the British Convention); Convention between the United States and the Kingdom of the Netherlands with respect to Taxes on Estates and Inheritances, signed July 15, 1969, in force Feb. 3, 1971 (the Netherlands Convention); Convention between the United States and the Republic of Austria with respect to Taxes on Estates, Inheritances, Gifts and Generation-Skipping Transfers, signed June 21, 1982, in force July 1, 1983 (the Austrian Convention); Convention between the United States and the Kingdom of Denmark with respect to Taxes on Estates, Inheritances, Gifts and Certain Other Transfers, signed Apr. 27, 1983, in force Nov. 7, 1984 (the Danish Convention; text verified from a reproduction corroborated by the Joint Committee on Taxation explanation, JCS-18-84).

[79] French Convention Arts. 5(3), 7(1).

[80] German Convention Art. 9; French Convention Art. 8; British Convention Art. 5(1)(a); Netherlands Convention Art. 8; Austrian Convention Art. 7(1); Danish Convention Art. 8(1).

[81] German Convention Art. 11(1)(a)(i) to (iii); French Convention Art. 1(4)(a); Austrian Convention Art. 9(1); Danish Convention Art. 1(3); Netherlands Convention Art. 9; British Convention Art. 5(1)(b), (5).

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affidavit route.[82] The second is domicile, which the conventions define themselves with rules that keep a recently arrived national of the other state domiciled in the state of nationality: domicile in the other state for not more than ten years under the German convention, for less than five of the preceding seven years with a manifest intention to retain the domicile of nationality under the French, United States income tax residence in seven or more of ten years to lose British treaty domicile, and less than seven of ten, five of ten and five of seven years under the Netherlands, Austrian and Danish texts.[83]

For the property the United States may still tax, the German, French and Canadian instruments grant two forms of relief that the Code does not. The first is the pro rata unified credit. The estate of a decedent domiciled in Germany or France who was not a United States citizen, and the estate of a resident of Canada, is allowed a unified credit equal to the greater of the credit allowed to the estate of a nonresident not a citizen and the credit allowed to a citizen's estate multiplied by the ratio of the United States situs gross estate to the entire gross estate wherever situated; the United States situs part may not exceed what the convention permits the United States to tax, the credit is reduced by any unified credit previously allowed against gift tax, and the ratio credit is allowed only if all information necessary for its verification and computation is provided, which is to say the worldwide inventory.[84] With the applicable credit amount at $5,945,800 for 2026, a condominium of $2,000,000 in a worldwide gross estate of $20,000,000 earns a credit of $594,580 against a tentative tax of $745,800, a tax of $151,220 before deductions, where the Code alone would allow $13,000 and leave $732,800.[85] The second is relief for the surviving spouse. The German and French conventions exclude from the United States base one half of the United States-taxable property passing to a spouse who is not a United States citizen from a decedent domiciled in the other state, and both grant a marital deduction equal to the lesser of the qualifying property and the applicable exclusion amount, $15,000,000 for 2026, if the decedent was domiciled in either state or a United States citizen, the survivor was domiciled in either state, where both were domiciled in the United States one of them was a national of the treaty country, and the executor elects the deduction and irrevocably waives every other United States marital deduction on a return filed by the date on which a qualified domestic trust

[82] German Convention Art. 11(2)(b); French Convention Art. 12(2)(b)(ii); Internal Revenue Service, Transfer certificate filing requirements for the estates of nonresident citizens of the United States (page last reviewed Jan. 12, 2026).

[83] German Convention Art. 4(1), (3); French Convention Art. 4(1) to (3); British Convention Art. 4(1)(a), (2), (3); Netherlands Convention Art. 4(2); Austrian Convention Art. 4(3); Danish Convention Art. 4(3).

[84] German Convention Art. 10(5); French Convention Art. 12(3); Canadian Convention Art. XXIX B(2); I.R.C. § 2102(b)(3)(A) ("To the extent required under any treaty obligation of the United States, the credit allowed under this subsection shall be equal to the amount which bears the same ratio to the applicable credit amount in effect under section 2010(c) ... as the value of the part of the decedent's gross estate which at the time of his death is situated in the United States bears to the value of his entire gross estate wherever situated. For purposes of the preceding sentence, property shall not be treated as situated in the United States if such property is exempt from the tax imposed by this subchapter under any treaty obligation of the United States."), (b)(3)(B). The instrument: Convention between the United States of America and Canada with Respect to Taxes on Income and on Capital, signed Sept. 26, 1980, Art. XXIX B as added by the Protocol signed Mar. 17, 1995 (the Canadian Convention).

[85] I.R.C. §§ 2001(c), 2010(c)(1), (3)(A) (as amended by Pub. L. No. 119-21, § 70106(a)); Instructions for Form 706 (Rev. July 2026) (basic credit amount $5,945,800 for 2026).

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election could be made; the British convention grants the marital deduction that would have been allowed had the decedent been domiciled in the United States, and the Canadian convention a marital credit on election.[86]

The situs-type conventions give less, and they give it differently. The Swiss convention of 1951 allocates no taxing rights and leaves each state to determine domicile and citizenship for itself; the United States taxes the United States situs property of a Swiss domiciliary under its own law, shares of American corporations included, and the convention's relief is a specific exemption of not less than the proportion of the citizen's exemption that the property subject to United States tax bears to the property that would have been taxed had the decedent been domiciled here, which the Code implements as a pro rata unified credit, with credits only where both states claim the decedent and claims within five years of death.[87] For the Zurich decedent of the opening example with $3,000,000 of American shares in a worldwide estate of $20,000,000, the credit is $891,870 against a tentative tax of $1,145,800, a tax of $253,930 where the Code alone would leave $1,132,800. The conventions with Italy, Japan, Finland and Australia also leave shares taxable at the place of incorporation and grant a proportionate exemption; their situs rules place debts, bank deposits included, at the residence of the debtor, but each contains a clause that the convention shall not increase the tax under domestic law, so that the bank deposit exclusion of section 2105(b)(1) survives.[88] The Greek convention places shares at the place of incorporation and bonds, bank deposits and claims at the decedent's domicile and grants a proportionate allowance; the Irish and South African conventions place shares at the place of incorporation and debts at the decedent's domicile or ordinary residence and grant no proportionate exemption at all, so that an Irish or South African domiciliary's American shares bear the tax above $60,000 at the full rates.[89] The Canadian provisions stand apart: a resident of Canada whose worldwide gross estate does not exceed $1,200,000 is taxable by the United States only on property whose gain would be taxable under the income tax convention, which leaves real property and business property and spares the brokerage account, and above that amount the pro rata credit and the marital credit apply while Canada deducts the United

[86] German Convention Art. 10(4), (6); French Convention Art. 11(2), (3); British Convention Art. 8(2); Canadian Convention Art. XXIX B(3), (4); Treas. Reg. § 20.2056A-1(c) (the estate may not claim both the treaty deduction and the qualified domestic trust deduction).

[87] Swiss Convention Arts. II(3), III, IV(1), (3), V(1). The instrument: Convention between the United States of America and the Swiss Confederation for the Avoidance of Double Taxation with Respect to Taxes on Estates and Inheritances, signed July 9, 1951, in force Sept. 17, 1952 (the Swiss Convention; the authentic German text was read on fedlex.admin.ch, SR 0.672.933.62). I.R.C. § 2102(b)(3)(A); Instructions for Form 706-NA (Rev. Sept. 2025), Part II, line 7 (Switzerland named among the conventions to which § 2102(b)(3)(A) applies).

[88] Italian Convention Arts. III(1), IV(a), IX(2) (Convention of Mar. 30, 1955); Japanese Convention Arts. III(1)(c), (d), IV(a), VIII(2) (Convention of Apr. 16, 1954); Finnish Convention Arts. III(2)(c), (d), IV(1)(a), XI(2) (Convention of Mar. 3, 1952); Australian Convention Arts. III(1)(e), (2), IV(2)(a), VIII(2) (Convention of May 14, 1953); texts of the Italian, Japanese and Finnish conventions verified from reproductions, the Australian from the Estate Duty Convention (United States of America) Act 1953 (Cth), Schedule.

[89] Greek Convention Arts. IV(2), V (Convention of Feb. 20, 1950, with Protocols of July 18, 1953 and Feb. 12, 1964); Irish Convention Arts. III(2)(c), (d), IV, V(1) (Convention of Sept. 13, 1949; Finance Act 1950 (Ir.), First Schedule); South African Convention Arts. III(2)(c), (d), IV, V (Convention of Apr. 10, 1947, in force July 15, 1952); Instructions for Form 706-NA (Rev. Sept. 2025), Part II, line 7 (Ireland and South Africa absent from the list of conventions to which § 2102(b)(3)(A) applies).

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States federal and state estate taxes from its own tax on the deemed disposition at death.[90]

Three consequences for the administration follow from every one of these instruments. The return remains. The filing threshold of section 6018(a)(2) is measured by the gross estate as the Code defines it, the treaty position is a return position that must be disclosed and the regulation requires a return for the disclosure even where none would otherwise be due, so that the estate of a German domiciliary whose only American asset is a brokerage account of $5,000,000 files Form 706-NA, reports the account in Part V, claims the exemption of Article 9 by statement and Form 8833 and shows a tax of zero.[91] The certificate remains, because the custodian's protection under the regulation does not depend on whether tax is due, and the estate that owes nothing files in order to obtain the release document rather than to pay.[92] And the credits must be coordinated in both directions within the conventions' own periods. Germany credits the United States federal tax and the death taxes of the states against the Erbschaftsteuer on the same property, on a claim made within one year after the final determination and payment of the United States tax and within ten years of death, the domestic rules of § 21 ErbStG applying to the treaty credit; France deducts the United States tax from the droits de succession on the same property, capped at the French tax attributable to it, on a claim admissible until the latest of the domestic period, five years from death and one year after final determination and payment within ten years of death, through the imputation of article 784 A of the Code général des impôts on form 2740, which the French guidance extends to the taxes of political subdivisions of the United States; the United Kingdom credits on claims made within six years of the death or one year after the United States tax falls due, if later.[93] Because the home-country credit is granted only against proof of a final and paid United States tax, the United States numbers are needed abroad before the foreign return can be closed, while the foreign worldwide figures are needed here before the pro rata deduction and credit can be computed; the two returns are prepared from one inventory, and the treaty analysis is the first step of the administration, not the last, because it decides what tax the sequencing of Part IX is securing. Table 3 sets out the map.

[90] Canadian Convention Art. XXIX B(2), (3), (4), (6), (8).

[91] I.R.C. §§ 6018(a)(2), 6114(a); Treas. Reg. § 301.6114-1(a)(1)(i), (ii); Instructions for Form 706-NA (Rev. Sept. 2025), Death tax treaties.

[92] Treas. Reg. § 20.6325-1(a), (c).

[93] German Convention Art. 11(3)(a), (4), (7); § 21 Abs. 1, 4 ErbStG; French Convention Arts. 12(2)(a), 13(1); CGI art. 784 A; BOI-ENR-DMTG-10-50-60 (Sept. 12, 2012), §§ 30, 40, 50, 70, 80, 90; British Convention Art. 9(2), (5).

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Table 3: The estate tax conventions and the administration of a domiciliary's United States assets (decedent not a United States citizen; as of October 2026)

Country (convention; taxes covered)	Type and allocation of taxing rights	U.S. tax on a domiciliary's shares, deposits and real property	U.S.-side relief	Credit article; treaty claim period
Germany (Dec. 3, 1980; Protocol Dec. 14, 1998; estate, gift, GST)	Domicile type: immovable property (art. 5), permanent establishment property (art. 6), partnership interests to the extent attributable (art. 8); all other property only in the domicile state (art. 9); ten-year rule for nationals (art. 4(3))	Shares and deposits: not taxable; real property: taxable	Pro rata unified credit (art. 10(5)); 50 percent exclusion for spousal property (art. 10(4)); marital deduction up to the applicable exclusion amount on election and waiver (art. 10(6)); acquisition and upkeep debts (art. 10(1))	Germany credits U.S. federal and state tax (art. 11(3)(a), (4)); claim within one year after final determination and payment, within ten years of death (art. 11(7)); § 21 ErbStG
France (Nov. 24, 1978; Protocol Dec. 8, 2004; estate, gift, GST)	Domicile type: real property including shares of entities at least 50 percent real property (art. 5(3)), permanent establishment property (art. 6), tangible movables other than currency (art. 7); other property only where the decedent was domiciled or a citizen (art. 8); five-of-seven-years rule with manifest intention (art. 4(3))	Shares and deposits: not taxable (real property companies excepted); real property and tangibles: taxable	Pro rata unified credit (art. 12(3)); 50 percent exclusion for property passing to a non-citizen spouse (art. 11(2)); marital deduction up to the applicable exclusion amount on election and QDOT waiver (art. 11(3)); debts pro rata (art. 9)	France deducts the U.S. tax, capped at the French tax on the same property (art. 12(2)(a)); claim until the latest of the domestic period, five years from death and one year after final determination and payment within ten years (art. 13); CGI art. 784 A, form 2740
United Kingdom (Oct. 19, 1978; estate, gift, GST)	Domicile type: property other than immovable (art. 6) and permanent establishment property (art. 7) not taxable in the non-domicile state unless the decedent was its national or the domicile state's tax is not paid (art. 5(1), (5)); seven-of-ten-years rule for U.K. nationals (art. 4(2))	Shares and deposits: not taxable; real property: taxable	Marital deduction as if the decedent had been U.S.-domiciled (art. 8(2)); on claim, U.S. tax of a U.K. national capped at the tax of a U.S. domiciliary (art. 8(5)); no pro rata credit	U.K. credits U.S. tax on arts. 6 and 7 property (art. 9(2)); claim within six years of the event or one year after the credited tax is due (art. 9(5))

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Country (convention; taxes covered)	Type and allocation of taxing rights	U.S. tax on a domiciliary's shares, deposits and real property	U.S.-side relief	Credit article; treaty claim period
Netherlands (July 15, 1969; estates only)	Domicile type: immovable property (art. 6), permanent establishment property including through a partnership (art. 7); other property only in the domicile state (art. 8); citizenship clause without time limit (art. 9); seven-of-ten-years rule (art. 4(2))	Shares and deposits: not taxable; real property: taxable	No tax where the U.S.-taxable property does not exceed $30,000; above that, tax capped at 50 percent of the excess (art. 10(2)); no pro rata credit; no U.S. marital clause	Netherlands credits U.S. tax (art. 11(1)); claim until the latest of the domestic period, five years from death and one year after final assessment and payment within ten years (art. 12(1))
Austria (June 21, 1982; estate, gift, GST)	Domicile type: immovable property (art. 5), permanent establishment property (art. 6); all other property only in the domicile state (art. 7(1)); five-of-ten-years rule (art. 4(3)); Austria has levied no inheritance tax since Aug. 1, 2008	Shares and deposits: not taxable; real property: taxable	Statutory credit of $13,000 only; no pro rata credit; no marital clause	Austria exempts U.S.-taxable property with progression (art. 9(5)); claim within two years after final determination and payment, within ten years of death (art. 9(6))
Denmark (Apr. 27, 1983; estate, gift, GST)	Domicile type: real property (art. 5), permanent establishment property (art. 6); other property only in the domicile state (art. 8(1)); five-of-seven-years rule (art. 4(3)); saving clause art. 1(3)	Shares and deposits: not taxable; real property: taxable	Marital deduction of a U.S. domiciliary (art. 9(2)(a)); no pro rata credit	Denmark credits U.S. tax (art. 10(2)); claim within two years after final determination and payment, within ten years of death (art. 10(7))
Switzerland (July 9, 1951; estates only)	Situs type without allocation: each state determines domicile and citizenship for itself (art. II(3)); no situs rules; the Code decides	Shares: taxable; deposits: exempt under § 2105(b)(1) only; real property: taxable	Proportionate specific exemption, applied as a pro rata unified credit (art. III; § 2102(b)(3)(A))	Credits only where both states claim the decedent (art. IV); claims within five years of death (art. V(1)); cantonal law otherwise

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Country (convention; taxes covered)	Type and allocation of taxing rights	U.S. tax on a domiciliary's shares, deposits and real property	U.S.-side relief	Credit article; treaty claim period
Italy (Mar. 30, 1955; estates only)	Situs type: shares where the corporation is organized; debts where the debtor resides; other property at the domicile (art. III(1)); no increase in tax (art. IX(2))	Shares: taxable; deposits: exempt under § 2105(b)(1); real property: taxable	Proportionate specific exemption (art. IV(a)); pro rata unified credit	Italy credits U.S. tax (art. V); no treaty claim period
Japan (Apr. 16, 1954; estate and gift)	Situs type: debts including bank deposits where the debtor resides, shares where the corporation is organized (art. III(1)(c), (d)); no increase in tax (art. VIII(2))	Shares: taxable; deposits: exempt under § 2105(b)(1); real property: taxable	Proportionate specific exemption (art. IV(a)); pro rata unified credit	Japan credits U.S. tax (art. V(1)); no credit after five years from the due date of the tax unless claimed (art. V(5))
Finland (Mar. 3, 1952; estates only)	Situs type: debts where the debtor resides, shares where the corporation is organized (art. III(2)(c), (d)); no increase in tax (art. XI(2))	Shares: taxable; deposits: exempt under § 2105(b)(1); real property: taxable	Proportionate specific exemption (art. IV(1)(a)); pro rata unified credit	Finland credits U.S. tax (art. V(2)); claim within six years of death (art. VI(1))
Australia (May 14, 1953; estate; separate gift convention)	Situs type: situs rules for listed property including bank accounts at the branch (art. III(1)); no rule for shares, so the Code applies; no increase in liability (art. VIII(2)); Australia levies no death duty	Shares: taxable; deposits: exempt under § 2105(b)(1); real property: taxable	Proportionate specific exemption (art. IV(2)(a)); pro rata unified credit	Credit article V; claim within six years of death (art. V(5))
Greece (Feb. 20, 1950; Protocols 1953 and 1964; estates only)	Situs type: shares where the corporation is organized; bonds, bank deposits and claims at the decedent's domicile (art. IV(2)); immovable property outside the convention since 1964	Shares: taxable; deposits: not taxable (domicile situs); real property: taxable under the Code	Proportionate allowance of exemptions, deductions and credits (art. V); pro rata unified credit	Greece credits U.S. tax (art. VI); claim within five years from the end of the filing period (art. VII(1))
Ireland (Sept. 13, 1949; estates only)	Situs type: shares where the corporation is organized; debts at the decedent's domicile (art. III(2)(c), (d))	Shares: taxable; deposits: not taxable (domicile situs); real property: taxable	None beyond the statutory credit of $13,000 (art. IV; not a § 2102(b)(3)(A) convention)	Ireland credits U.S. tax (art. V(1)); claim within six years of death (art. VI(1))

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Country (convention; taxes covered)	Type and allocation of taxing rights	U.S. tax on a domiciliary's shares, deposits and real property	U.S.-side relief	Credit article; treaty claim period
South Africa (Apr. 10, 1947; estates only)	Situs type: shares where the corporation is organized; debts at the decedent's domicile or ordinary residence (art. III(2)(c), (d))	Shares: taxable; deposits: not taxable (domicile situs); real property: taxable	None beyond the statutory credit of $13,000 (art. IV; not a § 2102(b)(3)(A) convention)	South Africa credits U.S. tax (art. V); claim within six years of death (art. VI(1))
Canada (Sept. 26, 1980; Protocol Mar. 17, 1995; art. XXIX B of the income tax convention)	No situs allocation; where the worldwide gross estate does not exceed $1,200,000, U.S. tax only on property whose gain is taxable under art. XIII (art. XXIX B(8))	Shares: taxable above the $1,200,000 rule; deposits: exempt under § 2105(b)(1); real property: taxable	Pro rata unified credit (art. XXIX B(2)); marital credit on election and waiver (art. XXIX B(3), (4))	Canada deducts U.S. federal and state estate tax from its tax on the deemed disposition (art. XXIX B(6)); no treaty claim period

Part VIII. Income tax, withholding and the sale of real property during the administration

The estate of a nonresident non-citizen is a foreign estate for income tax purposes, an estate whose income from sources outside the United States not effectively connected with a United States trade or business is not includible in gross income, and it is taxed as a nonresident alien individual not present in the United States.[94] Its United States source dividends, interest and other fixed or determinable income are subject to withholding at 30 percent or at the rate of the applicable income tax convention on the estate's Form W-8BEN-E, and the estate files Form 1040-NR for each year of the administration in which it has United States source income, by the fifteenth day of the fourth month after the close of its year if it has an office in the United States and by the fifteenth day of the sixth month if it does not, with an extension on Form 4868 and not on Form 7004, which lists no code for Form 1040-NR.[95] Gain on the sale of the decedent's United States real property is taxed to the foreign estate as effectively connected income, and the purchaser must withhold 15 percent of the amount realized and report and pay it on Forms 8288 and 8288-A by the twentieth day after the transfer, 10 percent where the purchaser acquires the property as a residence for $1,000,000 or less and nothing where the purchaser acquires a residence for $300,000 or less; an application for a withholding certificate on Form 8288-B, filed by the day of the transfer, defers the payment until the twentieth day after the Service acts on it, which the Service normally does within ninety days of a complete application, and the withheld tax is credited on the estate's return.[96] The basis of the property

[94] I.R.C. §§ 641(b), 7701(a)(30)(D), (a)(31)(A).

[95] I.R.C. §§ 871(a), 1441(a); Treas. Reg. § 1.1441-1(c)(2) (a foreign estate is a foreign person); Instructions for Form 1040-NR (2025), Who Must File, When To File ("If you file for a nonresident alien estate or trust that has an office in the United States, file the return by the 15th day of the 4th month after the tax year ends"; otherwise the 15th day of the 6th month), Identifying Number; Form 4868 (2025) (an estate or trust filing Form 1040-NR enters its employer identification number); Form 7004 (Rev. Dec. 2025), form codes.

[96] I.R.C. §§ 897(a)(1), 1445(a), (b)(5), (c)(1), (c)(4), (f)(3); Treas. Reg. § 1.1445-1(c)(1), (c)(2)(i)(A);

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in the hands of the estate or the heirs is its fair market value at the decedent's death or the alternate valuation date, which limits the gain on an early sale.[97] Two states add their own withholding on the closing: California requires the buyer to withhold 3 1/3 percent of the sales price on a sale by a nonresident seller, with exceptions for sales of $100,000 or less and for a principal residence, and New York requires the estimated tax on the gain to be paid with Form IT-2663 before the deed is recorded, at 10.90 percent for 2026.[98] The closing also requires the state death tax documents: in New York the release of lien on Form ET-117, in Maryland the register's receipt for the inheritance tax, which is a lien on the property until paid, and in the District of Columbia and Maryland the foreign representative's compliance with the publication and claims procedure that precedes a conveyance.[99]

Distributions to the beneficiaries raise the questions of their own country. A foreign estate's distribution of foreign source income to a foreign beneficiary is outside the United States tax, and a United States beneficiary of a foreign estate reports a distribution exceeding $100,000 in the year on Form 3520 and takes the stepped-up basis of section 1014.[100] The surviving spouse's position is decided by Part V and Part VII: the marital deduction is denied without a qualified domestic trust unless a convention supplies it, and the trust or the treaty election must be in place by the return.[101]

Part IX. Sequencing the multi-jurisdiction administration

The expensive error in cross-border administration is serialization: the German or French proceeding is completed before the American assets are considered; ancillary letters are obtained before the tax condition is discovered; the condominium is sold before FIRPTA and the state lien are discovered at the closing. The efficient administration runs three lines of work in parallel from the first month. The first is information. The worldwide inventory is assembled once, early and to the stricter of the two standards: the foreign proceeding needs it for its own return, Form 706-NA needs it for the pro rata deduction and the pro rata credit, and the foreign credit for the United States tax needs the United States figures. The second is tax. Form 706-NA is prepared at once, extended on Form 4768 if the figures are not final at nine months, filed as early as the figures allow with the treaty statement and Form 8833, the worldwide schedule and the supporting documents, and the transfer certificate is requested for every custodian's assets in one submission; where the estate is below the threshold, the affidavit route is started with the same documents at the same time, and the custodians are given the statement under the regulation. The third is authority. The custodians' written requirements are collected in the first weeks; the death certificates, apostilles and translations are ordered in the quantity the

Instructions for Form 8288 (Rev. Jan. 2026) (a foreign estate is a foreign person; Ogden Service Center).

[97] I.R.C. § 1014(a), (b)(1); Rev. Rul. 84-139, 1984-2 C.B. 168 (basis of foreign real property inherited from a nonresident), confirmed in Rev. Rul. 2023-2, 2023-16 I.R.B. 658.

[98] Cal. Rev. & Tax. Code § 18662(e)(2)(A), (e)(3)(A), (D) (Franchise Tax Board Form 593); N.Y. Tax Law § 663; N.Y. Department of Taxation and Finance, Form IT-2663 (2026).

[99] N.Y. Department of Taxation and Finance, Release of lien of estate tax (Form ET-117); Md. Code, Est. & Trusts §§ 5-503, 5-504, 5-505; Md. Code, Tax-Gen. § 13-806; D.C. Code § 20-343(c).

[100] I.R.C. §§ 1014(a), 6039F(a); Notice 97-34, 1997-1 C.B. 422, § VI.B.1; Instructions for Form 3520 (Rev. Dec. 2025), Part IV.

[101] I.R.C. §§ 2056(d), 2056A(d), 2106(a)(3); German Convention Art. 10(6); French Convention Art. 11(3).

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institutions and the courts will need; the eligibility, agent and bond questions of the situs state are answered before the petition is drafted; and the ancillary proceeding for real property is opened as soon as the authenticated domiciliary record exists, which is ordinarily months before the foreign administration ends.[102]

A representative timetable for a German or French domiciliary's estate with a condominium and a brokerage account in the United States is set out in Table 4. Estates that run the three lines in sequence take twice as long; estates that file a thin return or omit an asset from the certificate request take longer still, because each item of correspondence from the Service reopens the slowest part of the process.

Table 4: A representative timetable (German or French domiciliary; condominium and brokerage account in the United States)

Phase	Tax (federal and foreign)	Authority (state courts and custodians)
Months 1 to 3	Statutory executor designated; employer identification number obtained; worldwide inventory begun; treaty analysis settled; Form 706-NA opened and Form 4768 calendared; foreign return prepared (Germany: notice within three months; France: declaration at six months)	Custodians canvassed in writing; death certificates, apostilles and translations ordered; eligibility, agent and bond questions of the situs state answered; Form W-8BEN-E of the estate and Forms W-8BEN of the beneficiaries prepared
Months 3 to 9	Form 706-NA filed or extended with the treaty statement, Form 8833, the worldwide schedule and the supporting documents; tax paid at nine months or extension of time to pay requested; transfer certificate requested for every asset in one submission (or affidavit route started)	Domiciliary record authenticated; ancillary petition filed for the real property; documents delivered to the custodians that release on them; property management and insurance arranged
Months 9 to 18	Service's correspondence answered; estate income tax return (Form 1040-NR) filed for the first administration year; FIRPTA and state withholding prepared for any sale	Ancillary letters issue; real property managed or sold with Forms 8288 and 8288-A, state withholding and the state lien release at closing; accounts within the ancillary estate collected on the letters; claims and expenses paid
Month 12 onwards	Transfer certificate issues; remaining accounts released; closing letter or transcript requested where useful; United States figures furnished to the foreign administration for its credit within the treaty period (Germany art. 11(7); France art. 13; United Kingdom art. 9(5))	Ancillary estate closed with transmission to the domicile or distribution as the state permits; final accounts; distribution to the beneficiaries with their tax documentation

[102] On the German side the Erbschein issues after the application and the eidesstattliche Versicherung (§ 2353 BGB; §§ 352, 352e FamFG) and the notice to the Finanzamt is due within three months (§ 30 Abs. 1, 3 ErbStG); on the French side the acte de notoriété is drawn by the notaire within weeks of the death and the déclaration de succession is due six months after a death in metropolitan France (Code civil art. 730-1; CGI art. 641).

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Part X. Practice points

1. **Canvass the custodians before petitioning.** Every United States institution is asked in writing, in the first weeks, what it requires to release the decedent's assets; many release to a foreign representative on authenticated documents and the transfer certificate under N.Y. EPTL § 13-3.4, D.C. Code § 20-342, Md. Code, Est. & Trusts § 5-502 or Fla. Stat. § 734.101(4), and a proceeding opened for an asset that did not need one costs the estate a year.

2. **Run the tax and the authority lines in parallel.** The transfer certificate is the slowest item in the administration and no period is published for it; nothing in the foreign proceeding or the ancillary petition excuses a late start on Form 706-NA, which is due nine months after death with the tax.

3. **Designate the statutory executor and obtain the employer identification number at once.** Where no representative has been appointed in the United States, every person in possession of the decedent's property is the executor under section 2203; the person who files, signs and instructs is fixed in writing in the first month, and the heirs are told of their personal liability under 31 U.S.C. § 3713(b) and section 6324(a)(2).

4. **Build the worldwide inventory once, to the stricter standard.** The pro rata deduction, the pro rata credit and the foreign credit for the United States tax all require worldwide disclosure; one inventory, valued at death and supported by the foreign return or the foreign inventory, serves Form 706-NA, the foreign return and the credit in both directions.

5. **File Form 706-NA complete, with the treaty disclosure, and request the certificate for every asset.** Missing appointment documents, missing translations and unsupported values are the causes of correspondence; the treaty position is disclosed by statement and Form 8833 even where the tax is zero, and every custodian's holdings are listed in the certificate request, because an omitted asset requires a second submission.

6. **Read the convention before the Code.** A German or French domiciliary's shares and accounts are not taxable at all; the pro rata credit and the marital provisions resize the tax on the real property; the Swiss, Italian and Japanese conventions leave the shares taxable with a proportionate exemption; the return and the certificate remain in every case, and the home-country credit is claimed within the convention's period.

7. **Resolve eligibility, agent and bond before the petition is drafted.** Florida's relative rule, New York's resident co-fiduciary requirement, California's exception for the named executor, the District's and Maryland's exclusion of non-citizens who are not permanent residents and Virginia's surety requirement decide who petitions; a petition by an ineligible person is returned, and Florida does not recognize a holographic will of a nonresident.

8. **Plan the sale of real property as one transaction.** The deed from a recognized representative, the title insurer's requirements, the transfer certificate or the ancillary letters, the state estate tax lien release or inheritance tax receipt, the FIRPTA withholding on Forms 8288 and 8288-A or the certificate on Form 8288-B, and the state withholding are assembled for the same closing date.

Conclusion

The administration of a nonresident non-citizen decedent's United States assets is not conceptually difficult; it is procedurally exact, and its two conditions are met by different authorities on different timetables. The situs state supplies the authority, through ancillary letters on the authenticated domiciliary record or through a statute that lets the foreign

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representative act without them, under eligibility, agent and bond rules that differ from Florida to Virginia and that decide who petitions; the federal government supplies the clearance, through a Form 706-NA that is due nine months after death whether or not any American court is ever involved and through a transfer certificate that every custodian is entitled to demand and that no published period governs. The foreign executor and the heirs are not observers of this process: section 2203 makes whoever holds the assets the executor for federal purposes, with the return, the payment, the certificate requests and the employer identification number on that person's desk from the first month, and with personal liability for distributions made before the tax. The conventions decide what the process is securing, and for the German or French domiciliary they reduce the tax on the brokerage account to nothing while leaving the return and the certificate in place, resize the tax on the real property through the pro rata credit and the marital provisions and provide the home-country credit within their own periods. The estates that close within eighteen months are those whose advisers canvassed the custodians before petitioning, filed the return before the foreign inventory was complete, requested the certificate for every asset in one submission and treated the apostilles, translations and eligibility rules as the substance of the work; the estates that close in four years made the same filings later, less completely and in sequence. The rule for the adviser is that the two conditions are pursued from the first month as one administration, that the convention is read before the Code, and that the United States return is never made to wait for the end of the proceeding at the domicile.

Contact

Whether a nonresident decedent's United States real property, brokerage accounts, bank deposits and business interests can be released without a proceeding in the situs state or require ancillary letters, who may be appointed and on what bond, who owes Form 706-NA and the tax as the statutory executor, what the convention leaves the United States to tax and how the transfer certificate, the state death taxes and the FIRPTA rules are sequenced with the proceeding at the domicile, turn on the decedent's domicile, the situs and title of each asset, the state concerned and the convention. **Ashford International Law PC advises families, fiduciaries, and their advisers** across the whole map: the canvass of custodians and the preparation of their document packages, ancillary administration in Florida, New York, California, the District of Columbia, Maryland and Virginia with local counsel where required, the preparation and filing of Form 706-NA with the treaty position and the pro rata credit, the transfer certificate and the statement procedures, the income tax, withholding and FIRPTA compliance of the administration, and the delivery of the United States figures to the German, French or other home-country proceeding for its credit.

The firm is led by attorney **Caroline Esche Ashford, PhD, JD**. A graduate of Columbia University Law School, her practice focuses on international estate planning and the cross-border taxation and administration of estates and trusts, including the administration of the estates of nonresident decedents and the recovery of their United States assets. Dr. Ashford is also licensed to practice law in Germany. She advises in French and German as well as English. The firm's attorneys are admitted in Germany, California, the District of Columbia, Maryland and Virginia.

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This article is intended for general educational purposes for U.S. and foreign estate planners, fiduciaries, and their clients and does not constitute legal or tax advice, nor does it create an attorney-client relationship. The matters described, namely I.R.C. §§ 641, 897, 1014, 1441, 1445, 2001, 2010, 2032, 2053, 2054, 2056, 2056A, 2101 to 2106, 2203, 2204, 6018, 6039F, 6075, 6081, 6114, 6151, 6161, 6324, 6651, 6712, 6901 and 7701(a)(30) and (31) and 31 U.S.C. § 3713; Treas. Reg. §§ 1.1445-1, 20.2104-1, 20.2105-1, 20.2203-1, 20.6081-1, 20.6161-1, 20.6325-1, 300.12, 301.6114-1 and 301.6324-1; the Internal Revenue Service's transfer certificate procedures and closing letter procedures as published in 2026; Forms 706-NA, 4768, 8833, 1040-NR, 4868, SS-4, W-8BEN, W-8BEN-E, 8288, 8288-A, 8288-B and 3520 and their instructions; the estate tax conventions with Germany, France, the United Kingdom, the Netherlands, Austria, Denmark, Switzerland, Italy, Japan, Finland, Australia, Greece, Ireland and South Africa and Article XXIX B of the convention with Canada; the probate, fiduciary and death tax statutes of Florida, New York, California, the District of Columbia, Maryland and Virginia cited; the German, French and European instruments cited; and the unsettled situs of partnership and limited liability company interests, depend on the specific facts, entities, states, and countries concerned and on the law in effect at the relevant time, and they change. Processing times of the Internal Revenue Service vary and are not guaranteed. Statuses are stated as of this writing and must be confirmed before any filing, structuring or distribution decision. Nothing here is advice on any particular estate, asset or proceeding. Confirm every point with qualified counsel in the situs state and in the home country and current law before acting.

#AncillaryProbate #NonresidentEstate #Form706NA #TransferCertificate #StatutoryExecutor #Section2203 #Section6324 #ForeignExecutor #USSitusAssets #EstateAdministration #CrossBorderEstates #EstateTaxTreaty #GermanyUSTreaty #FranceUSTreaty #ProRataUnifiedCredit #Erbschein #ActeDeNotoriete #FloridaProbate #NewYorkSurrogatesCourt #CaliforniaProbate #FIRPTA #TitleInsurance #ForeignEstate #InternationalEstatePlanning

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