

# Federal Estate Tax Returns Filed for Nonresident Aliens, 2009–2011

by Melissa J. Belvedere

**T**he estate tax, which is one part of the Federal transfer tax system, is a tax on the right to transfer property at death. It applies to tangible and intangible assets of U.S. citizens, resident aliens, and nonresident aliens. A nonresident alien is a noncitizen of the United States who is not a lawful permanent resident and has not spent a substantial amount of time in the United States.<sup>1</sup>

Estates of nonresident aliens who held more than \$60,000 in assets in the United States at their time of death are required to file Form 706-NA, *United States Estate (and Generation-Skipping Transfer) Tax Return, Estate of nonresident not a citizen of the United States*. Forms 706-NA are used to report U.S.-held assets and to compute estate tax liability. Returns filed in 2009, 2010, and 2011 were predominantly for estates of decedents who died between 2007 and 2010.

## Background

The estates of nonresident aliens can be composed of many different types of property and assets. To be considered as part of the decedent's U.S. gross estate, tangible personal property and real property must be physically located in the United States. Different criteria apply to financial assets, such as stocks or debt obligations. Stock issued by U.S. corporations is included in the decedent's U.S. gross estate, as are debt obligations issued by a U.S. citizen, resident, business, trust, or Government organization. The executor may value the decedent's estate at the date of death or at a date up to 6 months after the date of death, if doing so reduces both the estate's value as well as the estate tax liability.

The United States maintains estate and gift tax treaties with 16 countries to minimize double taxation, which occurs when assets are taxed in both the U.S. and the decedent's home country.<sup>2</sup> Estates of decedents domiciled in treaty countries have options available to reduce their U.S. taxable estate and estate tax liability, which are unavailable to other estates. These options include greater unified credit amounts, different deductions, and changes to what constituted their U.S. gross estate. Because the

tax law applicable to decedents domiciled in, or who are a citizens of, treaty countries varies so greatly from the tax law applicable to the general population of nonresident alien decedents, the data from Forms 706-NA identified as treaty returns are presented separately from the data from regular (nontreaty) returns.

## Form 706-NA Filing Population

The number of Forms 706-NA filed declined significantly in the 3-year period from 2009 to 2011, from 824 returns filed in 2009, to only 438 filed in 2011 (Figure A). This may have been the result of economic conditions during this time. Nontaxable returns made up an increasingly larger majority of all returns filed between 2009 and 2011, from 54.2 percent of the total returns in 2009 to 67.4 percent of the total in 2011. However, this overall percentage masks the different characteristics of treaty and nontreaty returns. Treaty returns, which comprised about three-quarters of all returns filed during this time, were mostly nontaxable. In 2009, some 67.6 percent of treaty returns were nontaxable; this percentage increased to 81.2 percent of treaty returns in 2011. In comparison, nontreaty returns were overwhelmingly taxable; more than 80 percent of nontreaty returns filed in were taxable.

When considered in terms of the sex of the decedent, the majority of returns were filed for male decedents (Figure B). The percentage of returns filed for the estates of male decedents remained essentially the same throughout the 3-year period. Returns were slightly more likely to be filed for female decedents residing in treaty countries than in nontreaty countries.

## Total Gross Estate, Taxable Estate, and Net Estate Tax by Country of Domicile

Nontreaty returns filed in 2009 reported \$125.6 million in U.S. total gross estate, which is the total value of assets held in the United States, either at the time of death or at an alternative valuation date within 6 months thereafter (Figure C). The alternative valuation method is allowed in cases where the value of assets declined within 6 months of a decedent's death. This amount decreased a total of 63.1 percent over the next 2 years, to \$46.4 million in 2011. Some of the decrease is attributable to the decreasing number of returns filed between 2009 and 2011, which declined by 51.7 percent over the 3-year period. However, the mean amounts also decreased. The

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<sup>1</sup> These conditions are known as the "Green Card test" and the "substantial presence test," as described in IRS Publication 519, *U.S. Tax Guide for Aliens*.

<sup>2</sup> For Filing Years 2009, 2010, and 2011, the United States had reciprocal taxation treaties in effect with Australia, Austria, Canada, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Japan, Netherlands, Norway, South Africa, Switzerland, and the United Kingdom.