



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 1. Decedent and Estate Tax Accounts

5.5.1 Decedent and Estate Tax Accounts

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5.5.1.1 (03-26-2010)

Purpose

1. This IRM section provides information to explain differences between decedent accounts, estate tax accounts, legal terms used in probate, documents used in probate proceedings and general information regarding probate proceedings.
2. This IRM section does not provide complete information on probate issues due to variations in state probate laws. Local Counsel should be consulted on provisions of specific state probate codes and their potential impact on collection.
3. Additional resources:
 - A. Use IRM 5.17.13, *Legal Reference Guide, Insolvency and Decedents Estates*, and confer with local Counsel and/or Advisory when working decedent taxpayer accounts. Modification of procedures may be necessary to conform to the specific legal requirements for each state.
 - B. Publication 559, *Survivors, Executors, and Administrators*
 - C. Publication 950, *Introduction to Estate and Gift Taxes*

5.5.1.2 (03-26-2010)

Decedent and Estate Tax Accounts

1. Working accounts on deceased taxpayers is one of the more complex and challenging tasks expected from Collection employees. Many procedures for decedent cases are different from those for estate taxes because the nature of the liabilities differ and different liens are in effect.
2. *Decedent accounts* involve tax liabilities that accrued before the death of the taxpayer and remain unpaid. Typically the unpaid taxes result from assessments for income tax (Form 1040), trust fund recovery penalty, or business taxes due from a sole proprietorship or partnership.
3. Assessments are reflected under the taxpayer's SSN or in the case of business taxes the EIN used by that business. The IRC 6321 and IRC 6323 liens are applicable to this type of account.
4. Decedent accounts, liens and collection are addressed in sections 5.5.1, 5.5.3 and 5.5.4 of this IRM. Additional information may also be found in Publication 559, *Survivors, Executors, and Administrators*.
5. *Estate taxes* are levied on assets comprising the gross estate which are required to be reported on Form 706. The gross estate includes all property in which the decedent had an interest at the time of death.
6. Estate tax accounts are identified on IDRS under the decedent's SSN with a "V" indicator (123-45-6789V). The MFT will always be 52 and the tax period 000000. The IRC 6324 lien is a special lien for estate and gift tax that arises at date of death and attaches to all assets in the gross estate. There are also several special liens applicable to specific Internal Revenue Code sections relating to estate tax.
7. Estate tax accounts, liens and collection are addressed in sections 5.5.5, 5.5.6, 5.5.7 and 5.5.8 of this IRM. Additional information may also be found in Publication 950, *Introduction to Estate and Gift Taxes*.
8. An *estate* is a taxable entity separate from the decedent that comes into being on the death of the individual. It exists until the final distribution of its assets to the heirs and other beneficiaries.
9. The income earned by assets of the estate must be reported on Form 1041, U.S. Income Tax Return for Estates and Trusts, if there is \$600 or more of income during a tax year. The estate's income, like an individual's income, must be reported annually on either a calendar or fiscal year basis. Schedule K-1 is filed with the return and provided to beneficiaries that receive income from the estate. Additional information may be found in Publication 559, *Survivors, Executors, and Administrators*.
10. Assessments are reflected under an EIN with MFT 05. The IRC 6321 and IRC 6323 liens are applicable to this type of account.

5.5.1.3 (03-26-2010)

Probate Terminology

1. Probate proceedings are governed by state law. The purpose of the proceeding is to gather and distribute the decedent's assets. Understanding the terminology used in probate aids in reviewing probate file documents and determining the disposition of the taxpayer's assets. Common terms used in probate include:
 - **Testate** - person who died testate had a will. A will typically appoints a fiduciary to handle affairs after the taxpayer's death and specifies beneficiaries to receive the assets.
 - **Intestate** - person who died intestate did not have a will. State law determines how the assets will be distributed.

- **Dependent, Supervised or Formal Probate** - the term differs by state, but all indicate that assets of the deceased are under control of the probate court. Enforcement actions are prohibited, and the CSED is suspended under IRC section 6503(b)..
- **Independent, Unsupervised or Informal Probate** - the term differs by state but all indicate that assets of the deceased are **not** under the control of the probate court. The CSED is not suspended and collection actions can be pursued.
- **Fiduciary** - the person who is the point of contact on a decedent case, acting as power of attorney. A fiduciary's primary function is to see that all debts of the decedent are paid and remaining assets are distributed. Fiduciaries are commonly called administrators, executors, or personal representatives.
- **Beneficiary, Devisee or Heir** - person or recipient who receives real or personal property as stated in the will or in accordance with state probate law.

5.5.1.4 (03-26-2010) Probate Documents

1. Below is a list of common probate documents that should be reviewed for information on the decedent, fiduciary and distribution of assets:
 - A. death certificate - provides date of death, where taxpayer died, cause of death and other data pertaining to the deceased.
 - B. will - a document containing instructions and wishes as to how property and assets are to be distributed after death.
 - C. letters testamentary - a document issued by the probate court that gives an executor the power to take control of and distribute a deceased person's property.
 - D. inventory and appraisal - a listing and valuation of properties owned by the decedent.
 - E. annual accounting - a document that lists assets and liabilities, it reflects the condition of the estate as time progresses.
 - F. status reports - show claims and distributions. Claims filed by creditors can be a source of information about insolvency or encumbrances against property.
 - G. bond - a probate bond is a bond issued on the performance of an administrator or executor. Its purpose is to protect heirs and creditors from being harmed by the negligence or malfeasance of the administrator or executor. Depending on circumstances, a bond may be levied if the executor pays lower priority creditors ahead of federal taxes due.

5.5.1.5 (03-26-2010) Probate and Non-Probate Property

1. The manner in which title passes determines whether an asset is a probate asset or a non-probate asset.
2. Title to probate property passes to the decedent's estate and a probate proceeding may be necessary to transfer the property to heirs.
3. Probate property is property the deceased owned at the time of his or her death or that is payable to the estate. For example, if a house, car, RV, and bank account are all in the name of the deceased at the time of death, those items of property will have to be included in the probate estate and go through the probate procedure before they can be legally transferred to the beneficiaries. If the estate of the deceased is named as the beneficiary of an insurance policy, the proceeds of the policy will be included in the probate estate. Salary and benefits due to the deceased and money collected from debts owed to the deceased are part of the probate estate as well.
4. Non-probate property is primarily those assets of the decedent that were transferred prior to death or were held in a way that ownership transferred automatically upon death. Non probate assets do not come under control of the court. They may be distributed without court approval.
5. Some examples of non-probate property include:
 - Transfers taking effect at death (payable on death accounts such as checking or savings accounts).
 - IRA's and retirement accounts that are payable to a designated spouse or survivor rather than the decedent's estate.
 - Property held jointly with rights of survivorship by decedent and any other person (such as a spouse).
 - Life insurance proceeds paid to a designated beneficiary other than the decedent's estate.
 - Property held in a revocable or living trust, with a designated beneficiary.

5.5.1.6 (03-26-2010) General Information on Probate Proceedings

1. State law normally dictates which courts administer estates or probate wills. It is generally in the jurisdiction of the court in the place of residence when the taxpayer died, however, more than one probate proceeding may be opened if the taxpayer owned property in more than one state.
2. Specific details of state probate proceedings vary widely and must be followed explicitly.
3. The following are actions commonly taken in probate proceedings. They cannot be generalized to apply in all circumstances. The existence of a will is the factor that most often influences a proceeding. The primary effect of a will is that it specifically names the party who will administer the estate and spells out how the estate property will be distributed after administration is complete.
4. A person who died testate had a will, which typically appoints a fiduciary to handle affairs after the taxpayer's death. When there is a will filed with the court by the executor, after its authenticity is declared, the executor is authorized to:
 - A. gather the assets,
 - B. pay the debts of the deceased, and
 - C. make distribution to the beneficiaries as specified by the will.
5. A person who died intestate did not have a will. When there is no will, a court petition is filed requesting the appointment of an administrator. The court appoints an administrator and issues letters testamentary authorizing the administrator to:
 - A. gather the assets,
 - B. pay the debts of the deceased, and
 - C. make distribution to the heirs as dictated by state law or ordered by the court.
6. The revenue officer must determine from the probate records if the proceeding is dependent, supervised or formal. The term differs by state, but all indicate that assets of the deceased are under the control of the probate court. **Enforcement actions are prohibited**, but a NFTL may be recorded because probate proceedings are not subject to an automatic stay as are bankruptcy proceedings.
7. If the proceeding is independent, unsupervised or informal, then assets of the deceased are **not** under control of the probate court. Collection action may be pursued.

8. Some states have statutes that allow for the distribution of assets without formal probate proceedings. For example, property may be transferred by affidavit and problems or questions may be handled by an administrative hearing. This is particularly true when most of the property is held in joint tenancy with right of survivorship or when there is only one heir.

5.5.1.7 (03-26-2010) Fiduciary Authority

1. The fiduciary is the person who is the point of contact on a decedent case, acting as the power of attorney. In probate documents you may see the fiduciary referred to as administrator, executor or personal representative.
2. A fiduciary may be identified in the will, by the probate court in letters testamentary, or by Form 56, Notice Concerning Fiduciary Relationship. A third party authorization (Form 2848, Power of Attorney and Declaration of Representative, Form 8821, Tax Information Authorization) expires with the death of the taxpayer. Do not assume the surviving spouse is the executor for the deceased spouse.
3. The fiduciary (executor or administrator) must post a bond to be authorized to act for the estate unless the will or probate court authorizes the fiduciary to act without one. The bond exists to protect all whose interests may be prejudiced by the action or inaction of the fiduciary. The bond is in effect an insurance policy with a designated policy limit for the payment of claims.
4. After gathering assets and determining debts due by the estate, the fiduciary:
 - A. prepares an inventory of estate assets,
 - B. approves or disapproves creditor claims, (A creditor may argue its claim before the probate court. If an adverse decision is rendered there, the creditor may appeal to a higher court) and
 - C. distributes to the beneficiaries any assets that remain after payment of creditors and expenses.

5.5.1.8 (03-26-2010) Filing Compliance

1. The fiduciary must file the decedent's final income tax return for the year of death and any returns not filed for preceding years. The decedent's income up to date of death is includible on a Form 1040.
2. The date of death determines the end of the decedent's tax year and the beginning of the estate's tax year. After the taxpayer's death the fiduciary is required to file Form 1041, U.S. Income Tax Return for Estates and Trusts, to report gross income of \$600 or more. If you encounter substitute for return (SFR) assessments for tax periods after death, request the fiduciary to properly report the income on a Form 1041. Publication 559, Survivors, Executors, and Administrators, provides information about how to complete and file federal income tax returns and points out responsibility to pay any taxes due.
3. If the decedent owned a business, the fiduciary is required to secure a new employer identification number (EIN) if the **estate** operates the business after the owner's death. Publication 1635, Understanding Your EIN, provides information about this requirement.
4. The fiduciary has an obligation to file and sign outstanding returns for the estate. Requests for delinquent tax returns should be addressed with the fiduciary for the estate.
5. If the fiduciary does not comply with deadlines to file tax returns, issue a summons to secure tax information not available through internal resources such as IDRS or IRP. Follow unfiled return procedures in IRM 5.1.11.6 for additional information on referrals of substitute returns. This information may be necessary for Advisory to submit a proof of claim with an estimate of taxes due on unfiled returns.
6. Local Counsel can help with drafting document requests for the summons. If the fiduciary ignores the summons, Counsel can seek enforcement in the federal courts instead of waiting for a state court to act.
7. When a business is involved, it may be necessary to prepare returns under IRC 6020(b) if they are not filed voluntarily. See IRM 5.1.11.6.7 for IRC 6020(b) procedures.
8. The determination to pursue or not pursue a return will depend upon the facts of each case. Factors to be considered include whether assets are available to satisfy any part of a tax liability and possibility of a transferee or trust fund penalty assessment.

5.5.1.9 (03-26-2010) Collection Statute Expiration Dates (CSED)

1. Independent, unsupervised or informal probate proceedings indicate that the assets of the deceased are **not** under control of the probate court. The CSED is not suspended and collection action may be pursued.
2. Dependent, supervised or formal probate proceedings indicate that the assets of the deceased are under control of the probate court. Enforcement actions are prohibited and the CSED is suspended under IRC 6503(b).
3. The transaction code (TC) 520 closing code (cc) 80 should be input by Advisory when the probate proceeding begins and the assets of the estate become subject to the control of the probate court. The TC 520 cc 80 freezes the account and puts the CSED into suspense, thereby preventing a TC 608 from posting and the account being zeroed out during the pendency of litigation.
4. When the probate proceedings end, input a TC 550 with definer code 02, using the date to which the CSED is extended. The TC 550 must be input prior to input of TC 521 to reflect the correct CSED. The period of limitations on collection is suspended for the period that all or substantially all of the assets of the deceased are in the control or custody of the probate court and for six (6) months thereafter.
5. The TC 521 date is the date the assets are no longer under custody of the court. If a TC 521 is input before the TC 550, and the CSED expired during the probate proceeding, a TC 608 will generate systemically and the account will be zeroed out. This may result in loss of lien priority if the TC 608 triggers a systemic lien release.
6. If a TC 608 posts prematurely in a case, actions must be taken to reestablish the assessed balance and to revoke the premature release of any NFTL's. If the TC 608/TC 583's are pending on TXMOD, take the following actions:
 - check ALS to see if the issuance of physical certificate(s) of release is pending. If so, contact the Centralized Lien Processing (CLP) unit to see if mailing of the certificate(s) can be stopped.
 - Request input of TC 520 cc 80, using a transaction code input date that is at least one day (1) prior to the CSED.
 - If the NFTL certificate(s) of release have already been issued, make a determination as to possible harm to the Government's priority and related litigation (it may be effective, depending when the documents were sent, to contact the county recorder and request they pull the releases and not record them).
 - Advise Area Counsel if a TC 608 posts on an account that is in litigation.
7. Advisory is responsible for input of the TC 520, 550 and 521.



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 2. Probate Proceedings

5.5.2 Probate Proceedings

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- 5.5.2.2 [Progression of Probate Proceedings](#)
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Manual Transmittal

April 5, 2012

Purpose

(1) This transmits revised IRM 5.5.2, Decedent Estates and Estate Tax, Probate Proceedings.

Background

This IRM is being revised to emphasize the priority of the Federal Tax Lien in regard to administrative expenses.

Material Changes

- (1) Section 5.5.2.3 added (6) that successor administrator should be notified of taxes due.
- (2) Section 5.5.2.4(3) added emphasis that the Service may in its discretion, *not generally*, not assert priority of its federal tax lien over reasonable administrative expenses of the estate.
- (3) Section 5.5.2.6 added emphasis on the discretion of the Service and reference to Section 5.5.2.4 for priority of the federal tax lien.
- (4) Section 5.5.2.6.1(1) and (2) added emphasis on priority of the federal tax lien and reasonable administrative expenses.
- (5) Section 5.5.2.6.1.1(1)(c) added statement concerning limiting attorney fees; (e) added statement that the family allowance is not considered an administrative expense of the estate; added (10) to address expenses for last illness.
- (6) Section 5.5.2.9 added (5) IRM reference concerning action on bonds.
- (7) Section 5.5.2.11 added (9) IRM reference for income tax returns.
- (8) Section 5.5.2.12 added concerning forgiveness of decedent's tax liability for members of Armed Forces who die while in active service.

Effect on Other Documents

This supersedes IRM 5.5.2, Probate Proceedings, dated February 01, 2011.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(04-05-2012)

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5.5.2.1 (02-01-2011) Overview

1. This IRM section provides information on probate proceedings and identifies the need for administrative or judicial action on decedent cases. Use the information in this section to guide you through probate proceedings and to evaluate and protect the Government's interest during these proceedings.
2. This section explains the progression of probate proceedings and is meant to emphasize the time sensitive deadlines during the proceedings that require action to be taken on behalf of the Service. It further explains necessary and reasonable expenses to assist in determinations of what expenses are allowable, insurance policies that may pay expenses, the priority of the federal tax lien and explains solvent and insolvent estates.
3. Additional resources:

- Use IRM 5.17.13, *Legal Reference Guide, Insolvency and Decedent Estates*, and confer with Area Counsel when confronted with decedent issues beyond your scope of knowledge and expertise.
- Refer to your local law guide for state specific information, located on the My SB/SE Counsel web page under the link for law guides.
- See IRM 5.5.3, *Working Decedent Cases*
- See Publication 559, *Survivors, Executors and Administrators*

5.5.2.2 (02-01-2011)

Progression of Probate Proceedings

1. This section provides the general steps taken in probate proceedings. These steps will vary based on state law and the type of administration (dependent or independent). Since laws vary from state to state you should conduct internet research on probate law for the state you work and check your local law guide.
 1. The first step is usually to apply for administration or probate of the will if there is one. An executor or administrator is then appointed by the will or by the court. Typically probate bond requirements are determined during this step. Sometimes, the court will approve administration without court intervention indicating an independent (or unsupervised) administration. Requirements may be outlined in the will or in the letters testamentary.
 2. The estate administrator is responsible for gathering the decedent's assets and placing them under the administrator's control. They are given possession and control of the decedent's assets and are charged with the payment of the decedent's debts. Typically the estate administrator will open accounts in the name of the estate and contract a bond if required.
 3. The estate administrator must file an inventory of the estate assets with the probate court. State statutes will dictate the time period in which the inventory needs to be filed, generally it is within 90 days of appointment of the estate administrator. All property and debts of the decedent are listed in the inventory with a value at the time of death.
 4. A newspaper notice is published notifying the creditors of the decedent's death and creditor's obligation to present claims for payment. Claims include all debts incurred by the decedent prior to his death. State statutes define a time period, usually 30 to 90 days, in which claims must be filed for consideration. A Notice of Creditors may be sent to known lienholders requesting a claim to be filed within a specific time period. The notice may indicate that untimely claims will be barred forever.
 5. At the end of the specified period to file claims the estate administrator determines the claims to be paid, in whole or in part, in accordance with statutory provisions. He must also resolve payment of expenses related to estate administration, such as funeral expenses, legal fees, cost of notices and any expenses related to maintenance of the decedent's property after death. A Notice or Petition of Proposed Distribution that outlines the claims to be paid and the amount to be paid, is usually filed with the court for the judge's approval.
 6. The estate administrator is responsible for filing tax returns, including applicable tax returns in accordance with federal or state laws.
 7. When all debts, expenses and taxes have been paid the estate administrator files a final accounting. This accounting informs the court and beneficiaries of all property and income received, expenses paid and amount remaining for distribution.
 8. When the final accounting is approved, the court will order the estate administrator to distribute the assets of the estate.
 9. After distribution the estate administrator files an affidavit of closing with the court. If a probate bond was required the court (or court order) notifies the surety company that the estate administrator has complied with all the orders and the bond is terminated.
2. Actions taken in probate proceedings are noted on a docket sheet. The docket sheet should be copied (or printed if available electronically) and added to your case file. The docket sheet will outline what has happened in the proceeding, such as orders, hearings, filings or motions.
3. Collection actions may continue during probate proceedings unless the assets are under the control of the court in a dependent or supervised proceeding. The following IRM sections provide guidance concerning collection actions: IRM 5.5.1.5, *Probate and Non-Probate Property*, IRM 5.5.1.6, *General Information on Probate Proceedings*, and IRM 5.5.3, *Working Decedent Cases*, which has numerous pertinent sections.

5.5.2.3 (04-05-2012)

Providing Notification of Federal Taxes Due

1. Three forms are used to notify the estate administrator or the probate court of taxes due, they are:
 - Form 10492, *Notice of Federal Taxes Due*
 - Form 4490, *Proof of Claim*
 - Form 2373, *Statement of Internal Revenue Taxes Due as an Expense of Administration of an Estate*
2. Form 10492 is prepared by revenue officers and advisors to show the taxes accrued by the taxpayer prior to the taxpayer's death. This form also cautions administrators of potential personal liability if taxes are not paid. Generally state probate courts will not accept this form as a substitute for a creditor claim presented for payment. This form should be sent to the estate administrator or a successor administrator as soon as the Service learns who has authority over estate assets.
3. Form 4490 is a proof of claim. It is a written statement that sets forth a claim against the probate estate of a deceased debtor for tax liabilities accrued prior to death. This form is prepared and monitored by advisors. State statutes will specify if the claim should be filed with the court or mailed/presented to the estate administrator. Generally a proof of claim should be sent to the estate administrator and should also be filed with the court in all probate proceedings unless the local law guide specifies otherwise. IRM 5.5.4, *Proof of Claim Procedures in Decedent Cases*, provides further guidance on filing proofs of claim.
4. Form 2373 is used to show taxes that have accrued after the probate proceeding has commenced. Typically taxes reflected on this form result from estate income tax (Form 1041), payroll taxes for a business operated after death of the taxpayer or excise taxes. This form is filed with the court. IRM 5.5.2.6.1.1.1, *Claiming Taxes as an Administrative Expense*, provides guidance on use of this form.
5. The ICS history must be documented to reflect the date on which a form is sent to an estate administrator to establish when they were put on notice of taxes due. Consideration should be given to sending these forms by certified mail and a copy should be maintained with the case file.
6. If a successor administrator is appointed, notice of taxes due must be sent to make the new administrator aware of the outstanding tax liability or unfiled returns. If notice was sent to the prior administrator send a copy of that notice to the successor administrator.

5.5.2.4 (04-05-2012)

Priority of the Federal Tax Lien

1. If a Notice of Federal Tax Lien (NFTL) has been recorded against a taxpayer during his lifetime, its priority is preserved after death and valid against other creditors (except as provided in IRC section 6323), including future beneficiaries whose claims come into existence subsequent to the Federal tax lien (they are debts of the **estate**).
2. The death of the debtor does not extinguish the federal tax lien, nor affect the priority among multiple security interests in the debtor's property.

3. Federal law controls in situations in which a federal tax lien competes with any interest under state law or by contract. However, the Service **may in its discretion** not assert priority of its federal tax lien over reasonable administrative expenses of the estate, to the extent that such expenses are not covered by an insurance policy, trust or other similar benefit that covers the cost of administrative expenses of the estate. State statutes may limit the amount of reasonable administrative expenses permitted to be paid during probate.
4. A state statute may not subordinate a federal tax lien to interests that Congress has not specifically permitted to prime the lien. State law is nullified to the extent that it conflicts with federal law.
5. IRC 6323(a) provides that specific valid liens on the decedent's property owed at death that were fully perfected prior to the NFTL will have priority.
6. When an issue arises concerning priority of the federal tax lien, particularly in a court proceeding, consult with Area Counsel. For further guidance on referrals see *IRM 5.5.2.10, Referral to Area Counsel for Judicial Action*.
7. For additional guidance on federal tax lien preparation, filing and attachment see *IRM 5.5.3.6, Notice of Federal Tax Lien*.

5.5.2.5 (02-01-2011)

Solvent or Insolvent Estate

1. A solvent estate is one in which the value of estate assets exceeds the estate's debts.
2. An insolvent estate is one that has insufficient assets or equity in assets to cover its debt. A "no asset" estate is a type of insolvent estate from which there is nothing to collect. Although there may be assets in this type of insolvent estate, the assets have little or no equity. If there actually are no assets then it is unlikely there is a need for a probate proceeding.
3. "Insolvent estate" is a broadly used term. Some documents use the term "insolvent estate" to refer to estates that cannot pay **all** claims presented. After priority claims are paid the estate is then insolvent to pay the full amount of all other (lower priority) claims. For this reason it is very important that notices of proposed distribution are carefully reviewed to make sure a federal tax claim is in the proper payment category. If the federal tax claim is not in the proper payment category Counsel should be consulted on judicial action necessary to ensure payment. Review federal law concerning priority of federal and state taxes.
4. Creditors within a given class or category are paid on a pro rata basis when there is not enough money to pay all of the creditors in that class or category.
5. Before any money can be distributed to beneficiaries all the debts of the deceased must be paid, including the funeral bill, any medical bills, taxes and credit cards. This might require the sale of assets if the deceased did not set aside enough to cover all debts.
6. A declining real estate and securities market may impact the administration of probate estates. An estate administrator may discover that an estate that was solvent at inception has suddenly become insolvent. In such case, the administrator may need to act swiftly to properly administer and settle the estate to avoid potential personal liability.

5.5.2.6 (04-05-2012)

Administrative Expenses

1. Expenses related to the decedent's estate are known as "administrative expenses". They include any expenses related to maintenance of the decedent's property incurred after the decedent's death. Expenses are paid from the estate before assets are distributed to the beneficiaries or heirs.
2. The Service **in its discretion** may permit reasonable, necessary expenses to be paid before a federal tax lien. Such expenses must be examined to determine if an expense is reasonable and necessary to the administration of the estate. Reasonable and necessary expenses should not be permitted ahead of a tax lien if such expenses are already covered by an insurance policy, trust or other similar benefit that covers such costs. State statutes may limit the amount permitted to be paid for administrative expenses in probate. Inform the administrator that such planned expense payments may not be made prior to tax payments. Contact Area Counsel if an administrator refuses to pay a tax lien. For more information see *IRM 5.5.2.4, Priority of the Federal Tax Lien*, and *IRM 5.5.2.10, Referral to Area Counsel for Judicial Action*.
3. The major expenses of probate include:
 - A. **the court filing fee** - some states set filing fees based on the value of the estate's assets, other states may have a set fee schedule
 - B. **personal representative (executor or administrator) fee** - an estate administrator may charge a fee for services. In some states the amount is regulated by statute and in others it is what is *reasonable* for the work performed. If the estate administrator is derelict in carrying out his or her duties, the court may even reduce or deny compensation.
 - C. **posting a bond** - if the estate administrator is asked to post bond, this is to protect heirs and creditors from being harmed by the negligence or malfeasance of the administrator. In such cases, the bond will make the estate whole again. It is like an insurance policy. Obtaining a probate bond can be costly and depends on the value of the property subject to the bond.
 - D. **publication and legal notices** - a publication fee is charged by the local newspaper, which announces the person's death and how interested parties/creditors can contact the attorney or file a claim.
 - E. **tax preparer fees** - expenses may be incurred for preparation of pre death income tax returns, estate tax returns, estate income tax returns or business tax returns if a sole proprietorship or partnership is in the estate.
 - F. **property appraisals** - an appraisal is sometimes necessary for real or personal property such as jewelry or artwork. The fee may be statutory or based on a percentage of the appraisal of the appraised value of the asset.
 - G. **attorney fees** - this is usually the largest expense of probate. In some states the attorney's fees are set as a flat amount. In others, they are based on the size and complexity of the estate.
 - H. **funeral expenses** - may be paid from the estate, a trust or by a burial or life insurance policy. Typically a burial insurance policy has a specified coverage limit, see *IRM 5.5.2.7*, for further discussion on insurance policies.
 - I. **family allowance** - the family allowance is an award made to the surviving spouse and the minor children to live on during the administration of the estate. The dollar amount of these allowances are usually addressed in the state probate provisions. The family may also receive proceeds from a life insurance policy that may be payable to the spouse or the estate at death.
4. The estate administrator must carefully examine the accuracy and validity of claims/expenses submitted and, if appropriate compromise and settle such administrative expense claims.
5. In accordance with state law, claims and expenses are categorized for priority in which they will be paid. For federal tax claims, federal law controls the priority of payments of federal tax liens. To the extent there is a conflict between state and federal law, federal law controls. Contact Area Counsel for guidance.

5.5.2.6.1 (04-05-2012)

Reasonable Administrative Expenses

1. If a Notice of Federal Tax Lien (NFTL) has been recorded against a taxpayer during his lifetime, its priority is preserved after death and valid against other creditors (except as provided in IRC section 6323), including future beneficiaries whose claims come into existence subsequent to the Federal tax lien (they are debts of the **estate**). See *IRM 5.5.2.4*, concerning lien priority.

2. Reasonable administrative expenses are limited to expenses for preserving and marshalling estate assets. Consideration should be given to how does allowance of this expense benefit the Government giving up its lien position.
3. Generally there are state law provisions that dictate "reasonable expenses". Some state law guidelines are based on the size of the estate, other provisions allow a set percentage to be paid as an allowable expense. Some expenses can be negotiated to a certain extent by the estate administrator, others such as court filing fees are not negotiable. State standards should be considered, **but are not controlling**, when making a determination if fees charged are unreasonable.
4. Research local probate codes to determine if your state has set guidelines for reasonable expense allowances. Local law guides on the My SB/SE Counsel intranet web site may also provide this information.
5. Even where there is a statutory amount set out by state law, this may be a *maximum*, not a mandatory amount. The estate administrator has the authority to compromise expenses submitted for payment if it is reasonable to do so and beneficial to the estate.

5.5.2.6.1.1 (04-05-2012)

Necessary Administrative Expenses

1. When determining allowance for necessary administrative expenses, consider the following factors:
 - A. **What is necessary to maintain the asset until it is transferred to a beneficiary? Those expenses that are necessary to administer the estate assets in accordance with the will or state law distribution due to the taxpayer dying intestate.** For example, a beneficiary is living in the decedent's home and incurs normal living expenses such as water bills, heating bills and pool cleaning, these normal living expenses for the beneficiary are not allowed. A necessary expense would be a payment such as insurance and property tax payments, to protect the property from damage or foreclosure.
 - B. **Expenses incurred to transfer or clear title to beneficiary or third parties** - limited to expenses that are the result of settling the decedent's interest in the property or vesting good title to the property in the name of the beneficiaries or third parties. An example would be for a vehicle that is devised to a beneficiary, a necessary expense would be to title the car to the beneficiary but not to make any repairs. By will or state law the beneficiary may inherit the property but the estate administrator is not required to repair property before transferring it to the beneficiary. If a piece of real property is being sold, only attorney fees for title work and expenses to vest good title will be considered an expense.
 - C. **When are attorney fees excessive?** Check local probate code to determine if thresholds have been established. The attorney's billing statements will provide information on what actions the attorney has taken on behalf of the estate to generate the fees. These commissions or fees should be limited to expenses for preserving or marshalling estate assets. Fees that have not been incurred or are estimated are not allowable.
 - D. **Attorney fees incidental to litigation incurred by the beneficiaries are expenses charged against the beneficiaries personally and are not administration expenses.** The Service needs to carefully consider attorney fees that are charged for litigation concerning assets when it is unlikely that after payment of taxes and other creditors these assets would be transferred to beneficiaries. For example, beneficiaries are suing the estate for ownership of a house but the house must be sold to pay claims against the estate. Therefore attorney fees should not be allowed since the asset must be sold to pay claims and it is unlikely the beneficiary would receive the property because liquidation of this asset is necessary to pay claims before a distribution can be made. Fees may be deemed unreasonable if they are incurred in support of unreasonable activity, such as positions that are frivolous or without substantial merit.

Note:

Attorney's lien under state law arising from the recovery of money for the estate may be entitled to priority over a tax lien for which a NFTL is filed under IRC 6323(b).

- E. **Family allowance** - this expense is **not** considered an administrative expense of the estate. In limited circumstances, the Service can exercise discretion to allow payment ahead of a tax lien. Consideration needs to be given to circumstances such as whether there are minor children who do not have another parent to support them. For example, if the surviving parent has sufficient income, trust distributions or life insurance proceeds to support minor or incapacitated children this payment would not be allowed ahead of the tax lien. To determine income the Form 1040, Individual Income Tax Return, may provide information, also see IRM 5.5.2.7, *Insurance Policies*, and IRM 5.5.2.11, *Reporting Estate Income*. The estate administrator may also be able to provide information.
2. Miscellaneous administration expenses necessarily incurred in preserving and distributing the estate are allowable. These expenses include appraiser's and accountant fees, certain court costs, and costs of storing or maintaining assets of the estate.
3. The expenses of selling assets are allowable only if the sale is necessary to pay the decedent's debts, the expenses of administration, or taxes, or to preserve the estate or carry out distribution.
4. Employees are required to request and review documents that substantiate expenses such as itemized statements of service, invoices for payment, etc. If documentation cannot be provided, employees should not permit these expenses to be paid ahead of a decedent's federal taxes (similar to deductions on a Form 1040 - if deductions cannot be substantiated they are not allowed). Statements should include the exact nature of the claim, the name of the creditor, and the time period covered by the claim.
5. Property taxes are only necessary administrative expenses if they accrue after death.
6. Inquire what non-probate assets the heirs received. Non-probate assets such as life insurance, burial policies, certificates of deposit, jointly held bank accounts or investment accounts that are payable on death and do not go through probate. These non-probate assets provide immediate cash at death to pay expenses, debts and final income taxes.
7. If provision for payment of funeral and administrative expenses is made by insurance, a trust or otherwise these expenses should not be permitted to be paid ahead of federal taxes to the extent non-probate assets are available. Only amounts not reimbursed by insurance or otherwise will be allowed ahead of taxes. In the case of a trust that provides for payment of estate administration expenses the trust document will need to be secured and provisions for payment reviewed.
8. Employees must inquire about pre-paid funeral plans, burial and insurance policies payable to the estate that provide for payment of administrative expenses. If these type of provisions have been made by the decedent, payment of such expenses should not be allowed ahead of a claim for unpaid taxes accruing prior to death.
9. A general rule when considering allowance of funeral expenses is exclusion of items that benefit the attendees/beneficiaries rather than the deceased.
10. Expenses of a decedent's last illness are a debt of the decedent and not entitled to priority under 31 U.S.C. 3713.

5.5.2.6.1.1.1 (02-01-2011)

Claiming Taxes as an Administrative Expense

1. It is the responsibility of the estate administrator to control, maintain, and distribute entrusted property in a manner defined by law. Monitor taxes that accrue during a proceeding to ensure that timely claims are filed. The following types of liabilities may accrue during the administration of a proceeding:
 - payroll or income taxes from the operation of a business.
 - excise taxes.
 - income taxes for the estate (Form 1041).
2. When a fiduciary is appointed by the court to operate a decedent/insolvent business or to oversee the administration of an estate, send a letter to the fiduciary advising of the responsibility for filing and paying federal taxes under a new EIN as described in Pub. 1635, *Understanding Your EIN* and Pub. 559, *Survivors, Executors and Administrators*.

3. Use Form 2373, *Statement of Internal Revenue Taxes Due as an Expense of Administration of an Estate*, to claim taxes accrued during a court proceeding. This form should be filed with the court and a copy sent to the fiduciary responsible for paying the taxes, for example the fiduciary operating the business or overseeing the administration of the estate.
4. Federal Tax Deposit (FTD) Alerts are sent directly from Master File to Integrated Collection System (ICS) for assignment to a revenue officer to make contact within 15 calendar days of receipt of the alert. If an FTD alert is received follow guidelines in IRM 5.7.1, *FTD Alerts*, to determine if the estate/business is in compliance with tax deposit requirements and resolve the alert appropriately. If the business is not in compliance and there is an open probate proceeding the Form 2373 should be sent to the fiduciary responsible for paying the taxes. If advisory has an open Non-Field Other Investigation (NFOI) to monitor a proof of claim notify advisory to prepare and send the Form 2373.
5. If a person operating the business is different from the estate administrator and it is unclear whether the person operating the business is a fiduciary appointed by the court, send a Form 2373 to the estate administrator, in addition to the person operating the business.

5.5.2.7 (02-01-2011)

Insurance Policies

1. Life insurance is a contract between the insurer and the policy owner whereby a benefit is paid to the designated beneficiary if an insured event (death) occurs which is covered by the policy.
2. The beneficiary is designated in the policy contract and could be any of the following:
 - A. Spouse and/or children to provide for living expenses
 - B. Owner's estate to pay administrative expenses
 - C. A revocable trust, which may be funded by policy proceeds to pay administrative expenses
 - D. Owner's business to maintain operation of the business or to redeem stock of the owner at death, commonly known as "key man insurance"
3. Burial policies cover funeral expenses, such as mortuary expenses, casket, cemetery plot, paying off debt, the cost of administering probate or medical bills. The policy may cover specific products and services or it may be written to make a lump sum payment to pay associated expenses. Secure a copy of the policy to determine coverage.
4. Quite often the Service gets involved after these expenses are paid, ensure these expenses or reimbursement of these expenses are not allowed ahead of payment of federal taxes accruing before death. Employees must inquire about insurance policies, trusts, or other similar benefits that cover administrative expenses, as well as state statutes that limit the amount permitted to be paid for administrative expenses in probate.
5. Internal research can be performed to see if a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., is reported by a beneficiary on their Form 1040. This would be reported on lines 16a and 16b of Form 1040 or lines 12a and 12b of Form 1040A. Beneficiaries may be identified by a will, obituary, documents that reflect payable on death designations, such as signature cards on bank accounts, term documents of certificates of deposit, or a Form 712, Life Insurance Statement.
6. If the decedent was a veteran, expenses may have been paid by the Veteran's Administration as part of burial and memorial benefits. Information concerning burial benefits for veterans can be researched at www.va.gov under the benefits tab.

5.5.2.8 (02-01-2011)

Beneficiary Designation

1. An asset that has a beneficiary designation (such as a retirement account, a life insurance policy or a payable on death account) is not controlled by a will. Beneficiary designations will take precedence over the will. This type of account or policy won't have to go through probate.
2. An account or policy may have multiple beneficiaries designated. The primary beneficiary or beneficiaries inherit first. If they are dead or they die with the owner of the account or policy, the assets go to any secondary beneficiaries that have been designated.
3. If all of the transfer on death beneficiaries predecease the deceased owner, the proceeds may pass to the estate and become probate property, to be distributed in accordance with state probate law or the will. Area Counsel should be consulted in this type of circumstance before collection action is taken against the asset.

5.5.2.9 (04-05-2012)

Probate Bonds

1. In some proceedings the estate administrator will be required to post bond. A probate bond is a bond issued on the performance of an administrator. Its purpose is to protect heirs and creditors from being harmed by the negligence or malfeasance of the administrator. It is like an insurance policy. Obtaining a probate bond can be costly and the cost depends on the value of the property subject to the bond.
2. Requirements for a bond will be reflected in documents such as:
 - A. **the will** - which would designate an executor and typically specifies if this person has the authority to act with or without bond and whether court supervision is required (independent or dependent administration).
 - B. **letters testamentary** - the court will approve appointment of an estate administrator, set forth the type of administration (independent or dependent administration) and set the amount of a required bond.
3. If during probate proceedings the estate administrator requests that the bond amount be reduced, advisors should determine if the IRS debt has been acknowledged and whether the proposed reduced amount is of an adequate amount to pay all taxes due if necessary.
4. Probate bonds are a potential collection source in the event of administrator negligence or malfeasance. In this case, consult Area Counsel for advice as to how to file a claim in probate court to enforce liability on the probate bond. Be aware that generally a bond will be terminated after the estate proceedings are officially closed. If an estate proceeding has officially closed, consult Area Counsel.
5. The Service would have to authorize Department of Justice to make a claim on a bond, just like any other collection suit. See IRM 34.6.2.10.1, *Action on Bonds*.

5.5.2.10 (02-01-2011)

Referral to Area Counsel for Judicial Action

1. There will be circumstances when administrative actions are impractical or ineffective and a referral should be sent to Area Counsel to consider judicial action to maximize collection efforts. A referral or memorandum should outline facts of the case, issues in question, include the docket sheet, a complete history transcript, and all related documentation/correspondence that will assist in decision making on the issue referred.
2. See IRM 25.3.2, *Litigation and Judgments - Suits by the United States*, for information regarding requests for legal action against a taxpayer to collect unpaid taxes.
3. Depending on the issue involved the following factors may need to be addressed when making a referral:
 - A. When was the assessment made; when was the lien recorded; when were estate assets distributed or sold?
 - B. Has the estate administrator been notified of the lien's priority and demand for payment made?

- C. Is there any indication that the tax lien will not be paid ahead of other claims (such as distributions made to creditors other than those described in IRC 6323(a) through (c))?
 - D. Are unnecessary or unreasonable expenses accrued after death being paid ahead of the tax lien?
 - E. Are heirs being reimbursed for expenses (such as funeral expenses) that were paid from insurance proceeds, non-probate assets or sources other than estate funds?
 - F. Are assets available to pay the taxes due?
 - G. Are estate assets involved in litigation with creditors that are not ahead of the tax lien?
 - H. If there is a situation where an estate administrator is not handling the estate affairs, not paying creditors or if expenses or claims are being improperly paid before taxes accrued against the decedent or the estate. It may be necessary to request appointment of a receiver or successor to handle affairs for the estate; another action that may be taken is to file a motion to compel an accounting.
4. Should you come across any of the following situations notify Area Counsel and make an expeditious referral as they may have a short time frame to respond to the court:
- A. Rejection of proofs of claim
 - B. Order or motion to appear in court
 - C. Competing lien issues, for example a suit to settle competing claims
 - D. Competing federal agencies for priority payment
 - E. Litigation involving assets in which an assessment has been made prior to death
 - F. Request for assistance from U.S. Attorney on a probate proceeding matter
 - G. Assistance when an estate administrator is not taking action to pay creditors or improperly paying expenses or claims of the decedent or the estate
 - H. Petition to sell property which does not provide for payment to IRS from sale proceeds
 - I. Anything in an application, motion, notice, objection, or petition filed with the Court that seeks to contest, defeat, dispute, disregard or misclassify the IRS claim, or which may have that effect. Time is of the essence in such cases because a notice of removal to the federal district court of any dispute of the merits of a federal tax assessment or lien must generally be filed within thirty days of receipt by the IRS of the initial pleading raising such an issue. It is essential that such issues be litigated in the federal courts whenever possible.

5.5.2.11 (04-05-2012) Reporting Estate Income

1. A decedent's estate or trust is a separate legal entity for federal tax purposes. Every estate or trust that is required to file Form 1041, United States Income Tax Return for Estates and Trusts, must have an EIN.
2. The estate administrator or fiduciary of a decedent's estate or trust uses Form 1041 to report:
 - A. The income, deductions, gains, losses, etc., of the estate or trust
 - B. The income that is either accumulated or held for future distribution or distributed currently to the beneficiaries
 - C. Any income tax liability of the estate or trust
3. Refer to the instructions for Form 1041 for information regarding filing requirements, filing dates, estimated tax payments and income reported on various schedules.
4. Your compliance check should include verification if the estate is required to file Form 1041. If the Form 1041 has been filed it should be reviewed to determine income and assets of the estate or trust. Cross reference EIN's should be input to ICS.
5. Income and assets are reported on the first page of the Form 1041 on lines 1 through 9, you will find various types of income paid to the estate (interest, dividends, business income, rents, etc.).
6. The Schedule C, Profit or Loss from Business, provides information such as type of business, income and expenses deducted for assets owned.
7. The Schedule K-1 is used to report the beneficiary's share of the estate or trust. It gives names and SSN's, which is helpful if they need to be contacted concerning distributions received. The amounts on the K-1's will flow to the beneficiaries individual Forms 1040.
8. Be aware that the amount of interest the taxpayer receives depends on the type of investment, interest rate and length of investment. Determine the length of time required to earn the amounts reported. You may discover that an amount initially thought to be nominal is in fact worth pursuing. The amount could have been earned over a short period of time, while the estate was looking for somewhere else to invest money.
9. IRM 21.7.4.3, *Income/Information Returns Research*, contains information and adjustment procedures for income tax returns.

5.5.2.12 (04-05-2012) Forgiveness of Decedent's Tax Liability for Members of Armed Forces Who Die in Active Service

1. Tax liability can be forgiven, or refunded if already paid, if while on active duty, a member of the U.S. Armed Forces dies in a combat zone, or from wounds, disease or injury incurred during active service in a combat zone.
2. This forgiveness applies to the year the death occurred, as well as any earlier tax year that ended after the member entered the combat zone.
3. Tax liability can be forgiven, or refunded if already paid, if a member of the U.S. Armed Forces dies from wounds or injury incurred in a terroristic or military action.
4. This forgiveness applies to the year the death occurred, as well as any earlier tax year beginning with the year before the year in which the wounds or injury occurred.
5. See IRC section 692, Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 3. Working Decedent Cases

5.5.3 Working Decedent Cases

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- 5.5.3.2 [General Collection Guidelines on Decedent Accounts](#)
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- 5.5.3.10 [Closing as Currently Not Collectible](#)
- 5.5.3.11 [Advisory Referrals](#)
- 5.5.3.12 [Indications of Fraud](#)

5.5.3.1 (03-26-2010)

Overview

1. This IRM chapter provides direction and guidance for employees investigating and collecting delinquent returns and balances due from a deceased taxpayer's estate. It provides a roadmap to investigation, collection and resolution of decedent cases.
2. Resources:
 - A. Use IRM 5.17.13, *Legal Reference Guide, Insolvency and Decedents Estates*, and confer with local Counsel and/or Advisory when working decedent cases. Procedures may vary and require local modification based on specific legal requirements for each state.
 - B. Publication 559, *Survivors, Executors, and Administrators*
 - C. Publication 950, *Introduction to Estate and Gift Taxes*

5.5.3.2 (03-26-2010)

General Collection Guidelines on Decedent Accounts

1. Remember the following collection guidelines when working an IMF liability that involves a deceased taxpayer.

If it is a joint liability and	Then
the secondary taxpayer is deceased	pursue collection from the primary taxpayer
the primary taxpayer is deceased	pursue collection from the secondary taxpayer
both taxpayers are deceased	follow the guidelines for a single deceased taxpayer

2. Remember the following collecting guidelines when working a BMF liability that involves a deceased taxpayer.

If it is a partnership liability and	Then
all partners are deceased	follow the guidelines for a single deceased taxpayer
there are one or more surviving partners	pursue collection from surviving partners

3. If a joint liability is due and there is a surviving spouse, make a collection determination based on the surviving spouse's assets, as well as the assets in the decedent's estate.
4. The normal 10-year collection statute applies to collection from the non-probate assets of the decedent and the assets of the surviving spouse on joint liabilities. The probate proceeding extends the collection statute for the decedent's liability only and only with respect to the probate assets in control of the court.
5. Generally, if there is collection potential on a joint balance due from a decedent's estate, a proof of claim may be filed or other fiduciary notice given. However, a TC 520 should not be input (unless there is an imminent CSED) because collection action continues on the surviving spouse.
6. For collection of taxes assessed after death, you must look to the fiduciary and recipients of the decedent's assets. Give Form 10492, *Notice of Federal Taxes Due*, and a copy of the NFTL to the party holding the decedent's assets to notify them of outstanding taxes due. Consult with Advisory regarding the possibility of assessing transferee liability against persons receiving property or asserting personal liability against the fiduciary after researching IRM 5.17.13 and IRM 5.17.14.
7. For additional information on individuals who may have access to information regarding deceased individuals, see IRM 11.3.2.4.11 .

5.5.3.3 (03-26-2010)

Automated Collection System (ACS) Actions

1. ACS will secure and document information such as domicile at the date of death and probate court information. Refer to IRM 5.19.1.4.3 for specific research conducted by ACS prior to sending an account to the field for collection action.
2. ACS will make a lien determination on all decedent accounts in accordance with IRM 5.19.4.5 lien procedures. Revenue officers working decedent accounts must verify that Notices of Federal Tax Lien (NFTL's) are recorded in the proper filing location.
3. Per IRM 5.19.1.4.3.1, if the taxpayer owned real property secured by a NFTL at the time of death, ACS will update the account to status 26 for assignment to a revenue officer. The revenue officer will determine the need for any required collection action.
4. If there is an open probate proceeding or assets were distributed prior to outstanding taxes being paid, ACS will forward a referral to the appropriate Advisory unit.

5.5.3.4 (03-26-2010)

Field Collection Actions

1. Fact finding required in a decedent case includes research of probate or surrogate records, as well as internal and third party resources. Proper collection action on a decedent case begins once fact finding actions are complete.
2. Prior to contact with the fiduciary, research all internal resources such as ACS history and IDRS. These sources should provide:
 - date of death
 - place of death (including county)
 - taxpayer's home address (including county) on the date of death
 - tax returns that may be due
 - whether a probate proceeding was or is open, docket number and contact information of fiduciary
3. Information Return Program (IRP) can help identify assets owned prior to death and whether those assets have been distributed. IRP should be checked for the year prior to death, the year of death and the year after death.
4. Research the Automated Lien System (ALS) to determine if a NFTL was recorded. Determine if the NFTL was recorded in the proper filing location. If not, an NFTL should be recorded in the proper filing location where assets are located.
5. After you have checked internal sources, make a field call to the probate or surrogate's court to determine the type of proceeding that has been filed and to secure copies of pertinent documentation such as:
 - death certificate
 - will
 - letters testamentary or other documents identifying the fiduciary and the fiduciary's contact information
 - list of assets, such as an inventory and appraisal
 - proceedings that outline distribution or litigation of the deceased's assets
 - list of heirs and their contact information
 - bonds posted by the fiduciary (this may be a levy source)
 - accountings that indicate liabilities, **especially** if taxes are listed as a debt of the estate
 - documents related to a business owned by the decedent
6. Search county courthouse records to:
 - obtain copies of deeds that show what real property the taxpayer owned prior to death and how title is currently held in real property
 - determine whether assets were transferred after death, after assessment of taxes or after the NFTL was recorded.
7. Research Accurint to determine if the deceased owned property out of state.
8. Request input of the TC 540 on the deceased individual's SSN for the year of death if it is not already input.

5.5.3.4.1 (03-26-2010)

Informal Estate Administration

1. Opening a probate proceeding may not be required in some states under certain circumstances. For example, where all property of the taxpayer is passed by right of survivorship to the surviving spouse no probate proceeding is necessary because the decedent's interest ceased at death.
2. If no probate filing can be located, assets may be identified using resources such as:
 - IDRS and IRP information
 - Accurint
 - Credit bureau reports
 - County records
3. It may be necessary to contact heirs or third parties familiar with the taxpayer for information; follow procedures in IRM 5.1.17, Third Party Contacts. In addition to the sources in IRM 5.5.3.4, the following resources may provide contacts:
 - local obituary of deceased
 - tax returns may list dependents
 - state inheritance tax return

5.5.3.4.1.1 (03-26-2010)

Assets In a Trust

1. Another alternative to a will and probate administration would be the creation of a trust. A trust involves any arrangement whereby property is transferred from one person to be administered by a trustee for a third party's benefit (the beneficiary).
2. Assets can be transferred to a trust before or after death.
3. It is necessary to secure a copy of the written trust document to determine:
 - the type of trust
 - the trustee of the trust
 - the beneficiaries of the trust

- specific assets to be transferred to the trust
 - when the assets will be transferred to the trust
 - ability to modify the trust, terms and conditions
4. Some common forms of trusts related to probate are:
- *Irrevocable Trust* - a trust that cannot be altered, changed, modified or revoked after its creation (absent extenuating circumstances). Once the grantor transfers property to an irrevocable trust, the grantor can no longer take the property back from the trust.
 - *Living Trust or Inter Vivos Trust* - a trust created during the lifetime of a grantor that can be altered, changed, modified or revoked. The grantor transfers title to property to a trust and has the power to remove the property from the trust during their lifetime. Typically the grantor is the initial trustee as well as the initial beneficiary of the trust, and his/her spouse and children are the ultimate beneficiaries of the trust.
 - *Testamentary Trust* - a trust that is included under the terms and conditions of a will. Such trusts take effect after the death of the person making the will.
5. When considering collection against assets in a trust, it is important to determine when the tax lien arose or was recorded in relation to when assets were transferred to the trust.
6. Local Counsel should be consulted to review terms/conditions of the trust and the impact of the tax lien before pursuing collection against assets in a trust.

5.5.3.5 (03-26-2010) Contact With The Fiduciary

1. Once you complete the fact-finding phase, contact the fiduciary and make demand for any tax due or outstanding returns. Follow requirements in IRM 5.1.10.3.2 for an effective initial contact. Give Form 10492, Notice of Federal Taxes Due, and a copy of the NFTL to the fiduciary. Form 10492 warns the fiduciary of personal liability if lower priority claims are paid ahead of the Service's claim. Advise the fiduciary that penalties and interest continue to accrue until the balance is paid in full.
2. Collection against assets not controlled by the court is not restricted. Recording a NFTL or other collection action may continue. Make every effort to work with fiduciaries to secure payment or returns prior to enforcement. Consult with Counsel or Advisory before levy or seizure of probate assets, or if you are unsure whether or not assets are under court control.
3. Ensure that information provided by a fiduciary or beneficiary regarding assets and debts is corroborated by your own investigation.

5.5.3.5.1 (03-26-2010) Probing Questions

1. Ideally, research is conducted before interviewing a fiduciary or third party about the current status of assets. Useful questions during the fact finding phase include:
 - Is the probate proceeding open?
 - Is there a listing of probate assets?
 - Did the taxpayer own assets out of state?
 - Did the taxpayer have assets in a trust?
 - Did the taxpayer own publicly traded stock or stock in a closely held corporation?
 - Are there any exempt, abandoned or after acquired assets?
 - Were the probate assets distributed?
 - Who received assets and when? Ask for a description of the assets and the names, addresses and contact information of those who received assets.
 - Did the deceased own a business? If yes, what is the EIN? Who is currently operating the business?
 - What is the type of business entity (sole proprietorship, partnership)? Are there business assets?
 - Is a financial statement available for the business?
 - Is the business in compliance with filing and paying requirements?
 - Is there current litigation pending that affects probate assets?

5.5.3.6 (03-26-2010) Notice of Federal Tax Lien

1. Determine whether the NFTL was recorded, when it was recorded in relation to the date of death and whether it was recorded in the appropriate filing location that coincides with property owned by the decedent.
2. If there is an error with the styling of the NFTL or the location in which the NFTL was recorded, take action to either file a new NFTL or amend the recorded NFTL. See IRM 5.12.2.6.11, Correcting Lien Notices, for guidance on correcting lien errors.
3. It is important to determine what property the lien attaches to and the Government's position among other creditors.

If assessment is made: Then the assessment lien attaches to:

before death	property owned by the taxpayer and follows property into probate or to the transferee.
after death	any probate property in the taxpayer's estate at the time of assessment.
4. If the NFTL is recorded on an **assessment made before death**, it attaches to assets owned by the taxpayer and follows those assets into the estate or the hands of the transferee. The Service's priority position with respect to those assets, is determined based on the date of the filing of the NFTL before the taxpayer's death. It is important to determine during your research what assets the taxpayer owned before death and how they were titled, when the lien was recorded. Consult with Advisory or Area Counsel concerning levy or seizure of these assets.
5. If the NFTL is recorded on a **post-death assessment**, it would not reach any property that passed to heirs automatically at the time of death (non-probate property), but it would reach any probate property in the taxpayer's "estate" at the time of the assessment. Title to the decedent's property passes to the estate or heirs upon death. It is important to determine during your research what assets were in the taxpayer's "estate" when the lien was recorded.
6. Probate and non-probate property are described in IRM 5.5.1.5.
7. If a decedent account is under Advisory control, Advisory is responsible for filing, amending and re-filing NFTL's as necessary.

5.5.3.7 (03-26-2010)

Styling and Mailing of Notices

1. Notices of Federal Tax Lien (NFTL's) and notices such as final demand letters or CDP notice, should be styled and sent as indicated in the table below. In this example, John Smith is the decedent, Jane Smith is his surviving spouse, and Robert Drew is the executor, where applicable.

IF the liability is...

a joint assessment,

an individual assessment, and a fiduciary has been appointed,

an individual assessment, and no fiduciary has been appointed,

based on Form 1041,

Then styling should include...

Name: John Smith (Deceased) and Jane Smith

- Address: Jane Smith's address
- Notices must be sent separately to the last known addresses of both spouses.

Name: John Smith (Deceased)

- Address: John Smith's last known address
- Send notices to the fiduciary, Robert Drew, at his address.

Name: John Smith (Deceased)

- Address: John Smith's last known address
- Send notices to John Smith's last known address

Name: Estate of John Smith

- Address: John Smith's last known address
- Send notices to the fiduciary, Robert Drew, at his address.

2. The NFTL must identify the taxpayer, the party against whom the assessment was made. The fiduciary or his address should not be added to the NFTL.
3. Notices must be mailed to the fiduciary. If no fiduciary is appointed, notices should be mailed to the decedent's last known address. The fiduciary for the decedent has the authority to exercise CDP rights on the behalf of decedent.

5.5.3.8 (03-26-2010)

Notice of Levy

1. The Service cannot levy on property in control of the probate court. Consult local Area Counsel regarding the effect of probate and local law regarding property interests.
2. Revenue officers can levy on any property subject to the assessment lien or property of the taxpayer's estate.
3. If the fiduciary has control of estate assets, a levy can be served on the fiduciary. If there is a levy source that has some sort of income due to the estate (e.g., rental or interest income), you may levy that source directly. If the estate generates income that becomes property of the estate, it can be reached by levy.
4. If a notice of levy will be issued, L1058 must be sent to the fiduciary.

5.5.3.9 (03-26-2010)

Fiduciary or Transferee Liability

1. Seek advice from Advisory or Counsel concerning other federal and state remedies that may be available to force the fiduciary or beneficiaries to pay the decedent's income or business tax debt. These remedies may include transferee actions against beneficiaries who received property before the taxes were paid or actions asserting the personal liability of the fiduciary under 31 U.S.C. Section 3713. See IRM 5.17.13 or IRM 5.17.14.5 for further guidance.
2. A fiduciary is a person entrusted with the property of another. It is the responsibility of a legally appointed or designated fiduciary to control, maintain, and distribute that property in a manner defined by law. The general rule is that in a case involving a decedent the fiduciary must pay the federal tax claim before other claims. A fiduciary who fails to pay federal tax claims may be held personally liable under 31 U.S.C. § 3713.
3. If you determine during your research that the fiduciary distributed assets of the estate and taxes were not paid:
 - determine if and when the fiduciary had knowledge of the balance due or unfiled returns. Documents submitted in probate proceedings or accountings may provide this information.
 - determine if a claim or other notification was made for taxes due, either by proof of claim, Form 10492 or recorded NFTL.
 - determine who received assets and the value of these assets.
4. The Statute of Limitations for suit against a fiduciary under 31 U.S.C. § 3713 is normally ten years from the date the tax was assessed. A suit referral should be made as early as possible to allow Counsel time to review the case and authorize the Department of Justice (D.O.J.) to file a suit. D.O.J. needs time to prepare and take litigation action.
5. If you determine during your fact finding research that assets were transferred before death, consult with Advisory regarding possible transferee issues.
6. The periods of limitation under IRC § 6901(c) for the assessment of the liability for an initial transferee is one year after the assessment period against the transferor ends. For a fiduciary, the statute of limitations is one year after the fiduciary liability arises or the date the period for collection of the tax ends, whichever is the later.
7. Another collection avenue is a suit to foreclose the federal tax lien. This is particularly advisable if there are unknown heirs that may have an interest in a property the Service is considering for seizure and sale action.
8. For more information concerning suits, see IRM 5.17.4, Suits by the United States.

5.5.3.10 (03-26-2010)

Closing as Currently Not Collectible

1. Investigation and collection of taxes due continues despite the death of a taxpayer. You may find during the fact finding phase that the taxpayer owned few or no assets, or that liabilities against the assets exceed equity. If research verifies there are no assets, the account may be closed uncollectible without a lien filed. If assets were transferred before death or distributed by the administrator without payment of the outstanding taxes, continue your investigation. The Government is generally entitled to have its claim paid first, see IRM 5.17.13.
2. Use Closing code (cc) 08 when reporting a decedent's account currently not collectible.
3. Closing code 08 is appropriate for IMF joint liabilities only when both taxpayers are deceased and a determination has been made that there is no collection potential from assets owned by either taxpayer at the time of death.

4. Closing code 08 may be used when the primary taxpayer is deceased and a determination has been made that there is no collection potential from the decedent's individual or business assets or from persons in possession of such assets. Collection may also be pursued from the surviving spouse on joint liabilities. Request a mandatory follow-up for the surviving spouse if appropriate.
5. Do not use cc 08 when only the secondary taxpayer is deceased. A TC 540 should be input on the secondary taxpayer's SSN for the year of death. Collection may be pursued from the decedent's individual or business assets or from persons in possession of such assets. Collection may also be pursued from the primary taxpayer on joint liabilities. If the primary taxpayer is determined to be uncollectible, the account should be closed using a hardship closing code. A Collection Information Statement must be secured from the primary taxpayer.
6. Closing code 08 also applies to BMF sole proprietorships and partnerships only if all of the partners are deceased and taxes were due at the time of death.
7. In situations where the owner of an LLC is identified as the liable taxpayer and is deceased, closing code 08 is appropriate.
8. When reporting accounts CNC using closing code 08, do not request separate input of TC 540 to delete the master file filing requirements. TC 530 cc 08 generates a TC 540.

5.5.3.11 (03-26-2010) **Advisory Referrals**

1. Revenue officers should take appropriate collection actions before referring cases to Advisory. Collection action generally can proceed against distributed assets if the assessment was made before distributing, either through administrative procedures or suit to enforce the lien.
2. If you determine the assets:
 - are under the control of the probate or surrogate's court, copy pertinent documents regarding these assets and prepare a referral to Advisory
 - were not reported to the court, contact Advisory or Counsel for guidance on how to proceed with collection action against these assets
 - have been transferred before payment of the outstanding taxes or assets are involved in litigation, contact Advisory or Counsel for guidance on how to proceed with collection action against these assets.
3. State laws vary regarding the requirements involving probate proceedings. Some states require a timely proof of claim to be filed with the probate court where other states do not. If you work in a state that requires a proof of claim, contact Advisory and discuss referring the case for the filing of a proof of claim. Ask the advisor about documentation required to forward a referral so the claim can be filed accurately and timely.
4. Send referrals to Advisory on Form 4488, Proof of Claim Report for Advisory/Insolvency. This form identifies pertinent information and documentation that Advisory generally needs when filing a proof of claim in decedent cases.
5. Once a referral of a probate case is accepted by Advisory, an advisor will request input of the TC 520, if appropriate. Once the TC 520 posts on IDRS, the ICS case will close unless outstanding return delinquencies are assigned to the revenue officer.
6. Advisory may issue an Other Investigation (OI) for necessary field actions related to a decedent case under their control.

5.5.3.12 (03-26-2010) **Indications of Fraud**

1. If you uncover indications of fraud during an investigation, follow guidelines in IRM 25.1.2, Fraud Handbook, Collection Field Function.
2. Possible indicators of fraud might include:
 - suspected intentional omission or concealment of assets
 - suspected concealment or alterations of records or documents
 - deliberate false statements regarding the valuation of property
 - deliberate unsupported claims for debts or expenses
 - deliberate falsification of affidavits pertaining to attorney's fees or executor's commissions.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 4. Proof of Claim Procedures in Decedent Cases

5.5.4 Proof of Claim Procedures in Decedent Cases

- 5.5.4.1 [Section Overview](#)
- 5.5.4.2 [Establish Local Decedent Guide](#)
- 5.5.4.3 [Establishing Case Controls](#)
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- 5.5.4.14 [Subsequent Closing Actions](#)
- 5.5.4.15 [Working Requests for Discharge](#)
- 5.5.4.16 [Proof of Claim Retention](#)
- Exhibit 5.5.4-1 [Template for Decedent Guide](#)

Manual Transmittal

December 06, 2011

Purpose

(1) This transmits a complete revision to IRM 5.5.4, Collecting Actions on Insolvency and Decedent Cases that is being renamed to represent the content matter in which guidance is being provided on. This IRM section has been completely rewritten to provide direction on preparation of proofs of claim, monitoring proofs of claim, compliance with state laws regarding timely filing of proofs of claim and technical guidance related to claim procedures.

Material Changes

- (1) Due to the substantial revisions, the subsection dates have all been changed to reflect the current date.
- (2) References to Technical Support were changed to Advisory throughout the text.
- (3) Added new information on the following topics:
 - proof of claim procedures
 - Advisory responsibilities
 - preparation of estimated proofs of claim
 - compliance with bar dates
 - working discharge requests
 - preparation of local decedent guide
 - proof of claim retention period

Effect on Other Documents

This manual transmittal supersedes manual transmittal dated June 23, 2005.

Audience

Small Business/Self-Employed Employees

Effective Date

(12-06-2011)

Scott D. Reisher
Director, Collection Policy

5.5.4.1 (12-06-2011) Section Overview

1. This section describes Advisory actions in relation to decedent estate proceedings and is meant to emphasize time sensitive deadlines in state probate proceedings that impact timely case actions to protect the Government's interest.
2. Use the information in this section to guide you in the filing, processing and monitoring of Proofs of Claim (POC) and decedent files maintenance.

3. Additional resources:

- Refer to your local law guide for state specific information, located on the My SB/SE Counsel web page under the link for law guides, <http://ccintranet.prod.irsounsel.treas.gov/OrgStrat/Offices/sbse/Pages/LawGuides.aspx>.
- IRM 5.5.2, Probate Proceedings
- IRM 5.17.13, Legal Reference Guide for Revenue Officers, Insolvencies and Decedents' Estates, and confer with Area Counsel when confronted with decedent issues beyond your scope of knowledge and expertise.
- Publication 559, Survivors, Executors and Administrators
- Decedent Estates page, located on MY SB/SE Collection web page: <http://mysbse.web.irs.gov/Collection/toolsprocesses/EstateTax/DecedentEstates/default.aspx>

5.5.4.2 (12-06-2011)

Establish Local Decedent Guide

1. Advisory offices responsible for processing decedent cases and related claims will draft a local decedent guide for the states they work. This guide must address specific state proceeding time requirements and thresholds that will assist employees in taking timely action to protect the Government's interest. The guide should address issues such as time periods for filing a proof of claim, period of time to reject a claim, deadlines to institute suit or appeal rejected claims, thresholds on fees, bond requirements, deadlines for filing an inventory, etc. Confer with Area Counsel for their input and assistance with interpretation of state law provisions. Review local law guides to determine if these time requirements or thresholds have been addressed and conduct internet research of state probate codes for information to be included in the guide.
2. See template for preparation of Decedent Guides in Exhibit 5.5.4-1. Decedent guides will not reiterate procedures that are currently addressed in the decedent IRMs. Instead, the decedent guides should address specific time frames that are mandated for state probate proceedings that have impact on timeliness of action that needs to be taken by Advisory. These guides should be updated every two years based on probate rulings within that period, any modifications should be approved by Counsel.
3. If Area Counsel advises not to file POCs in specific jurisdictions, the Counsel opinion must be added to the local decedent guide or local law guide. In such a case, the local decedent guide should address actions the office will take to protect the Government's interest in these jurisdictions, see IRM 5.5.4.6.1, No Proof of Claim Requirement.

5.5.4.3 (12-06-2011)

Establishing Case Controls

1. Advisory may receive requests for actions such as POC, payoff or release of lien from various sources including estate administrators, requests for assistance from Counsel or referrals from revenue officers or ACS.
2. These requests should be acted on promptly, within the state time frames established for the action requested.
3. Upon receipt of these requests Advisory will establish decedent case controls on the Integrated Collection System (ICS). Advisory will create an ICS Non-Field Investigation (NFOI) with ICS action code 198.
4. When creating an NFOI in the summary screen, under the section titled "Module Dates," input the due date for any action necessary, the earliest CSED, and the lien refile date.
5. Schedule follow up notifications in ICS at appropriate dates that coincide with time sensitive deadlines established by state probate proceedings to ensure maximum collection and protection of the Government's interests.
6. Input all cross reference EIN's (for 1041 returns), SSN's (for 706 returns) or any business entity operated by the estate, in the cross reference fields or ICS history.

5.5.4.4 (12-06-2011)

Field and Advisory Responsibilities

1. There is no absolute rule when a decedent case should be transferred from the field to Advisory. Every case needs to be evaluated and a determination made based on the facts of each case. This may depend on what action or inaction is being taken to liquidate estate assets to pay creditors of the estate. Factors to be considered in your determination are listed below, also refer to IRM 5.5.3.11, Advisory Referrals.
2. If the assets are presently under control of the probate or surrogate's court (a probate proceeding is usually dependent or supervised), the case should be referred to Advisory to maintain control.
3. If the assets are **not** under the control of the court and the case is assigned to the field, the revenue officer can continue collection efforts. The revenue officer must conduct research at the probate court to determine if there is a probate proceeding and the present status of that proceeding (open, closed, assets in litigation, assets pending distribution, etc). The docket sheet outlines what has been filed in a proceeding, it may be available electronically or in the probate file. Obtaining records from probate proceedings is critical to decision making. Advisory should document the ICS history concerning any documentation received concerning payment of creditors or distribution of assets, as this may impact collection actions.
4. If the account is assigned to the field, the revenue officer should determine if a POC has been filed by researching probate records and before contacting the estate administrator or Advisory. If a POC has not been filed and the probate proceeding is open, contact Advisory and request the claim be filed to protect the Government's interest. It may not be necessary to close the case to Advisory simply to file a POC if collection can continue.
5. If the estate is involved in litigation (concerning assets, lien priority, heirship, etc) or the estate administrator is not taking action to pay creditors, Advisory or Counsel should be consulted on how to proceed. Documents concerning the litigation will need to be reviewed and sent with a referral. See IRM 5.5.2.10, Referral to Area Counsel for Judicial Action for additional information.
6. If the probate proceeding is closed, the assets distributed, the estate administrator did not have knowledge of tax due the case should not be referred to Advisory. See IRM 5.5.3, Working Decedent Cases, for guidance on case actions in this circumstance.
7. If Advisory files a POC, Advisory is responsible for the following:
 - follow up on acceptance or rejection of the claim
 - reviewing notices related to distribution of estate assets/funds to determine if the Service is paid the appropriate amount
 - follow up on status of assets and probate proceedings
 - determination if all required tax returns have been filed
 - that distribution is made in accordance with final accounting
 - preparation of a referral to Counsel if required
8. Whether the account is in the field or Advisory, related accounts for entities that were owned by the decedent should be associated to address all tax due accounts and POCs can be filed if necessary.

5.5.4.5 (12-06-2011)

Advisory Responsibilities on Controlled Cases

1. Once an NFOI is established Advisory needs to analyze what action is needed, document a plan of action and set follow up dates in ICS. IRM 5.5.3.4, Field Collection Actions, provides guidance to assist in your initial analysis concerning estate assets.
2. Determine outstanding tax liabilities, cross reference related entities and secure unfiled returns to file accurate POCs or provide notice of tax due to estate administrators.
3. Advisory is responsible for input of TC 520, 521 and 550.
4. IRC Section 6503(b) suspends the period for collection in any judicial proceeding **when all or substantially all of the assets of a taxpayer are under the control of a court**. If this condition is present, input Transaction Code (TC) 520, Closing Code (CC) 80 in the case of a probate. See IRM 5.5.1.9, Collection Statute Expiration Dates, for additional information regarding CSEDs.
5. Advisory is responsible to take action to refile NFTLs on accounts they are monitoring and at the time an NFOI is being closed. Document the ICS history as to whether the NFTL was refiled or the reason why it was not.
6. Ensure the NFTL is filed in the proper location based on estate assets (not the location of the executor).
7. If the Service is in litigation keep NFOI controls open and set a notification in ICS to refile the lien, so the NFTL does not self release.
8. In all cases being monitored, contact Area Counsel immediately if any document (without limitation: application, motion, notice, objection, petition, etc.) is filed with the Court that seeks to contest, defeat, dispute, disregard or misclassify the IRS claim, or that may have that effect. Time is of the essence in such cases because a notice of removal to the federal district court of any dispute of the merits of a federal tax assessment or lien must be filed generally within thirty days of receipt by the IRS of the initial pleading raising such an issue. It is essential that such issues be litigated in the federal courts whenever possible.
9. Advisory will follow up with the court or estate administrator to determine the status of proceedings and secure additional documents related to probate proceedings. Research electronic systems that provide access to docket sheets or court records, review correspondence from the court or administrator or make contact with the estate administrator.
10. Advisory will be responsible for actions outlined in IRM 5.5.4.4(7).

5.5.4.6 (12-06-2011)

Proof of Claim Procedures

1. A proof of claim (POC) is a written statement that sets forth a claim against the probate estate of a deceased debtor. To share in distribution from the probate estate most probate courts will not consider payment of a debt unless a timely claim is submitted. Under state law an estate administrator may be subject to liability for paying creditors who do not file a claim.
2. The Service may file a Form 4490, Proof of Claim for Internal Revenue Taxes, with the court or location mandated by state law to give notice of taxes due. By filing a POC the Service is notifying the estate administrator of taxes due, putting the Service in a higher priority among other creditors to be paid.
3. Delegation Order Number 25-3 establishes authority for Advisory and Insolvency employees to sign POCs. The signature should be notarized if required by state law or court rules.
4. Prior to the bar date, file the POC for the full assessed tax liability even when other action is pending that may alter the amount.
5. When related taxpayer entities (such as a business) are involved in separate proceedings, prepare a separate POC for each of them. If taxes accrue after the proceeding commences file Form 2373, Statement of Internal Revenue Taxes Due as an Expense of Administration of an Estate. See IRM 5.5.2.3, Providing Notification of Federal Taxes Due.
6. Form 4490 can be generated on ICS, when you are in the case pull up the templates and click on "Enter Data Grid". It populates the taxpayer TIN, Name, Address, Advisor information etc. The user will have to enter the Tax Periods since the NFOI does not contain them and can then print the form.
7. Letter 4653, Proof of Claim Cover Letter, will be sent with the POC. This cover letter provides information to estate administrators on the Government's position regarding federal law and its impact on state statutes. A facsimile NFTL generated by ALS (Automatic Lien System) may be included as an attachment to the proof of claim to support the Service's secured status.
8. It is critical that POCs are followed up on timely to ensure they are received and whether the claim is rejected. If an estate representative does not act on a presented claim in accordance with deadlines specified in state statutes (usually 30 days) such failure may constitute rejection of the claim.
9. Typically state statutes set a specific time period, usually 30 to 90 days, for the claimant to institute suit or appeal rejection of the claim. If appeal action is not taken the claim may be barred forever from being paid. If a claim is rejected it may be necessary to file a suit in federal district court and Counsel should be consulted as soon as possible to take action before the deadline.
10. Federal courts do have jurisdiction on actions to determine validity, priority and amount of claims against a decedent's estate. Filing suit in federal court is highly recommended in circumstances when the assessment lien or recorded lien has been established prior to death to determine priority of payment of taxes due.
11. If estate assets are under control of the probate court (supervised or dependent administration) enforced collection efforts should not be taken after the claim is filed or notice and demand is made without seeking Counsel approval before.
12. Any property which is exempt from a proceeding by statute may be levied upon. Before levy, consult with Counsel to determine that the property is not subject to administration by the court. Amounts not collected in the proceeding may be collected from non-probate property.
13. Probate proceedings do not typically have an automatic stay that prohibits collection or filing of a federal tax lien. Attempts to collect are first addressed with the estate administrator, if claims or demand for payment are not honored Counsel and/or the local decedent guide should be consulted on next actions to take.

5.5.4.6.1 (12-06-2011)

No Proof of Claim Requirement

1. If Area Counsel advises not to file POCs in specific jurisdictions the Counsel opinion must be added to the local decedent guide or local law guide. Notice of taxes due must still be provided to the estate administrator.
2. Filing a POC *may* subject the claim to action by the court where the proceeding is conducted. In a probate action, a state court can rule on the merits of a claimed federal tax liability. Do not file a POC in jurisdictions where there is a **history of adverse decisions**.
3. In jurisdictions where POCs are not filed, provide notification of amounts owed to the estate administrator or other fiduciary. Form 10492, Notice of Federal Taxes Due, must be sent to the estate administrator. A copy of the letter may be filed with the court. This form advises the estate administrator of the taxes owed and of their potential personal liability under 31 U.S.C. § 3713. The ICS history must be documented indicating the date the Form 10492 was sent putting the estate administrator on notice of tax due. See IRM 5.5.2.3, Providing Notification of Federal Taxes Due, for additional guidance.
4. If taxes accrue after the probate proceeding commences send Form 2373 to the estate administrator if this person is responsible for paying the taxes. If a person operating the business is different from the estate administrator and it is unclear whether the person operating the business is a fiduciary appointed by the court, send a Form 2373 to the estate administrator, in addition to the person operating the business. A copy of the form should be filed with the court. Filing a copy of the form with the court makes the

judge aware that estate liabilities are increasing and unresolved. See IRM 5.5.2.6.1.1.1, Claiming Taxes as an Administrative Expense, for additional guidance.

5. In all cases, contact Area Counsel immediately if any document (without limitation: application, motion, notice, objection, petition, etc.) is filed with the Court that seeks to contest, defeat, dispute, disregard or misclassify the IRS claim, or that may have that effect. Time is of the essence in such cases because a notice of removal to the federal district court of any dispute of the merits of a federal tax assessment or lien must be filed within thirty days of receipt by the IRS of the initial pleading raising such an issue. It is essential that such issues be litigated in the federal courts whenever possible.

5.5.4.6.2 (12-06-2011)

Probate Claims in U.S. Territories

1. U.S. territories generally model their revenue laws on the Internal Revenue Code ("I.R.C."). For guidance concerning laws in U.S. Territories read the local law guide on the SBSE Counsel website <http://ccintranet.prod.irs.counsel.treas.gov/OrgStrat/Offices/sbse/Pages/LawGuides.aspx>.

5.5.4.7 (12-06-2011)

Comply With Bar Date

1. The bar date (court deadline) for filing a POC is time sensitive. The deadline to file a creditor claim is mandated by state law. Many state probate codes will indicate that creditor claims not filed timely will be barred from payment forever or that a debt cannot be considered for payment unless a claim is filed. Check state probate codes or your local law guide to determine the established deadline to file a timely claim to be considered for payment.
2. Comply with the bar date when possible although the Service is not bound by state statutes of limitations in the collection of taxes, though state probate proceedings will continue based on deadlines specified by state law. Once filed the claims will be evaluated and decisions made to pay creditors based on those timely filed claims. Therefore it is critical that claims made on behalf of the Service be filed timely. If claims are not filed timely, the Service may have to litigate to establish its priority. It is of no benefit to the Service to submit a claim for payment after claims have been paid and estate assets have been distributed.
3. Timely filed claims may avoid additional litigation to pursue assets after distribution.
4. It is not in the state court's interest to prolong probate proceedings longer than necessary. That is why there are mandated deadlines to keep necessary actions occurring to resolve estate matters and close the proceedings.

5.5.4.7.1 (12-06-2011)

Missed Bar Dates

1. If the claim filing period has expired, secure probate records to determine the status of estate assets (available or distributed).
2. If the bar date has passed and estate assets have **not** been distributed or **involved** in litigation file the POC with the proper authority.
3. If the bar date has passed and estate assets have been distributed **and** the estate is closed do not file the POC. At this point it is best to contact the estate administrator and request documentation concerning distribution of estate assets to consider transferee issues. In such case determine if the estate administrator had knowledge of taxes due.

5.5.4.8 (12-06-2011)

Claiming Penalty and Interest

1. In decedent estate proceedings, claim interest to the anticipated date of payment. Typically that date would be after the filing and rejection period deadlines. Some states may dictate a time period when claims must be presented to the court for approval, that date may also be used.
2. Claim all applicable penalties to the expected payment date. State statutes limiting penalties do not bind the Service.
3. The advisor can calculate the tax, penalty and interest for the claim using IDRS command codes INTST or COMPA. Refer to IRM 2.3.29, Command Codes INTST, ICOMP and COMPA.
4. Command code INTSTB shows the tax, the assessed failure to pay (FTP), the assessed interest, assessed penalties other than FTP; these amounts comprise the "Assessed Total." INTSTB also reflects the accrued interest, accrued FTP and total accruals. Finally, it gives the total FTP (assessed and accrued), and the total interest (assessed and accrued) for a "Total Balance Due" (assessed total and accrued total).
5. Claim interest and penalties on tax liabilities incurred related to the administration of the estate.

5.5.4.9 (12-06-2011)

Estimated Claims

1. An estimated (or unassessed) claim is a POC that is filed when the exact amount owed is still unknown. This may be necessary when the examination of a tax return is not completed or a tax return has not been filed. An estimated POC protects the Government's interest before the exact liability is determined.
2. One Form 4490 can include both assessed and estimated amounts, identify the estimated portion as "Estimated Liability" in the "Remarks" column. Show the amount due for each tax period separately.
3. File an amended or supplemental POC as soon possible when the correct tax liability is determined, once returns are filed or Examination determines the amount of a tax liability or tax deficiency.
4. If no return information is available for a period from which to compute an estimate, annotate "Not Filed" next to the period, and put \$100 in the tax due column.
5. The estimated claim should be based on as much internal information as possible. If the evidence indicates the probability of a refund or no tax due situation exists do not add an estimate to the claim.
6. The following resources may be used to determine an estimated tax liability:
 - IDRS data using command codes such as IRPTR, SUPOL, PMFOL, RTVUE, and BRTVU
 - last return filed information (command code TRDBV)
 - income and expense schedules
 - inventory and appraisement (which may include assets that may not be on IRPTR such as pension or retirement accounts, stock accounts and IRA's)
 - information available from revenue officer's case file
 - examination files or information from exam functions (proposed notice of deficiency or statutory notice)
 - under reporter information
 - information from the estate administrator
7. If estimated liabilities are listed for unfiled returns, penalties and/or interest do not have to be computed.

8. Taxes subject to deficiency procedures remain estimates even if the taxpayer disagrees with the proposed assessment or fails to respond within the 30 day period because the Service must then issue a statutory notice of deficiency before assessment.

5.5.4.10 (12-06-2011)

Amended, Supplemental, and Consolidated Claims

1. If a POC has been filed and situations warrant, an amended claim may be filed as necessary to claim the correct liability owed the Service. Amended claims for additional tax due should be filed if the probate proceeding is open and:
 - additional returns are filed
 - examinations are completed
 - additional liabilities are determined (for example Trust Fund Recovery Penalty)
2. After the bar date, file an **"amended"** POC to change the amount in a filed claim. Mark the front of the Form 4490 as follows: **Amendment No. ___ to Proof of Claim dated _____**. Avoid filing repeated amendments whenever possible.
3. File a **"supplemental"** POC when an additional liability is discovered after the original claim was filed. Mark the front of Form 4490 as follows: **Supplemental No. ___ to Proof Of Claim dated _____**.
4. File a **"consolidated"** POC when two **"amended"** or **"supplemental"** claims have been filed and another change is needed unless the statement of taxes owed is extremely long and complex. **"This claim consolidates Proofs of Claim dated _____ and _____."**

5.5.4.11 (12-06-2011)

Service and Distribution of Proof of Claim

1. Mail or hand deliver (if a fee is required) parts one and two of the POC to the court official if designated by state law or to the responsible estate administrator when appropriate. Form 4490 provides distribution directions. A facsimile NFTL generated by ALS (Automatic Lien System) may be included as an attachment to the proof of claim to support the Service's secured status.
2. Letter 4653, Proof of Claim Cover Letter, will be sent with the POC. This cover letter provides information to estate administrators on acknowledging the claim, the Government's position regarding federal lien law and its impact on state statutes.
3. The court official will acknowledge receipt by stamping the time and place received on part 2. Estate administrators should include an acknowledgement letter when returning part 2.
4. Retain acknowledgment copy and part 5 file copy with the Advisory case file.
5. Furnish part three to the estate administrator, or Court if part 1 is sent to estate administrator.
6. Provide part four to the U.S. Attorney, unless that office previously advised the Area Director that they prefer **not** to receive a copy.
7. If an acknowledged POC part 2 is not received from the court or the fiduciary within 21 days, take the following actions to secure one.
 1. check the docket sheet to see if receipt of the claim was acknowledged in the probate proceeding records
 2. contact the court or estate administrator and request the acknowledgement copy
 3. if still no acknowledgement send a duplicate Form 4490 and Letter 4653 to the court or the estate administrator by certified mail.

5.5.4.12 (12-06-2011)

Monitoring During Probate Proceedings

1. On controlled cases Advisory will follow up with the court or estate administrator to determine the status of the POC, proceedings and/or estate assets. Research electronic systems that provide access to docket sheets or court records, review correspondence from the court or administrator or make contact with the estate administrator. Advisory should document the ICS history concerning any documentation they receive concerning payment of creditors or distribution of assets.
2. Each state has specific time frames to consider and reject or approve claims. Advisory needs to input follow up dates on ICS to coincide with these deadlines. Generally the estate administrator will send a notice to the party who submitted the claim to notify them if they will be paid in full, a partial payment or nothing.
3. When the estate administrator or court decides who gets paid a notice of distribution (or proposed notice of distribution) of estate assets is sent advising what claims get paid and how much. It must be reviewed in the stated time period to ensure the Service is paid in proper priority and in the appropriate amount. IRM 5.5.2, Probate Proceedings, provides guidance on administrative expenses.
4. There is a set time period (generally 30 days, check state law) to appeal this decision (or proposal) and it is critical that this time period is monitored because the Service can lose its appeals rights, which may result in additional litigation in federal court.
5. On occasion there may be a hearing to dispute priority of creditors. If the Service's priority is in question, a referral to Area Counsel is necessary .
6. Once distribution is made (received) if there is still tax due a determination needs to be made if there are non-probate assets to collect from or if the case should be closed.
7. Follow up dates in ICS should coincide with state time frames for filing a claim, deadlines for response to proposed distribution plan, deadlines to appeal rejection of a claim, etc. A follow up date may be based on anticipated sale date of a property in which payment from the sale proceeds will be applied to outstanding taxes. Follow ups in ICS will help the advisor protect the Government's interest and move the case to resolution in a timely manner.
8. If it appears that the executor is not taking appropriate action to pay the creditors of the estate it may be necessary to consult Area Counsel for direction or assistance to resolve a stagnant case. See IRM 5.5.2.10 for additional information concerning referrals to Counsel.
9. If taxes accrue after the probate proceeding commences send Form 2373, Statement of Internal Revenue Taxes Due as an Expense of Administration of an Estate, to the estate administrator if this person is responsible for paying the taxes. If a person operating the business is different from the estate administrator and it is unclear whether the person operating the business is a fiduciary appointed by the court, send a Form 2373 to the estate administrator, in addition to the person operating the business. A copy of the letter should be filed with the court. Filing a copy of the letter with the court makes the judge aware that estate liabilities are increasing and unresolved. See IRM 5.5.2.6.1.1.1, Claiming Taxes as an Administrative Expense, for additional guidance.

5.5.4.13 (06-23-2005)

Application of Payments

1. Apply payments as directed when a court order specifies how amounts must be credited.
2. Otherwise, apply payments in this order:
 - A. Accounts where the statutory period is about to expire, then the next oldest period
 - B. Trust fund portion of accounts, only when the statutory period for assertion of the Trust Fund Recovery Penalty (TFRP) has expired without assessment of the TFRP.

- C. Non-trust fund portion of accounts or non-trust fund liabilities
 - D. Other trust fund portion of accounts
3. Do not apply payments received from a proceeding to any non-claimable liability.
 4. Apply taxes paid by an estate administrator as an expense of administration only against taxes incurred by the estate administrator during the administration of the estate. These taxes are usually listed on a Form 2373.
 5. Designated payment code (DPC) 59 should be used for most POC payments. Document 6209 provides information on designated payment codes.

5.5.4.14 (12-06-2011)

Subsequent Closing Actions

1. When a state court determines that the Federal tax liability should be reduced **and** Counsel concludes that the court determination is binding, take necessary action to adjust the liability consistent with the specifics of the court order. Use Form 3870 Request for Adjustment.
2. Input TC 521 to reverse the systemic litigation freeze after insuring that a TC 550 updating the Collection Statute Expiration Date (CSED) has been input if the Closing Code used to input the TC 521 does not automatically update the CSED upon reversal. See IRM 5.5.1.9, Collection Statute Expiration Dates, for additional information on TC 521 input.
3. Advisory is responsible to take action to refile NFTLs on accounts they are monitoring and at the time an NFOI is being closed. Document the ICS history as to whether the NFTL was refiled or the reason why it was not.
4. Close out any internal controls that are kept on the case such as those on ICS.

5.5.4.15 (12-06-2011)

Working Requests for Discharge

1. Advisory is responsible for processing of requests for discharge of property from the tax lien.
2. Settlement statements must be reviewed to determine that no expenses are paid ahead of the Government, unless they meet the super priority creditor criteria under IRC 6323(a).
3. For guidance on allowable expenses see IRM 5.5.2.6, Administrative Expenses, IRM 5.5.2.6.1, Reasonable Administrative Expenses, IRM 5.5.2.6.1.1, Necessary Administrative Expenses.
4. IRM 5.12.3.12, Discharge of Property, provides additional information.

5.5.4.16 (12-06-2011)

Proof of Claim Retention

1. POC copies are to be retained in the advisory group. Destroy 2 years after court proceedings have been closed.
2. If litigation is pending, destroy 2 years after litigation case is closed.

Exhibit 5.5.4-1

Template for Decedent Guide

Decedent guides will not reiterate procedures that are currently addressed in the decedent IRMs. Instead, the decedent guides should address specific time frames that are mandated for state probate proceedings that have impact on timeliness of action that needs to be taken by Advisory, such as:

- What is the period for opening a probate proceeding and appointing an estate administrator? (this is an indication of when the probate proceeding should be initiated when a TP dies while the account is in active inventory being worked by an RO)
- What is the time period to provide an inventory and appraisal to the court? (this is an indication when an employee should follow up on the probate proceedings to determine estate assets)
- Is there a provision for supervised (dependent or formal) and unsupervised (independent or informal) probate proceedings? (TC 520 should be input on proceedings in which the estate assets are under control of the court)
- Are estate assets (real or personal) considered under control of the probate court jurisdiction? (need to determine if the CSED is extended in accordance with IRC 6503)
- Does the state require a bond for certain types of administration? What are bond amounts set on - value of the gross estate or a percentage of the estate?
- Does this specific state charge filing fees for claims? (need to make payment arrangements, such as sending OI to RO to file claim with court – if claim cannot be filed with administrator)
- What is the time period to file a timely POC? (need to know this time period in order for the Service's claim to be considered for payment)
- What is the proper venue for filing the POC, with the court or with the estate administrator?
- Does the state require POCs to be notarized or is a seal (Seal of Office of the Internal Revenue Service and Certification to the Authenticity of Official Documents) adequate to certify taxes due?
- Does state law prohibit fiduciary from paying claims not presented for payment?
- What is the time period for the estate administrator to consider creditor claims and/or reject claims? (this provides an indication of when the employee should follow up on the filed POC)
- What is the time period to appeal a rejected claim? (this is critical to know so that an appeal can be submitted or pull the case into federal district court – depending on the reason for denial)
- What is the period to object to a motion to disburse estate funds? (need to know time period in which the employee must review the distribution list and decide it is satisfactory or take action to disagree)
- Are there state law provisions that dictate thresholds for reasonable expenses, family allowances, homestead allowances, funeral expenses etc.? (need this information to determine if only reasonable expenses have been paid and if the distribution amount to the IRS is correct or in consideration of lien discharges)
- Is the estate liable for funeral expenses if the decedent had a funeral or burial policy or contract to pay costs associated with final disposition? (this is necessary to determine disallowance of funeral expense)
- Is there a provision for necessity of administration if the estate assets are less than the specific stated value? (this will assist with decision making regarding filing of a POC)
- Are there guidelines on priority of payment for insolvent estates? (necessary to determine if our interest is considered appropriately)

- Does the liability of the estate administrator terminate with the final settlement of the estate or remains until the administrator has any duties to perform as in their capacity as representative? (When does fiduciary liability expire? Impacts assertion of 3713 fiduciary liability)
- Is a final order issued by a probate court appealable to the court of appeals? If so within what time period?
- Does the filing of a proof of claim toll or extend the CSED for this specific state?

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 5. Processing Estate and Gift Tax Extensions

5.5.5 Processing Estate and Gift Tax Extensions

- 5.5.5.1 [Section Overview Request for Extension of Time to Pay Estate Tax](#)
- 5.5.5.2 [Collection Statute Expiration Date under IRC § 6503\(d\)](#)
- 5.5.5.3 [Processing Responsibility of Forms 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate \(and Generation-Skipping Transfer\) Taxes.](#)
- 5.5.5.4 [Evaluating Requests for Extensions of Time to Pay](#)
- 5.5.5.5 [Requests for Extension to Pay Tax Deferred under IRC § 6166](#)
- 5.5.5.6 [Advisory Actions \(Form 4768\)](#)
- 5.5.5.7 [Approval of Requests for Extension of Time to Pay](#)
- 5.5.5.8 [Denial of Requests for Extension of Time to Pay](#)
- 5.5.5.9 [Extension Requests to Pay Gift Tax](#)
- 5.5.5.10 [Automatic Extensions for 2010 Forms 706](#)
- 5.5.5.11 [Extensions for 2011 Forms 706](#)

Manual Transmittal

October 01, 2012

Purpose

(1) This transmits a complete revision to IRM 5.5.5, Processing Estate and Gift Tax Extensions

Material Changes

- (1) The title of this IRM was changed to include Gift Tax extensions.
- (2) IRM 5.5.5.8 (2) and (3) - revised to remove reference to preparing a rebuttal to avoid ex-parte communication.
- (3) IRM 5.5.5.9 is a new section to address processing of extension requests for Form 709, *United States Gift Tax Return*. It incorporates SBSE Memorandum SBSE-05-0512-050, Procedures for Processing Form 1127 Applications for Extension of Time for Payment of Tax Due to Undue Hardship. Procedures for returns not related to estate and gift tax are incorporated into IRM 5.1.12.26, *Cases Requiring Special Handling*.
- (4) IRM 5.5.5.10 is a new section to address automatic extensions for taxpayers who are filing 2010 Forms 706.
- (5) IRM 5.5.5.11 is a new section to address extensions for taxpayers who are filing 2011 Forms 706.

Effect on Other Documents

This material transmittal supersedes IRM 5.5.5 dated December 29, 2009 and incorporates SBSE Memorandum SBSE-05-0512-050, Procedures for Processing Form 1127 Applications for Extension of Time for Payment of Tax Due to Undue Hardship, dated 5/17/2012.

Audience

Advisory & Insolvency Employees

Effective Date

(10-01-2012)

Scott D. Reisher
Director, Collection Policy

5.5.5.1 (12-29-2009)

Section Overview Request for Extension of Time to Pay Estate Tax

1. Internal Revenue Code (IRC) § 6161 provides decedents' estates that file Form 706, *United States Estate (and Generation-Skipping Transfer) Tax Return*, the option of securing an extension of time to pay when specific circumstances impede their ability to pay the total tax due by the return due date. This section provides background information and procedures for processing of IRC § 6161 extension requests.
2. Taxpayers submit Form 4768, *Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes*, for an extension of time to file or pay Estate Tax. Advisory and the Estate & Gift tax unit of Cincinnati Compliance Services process Forms 4768 that request extensions of time to file and/or to pay.
3. Relevant provisions of IRC § 6161 and related regulations for extensions of time to pay estate tax are:
 - A. The maximum extension of time to pay that may be granted at one time is 12 months.
 - B. Additional extension requests can be granted for up to 12 months at a time for a maximum of 10 years, for tax determined by the taxpayer on the return. On amounts determined as deficiency, the extended time for payment cannot exceed four years from the date fixed for payment (see IRC § 6151(c)) of the deficiency, for up to one year at a time.

Note:

Different extension periods may apply for different assessments.

- C. A request for extension of time to pay must be in writing and received no later than the due date of the return, or in the case of a subsequent extension request, the extended payment date.
- D. Requests must include a statement of reasonable cause or undue hardship.
- E. No extension shall be granted for any deficiency if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

Note:

An extension of time to pay does not extend the time to file.

- F. The granting of an extension of time for payment of the tax will not relieve the estate from liability for the payment of interest during the period of the extension.
- G. The application will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified.

Note:

For extensions of time to pay an installment of tax deferred under IRC § 6166, see IRM 5.5.5.5.

5.5.5.2 (12-29-2009)

Collection Statute Expiration Date under IRC § 6503(d)

1. Under IRC § 6503(d), the Collection Statute Expiration Date (CSED) is 6503(d) suspended for the period of any extension of time for payment that is granted (also see IRM 5.1.19.3.12).
2. TC 468 is input on IDRS to identify accounts that may have been granted additional time to pay estate taxes due under IRC § 6161.
3. Generally the CSED is extended for the period of time between the TC 468 date and the TC 469 date, which reflects expiration of the extended time to pay.
4. CSEDs should always be checked when working estate tax accounts. Different CSEDs may run on different assessments. IDRS does not update the CSED.

5.5.5.3 (12-29-2009)

Processing Responsibility of Forms 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.

1. All requests for extension to file and pay involving unfiled tax returns in which the estate anticipates a cash shortage to pay taxes that will become due of \$25,000 or more will be sent to Advisory for approval consideration.
2. Extension requests on unfiled returns where the estate sends payment of the estimated liability with the request (payment and estimated tax are equal) will **not** be sent to Advisory; requests where the estimated tax is not paid will be sent to Advisory if the estimated liability is \$25,000 or more
3. All requests for extensions to pay on accounts in which the tax return has been filed and reflect a balance due over \$50,000 will be sent to Advisory.
4. All extensions to pay where it is the third request, regardless of the dollar amount, will be sent to Advisory.
5. All requests for extension of time to pay annual installments that are deferred under IRC § 6166 will be sent to Advisory.
6. All other requests that do not meet the above criteria will be processed by the Estate & Gift Tax unit of Cincinnati Compliance Services.

5.5.5.4 (12-29-2009)

Evaluating Requests for Extensions of Time to Pay

1. Employees must determine on a case by case basis whether to allow a request for an extension of time to pay, and if so, the length of time for such extension.
2. Employees will be expected to evaluate reasonable cause statements on extension requests in which the estate has requested the automatic six month extension to file and a non-automatic twelve month extension to pay tax due upon filing.
3. If the reasonable cause statement sent by the estate provides details (see instructions to Form 4768) explaining why it is unable to determine the tax liability or the liquidity of assets, it may be reasonable to limit approval of the extension of time to pay to six months. This corresponds with the extended due date of the estate tax return; making it reasonable to expect that the executor will know the tax liability and liquidity of assets by the end of that six month period.
4. If the executor then needed additional time to pay the estate tax, another request could be made on Form 4768.
5. If the estate indicates no tax will be due it **may be** reasonable to deny a request for extension of time to pay when the taxpayer believes in good faith that no liability is owed. Although an estate's request for an extension of time to pay may state that no liability will be due with the return, consideration will be given to the reasonable cause explanation in evaluating these requests for an extension to pay.
6. Extension to pay requests that lack a reasonable cause statement will be allowed an additional fifteen calendar days to perfect the reasonable cause statement. The employee reviewing the request will send a letter to the executor requesting additional information and will document the extended time allowed in the case history. If a timely response is not provided from the estate the request will be denied.
7. An extension of time to pay may be granted for a reasonable period of time if an examination of all facts and circumstances discloses that such request is based upon reasonable cause. The following examples illustrate cases involving reasonable cause for granting an extension of time (also see Treas. Reg. 20.6161-1(a)(2) for undue hardship criteria):
 - A. The estate contains enough liquid assets to pay the tax but the assets are located in several places and the executor cannot take control of them in time to pay the tax by the due date.
 - B. Much of the estate consists of assets that provide for payment in the future (e.g., annuities, copyright royalties, contingent fees, or accounts receivable). Currently they do not produce enough cash to fully pay by the due date. Borrowing against these assets has proved not to be possible, and sale of these assets at a discount would greatly decrease the value of the estate.
 - C. The estate includes a claim to substantial assets which cannot be collected without litigation. The value of the gross estate is undetermined so tax cannot be paid (or even computed) when the tax is due.
 - D. The estate does not have enough money (without borrowing at a rate of interest substantially higher than that generally available) to pay all the tax and other claims against the estate while providing funds for the decedent's dependents during the period of administration. The executor has made reasonable attempts to convert assets into cash.
8. In addition to establishing reasonable cause, these cases require an analysis of the progress of efforts being made to borrow or liquidate assets or to otherwise pay the amounts to be extended. Some suggested additional information required in this analysis include:
 - A. Balance sheets listing all assets, disbursements, liabilities and earnings for the estate. This documentation should be compared to any submitted for a prior

extension period, to determine what has been liquidated during the extension period. Real estate should be listed with the value and location identified (city, county, and state).

- B. An accounting of the actions taken during the past extension period to resolve the indebtedness. Examples include marketing property, resolving suits, or seeking loans.
 - C. Information on the executor's proposal to make partial payments during the extension being requested.
 - D. Consideration should be made as to whether the estate has complied with the conditions set for granting prior extensions.
 - E. Evaluation of what assets remain under the protection of the IRC § 6324 lien; determine if assets have been distributed or discharged.
 - F. An analysis should be made to determine if there is sufficient value or equity in the remaining assets relative to the amount of tax remaining.
9. Most requests for an extension to pay are necessary because the estate representative or executor needs additional time to liquidate what are often very valuable properties that cannot be marketed within the nine month period following the death of the taxpayer. Provided the executors verify that all steps necessary to sell property to pay the tax are being taken in an expeditious manner, and that all liquid assets not needed for the payment of anticipated administrative expenses are paid over, extensions to pay may be granted only for the amount of the cash shortage.
10. When evaluating extension to pay requests bear in mind that denial of the request may have adverse financial ramifications to the estate far in excess of the failure to pay penalty which will begin to accrue if the request is denied. Under IRC § 2011(c), for state death taxes to be deductible as an expense on Form 706, they must be paid within four years from the date the Form 706 is filed, or until the expiration of any extension to pay under IRC § 6161 or § 6166, whichever date is later. If the estate tax liability has been in extension to pay status (status 14) for more than four years from the filing of Form 706, the estate will be unable to claim as a deduction any subsequent state death tax payments if further extension to pay requests are denied.

5.5.5.5 (12-29-2009)

Requests for Extension to Pay Tax Deferred under IRC § 6166

- 1. All requests for an extension to pay an annual installment of tax deferred under IRC § 6166 will meet the guidelines for referral to Advisory. The same reasonable cause criteria apply to these requests.
- 2. A request relating to the annual installment will not be considered unless the extension is applied for on or before the date fixed for payment of the tax or installment.
- 3. If the estate is unable to pay the annual installment payment or non-deferred tax this is an indicator/factor that the estate may be financially unstable. At this time the advisor will conduct an evaluation of the current assets, review time remaining on the IRC § 6324(a) lien (or any other lien that may be in effect such as the IRC § 6324A lien) and determine if the Government is adequately secured for the remaining tax due during the duration of the deferral period. Refer to acceleration procedures in IRM 5.5.6 if it is determined necessary to proceed with collection of the deferred portion of tax.
- 4. Revenue officers may continue collection actions on the non-deferred portion of estate tax while the deferred portion is being accelerated.

5.5.5.6 (12-29-2009)

Advisory Actions (Form 4768)

- 1. Advisory will analyze extension requests to ensure that the Government's interests are protected before an additional extension of time is granted.
- 2. Treasury Regulation (Treas. Reg.) 1.6161-1(c) provides that applications will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified.
- 3. Create an ICS Non-Field Other Investigation (NFOI) with Action Requested type "199-Ext Time to Pay (4768)" upon receipt of the extension request.
- 4. Contact the executor within 30 calendar days of the date of the extension request to:
 - A. Advise them that you are reviewing the request,
 - B. Gather information to support your determination, and
 - C. Estimate the date of completion.
- 5. Generate an ICS Other Investigation (OI) to a revenue officer for cases that require field contact, valuation of property, or administrative remedies.
- 6. If, in the judgment of the Advisor evaluating the extension request, granting an extension to pay may put the interest of the government at risk, under IRC § 6165 granting of the extension can be conditioned upon the estate posting a bond.
- 7. The filing of a Notice of Federal Tax Lien should also be considered if there are assets attached by the IRC § 6321 lien, and if all of the statutory requirements for creation of the assessment lien have been met. See IRM 5.5.7.4 for further information on lien filing consideration. Letters such as 2568-C or CP 504 meet demand for tax due requirements and documentation of letters sent can be found in the TXMOD history of the IDRS account.
- 8. Maintain a file of all approved and rejected Forms 4768. Documents may be destroyed two years after the statutory period for collection has expired, according to the Records Control Schedule for Collection included in IRM exhibit 1.15.28.-1(#54).
- 9. Counsel may be consulted on cases with:
 - A. Requests for an extension of payment of interest on IRC § 6166 cases.
 - B. Provisions of 31 USC § 3713, fiduciary or transferee liability.
 - C. Administrative remedies based on the IRC § 6321 lien (e.g., filing of a Notice of Federal Tax Lien, Notice of Levy, and/or seizure of property or property rights).

5.5.5.7 (12-29-2009)

Approval of Requests for Extension of Time to Pay

- 1. If all issues are resolved in favor of an extension, complete part V of Form 4768 to notify the executor that the request has been approved and of any conditions/actions that are required. Forward to the Group Manager for review and approval.
- 2. Mail the approved original Form 4768 to the taxpayer and mail a copy, include Form 3210, to the Cincinnati Campus Estate & Gift tax unit for input of the TC 468 on IDRS. Retain a copy with the Advisory case file. Campus E&G will monitor the extension until expiration of the period granted, and the OI on ICS should be closed.
- 3. Document the ICS history with a summary history entry containing a statement of findings and any specified actions that were a condition of the decision to approve the extension request.

5.5.5.8 (10-01-2012)

Denial of Requests for Extension of Time to Pay

- 1. If the request is denied, complete part V of Form 4768 giving the reason for denial, appeal rights and the return address for the proper Advisory office. The statement concerning Appeal rights should include the following information:

- Send your appeal to the address as advised on the second page of Form 4768,
 - Send your appeal by registered or certified mail, and
 - File your appeal within 10 calendar days after the denial is mailed to the executor.
2. Forward to the Group Manager for review and approval; after approval mail the estate representative the signed Form 4768. Retain a copy of the case file and keep the OI open, with a scheduled follow up for at least 25 calendar days after forwarding to allow time for the executor to appeal (10 days) and mailing time (15 days).
 3. If the executor does **not** appeal the denied extension, mail a copy of the Form 4768, include Form 3210, to the Cincinnati Campus Estate & Gift tax unit for input of the TC 469. (For related information on transaction codes 468, 469 and closing codes see IRM 4.25.2.1.3(12) and (13)). The OI on ICS should be closed.
 4. A written appeal may be made to the advisor within ten calendar days after the time the denial is mailed to the executor.
 5. The appeal is considered filed on the date it is postmarked. If the due date falls on a Saturday, Sunday or legal holiday, it will be considered timely if postmarked by the next business day.
 6. Advisory should not make any commentary in the ICS history regarding the merits of the protest. A narrative statement detailing the basis for the original extension denial is not required when transmitting the request to Appeals. The case actions documented in the ICS history should be sufficient for Appeals to review the issue regarding the determination to deny the extension request. The Group Manager must ensure that no prohibited ex parte communications are included before approving the transmittal of the case to Appeals. For additional information on case transmittal to Appeals or ex parte communication, see IRM 5.1.9, *Collection Appeal Rights*.
 7. If an appeal is received in Advisory, the advisor will date stamp the protest and verify the protest was filed timely.
 8. The advisor will forward a file containing the following information to Appeals:
 - Executor or power of attorney information,
 - Any forms 4768,
 - All correspondence between the Service and the estate representative relating to the extension request,
 - Protest from the estate representative, and
 - Copy of the ICS history
 9. This file will be forwarded on a Form 3210 to the Office of Appeals for the state of the decedent's last domicile using the Case Routing List on the Appeals website, <http://appeals.web.irs.gov/APS/bystate2.htm>, with the understanding the case may be transferred to another Appeals office based on Appeals inventory needs.
 10. Notify the Cincinnati Campus Estate & Gift tax unit that the estate has requested an appeal so that the account remains in status 14 and payment due notices are not sent during the appeals process.
 11. The Appeals Office will send the case file and the Case Memorandum to the originating Advisor and a copy of the Case Memorandum to Campus once the decision is final, so that E&G Campus can proceed with billing. If no response Advisory or Campus will follow up with Appeals in 90 days. Contact can be made with the Appeals' Account Resolution Specialist to locate a case or update status (see website for contact information) .

5.5.5.9 (10-01-2012)

Extension Requests to Pay Gift Tax

1. Form 1127, *Application for Extension of Time for Payment of Tax Due to Undue Hardship*, is used to request extensions of time to pay the amount due on a gift tax return or a deficiency on Form 709, *United States Gift Tax Return*.
2. Requests for an extension of time to pay gift tax must be filed with the Estate and Gift Tax (E&G) unit in the Cincinnati Campus.
3. The E&G unit will determine whether the application is processable in accordance with the guidelines provided in IRM 5.1.12.26, *Field Collecting Procedures - Cases Requiring Special Handling*. Applications that are determined nonprocessable may be signed by the E&G unit manager and returned to the taxpayer along with a cover letter explaining why the application is nonprocessable. If it is determined that the application is processable, the following steps will be taken within seven calendar days of receipt:
 - Establish an entity under MFT 51, document the TXMOD history with the date the application was received and the date it was forwarded for consideration.
 - Forward the application and supporting documents to the Advisory Estate Tax Group.
4. Create an ICS Non-Field Other Investigation (NFOI) with Action Requested type "187 - Ext Time to Pay (1127)" upon receipt of the extension request.
5. The Advisory Estate Tax Group will determine whether the application should be approved or denied and will be responsible for sending the approval or denial letter to the taxpayer. Advisory will document the ICS history with the actions taken, and retain a copy of the Form 1127 and supporting documents in conformance with existing document retention guidelines.
6. Treasury Regulation (Treas. Reg.) 1.6161-1(c) provides that applications will be examined, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the taxpayer will be notified. The revised Form 1127 includes check boxes for indicating whether the application is being approved, denied, or returned. The reason(s) for this determination should be included on the form and more specifically explained in a cover letter sent to the taxpayer.
7. If the application is denied, the Advisory Estate Tax Group will send to the E&G unit a copy of the denied application and a copy of the cover letter sent to the taxpayer; upon receipt, the E&G unit will document the TXMOD history that the extension request was denied. Advisory will follow procedures in IRM 5.5.5.8 for protests on denied extension requests.
8. If the application is approved, the Advisory Estate Tax Group will send to the E&G unit a copy of the approved application and a copy of the cover letter sent to the taxpayer, along with Forms 4844, requesting the E&G unit to input the TC 470, no closing code, for the appropriate number of cycles, and the TC 270 for \$0.00; the E&G unit will document the TXMOD history that the extension request was approved and the new extension date.
9. Note that approval of the extension does not relieve the taxpayer from liability for interest that accrues during the period of the extension, but does provide relief from the failure to pay (FTP) tax penalty to the extended due date, even if the taxpayer fails to submit full payment by that date.
10. The E&G unit will monitor the account, reverse the TC 470 when necessary, and abate the failure to pay penalty if assessed for the period the extension was granted.
11. The E&G unit will associate a copy of the application and the cover letter sent to the taxpayer with the related Form 709 tax return.
12. Additional guidance concerning extension requests, sample forms and letters regarding Form 1127 are provided in IRM 5.1.12.26, *Field Collecting Procedures - Cases Requiring Special Handling*.

5.5.5.10 (10-01-2012)

Automatic Extensions for 2010 Forms 706

1. Under the Economic Growth and Tax Relief Reconciliation Act of 2001, the estate tax was repealed for persons who died in 2010. However, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 reinstated the estate tax for persons who died in 2010. This recent law allows executors of the estates of decedents who died in 2010 to opt out of the estate tax, and instead elect to be governed by the repealed carryover basis provisions of the 2001 Act. This choice was to be made by filing Form 8939, *Allocation of Increase in Basis for Property Acquired From a Decedent*. Notice 2011-66 explains the method for making election to apply carryover basis treatment
2. Notice 2011-76 allowed taxpayers who are filing 2010 Form 706 extensions to file and pay to March 19th, 2012. Timely filed extensions are automatic and do not need to be sent to Advisory for consideration.
3. Notice 2011-76, gave large estates, normally those over \$5 million, more time to comply with key tax law changes enacted late last year. The following relief was provided:
 - Large estates, opting out of the estate tax, had until Tuesday, Jan. 17, 2012, to file Form 8939. This special carryover basis form, required of estates making this choice, was previously due on Nov. 15, 2011. Because this is a change in the specified due date rather than an extension, no statement or form needs to be filed with the IRS to have this new due date apply.
 - The 2010 estates that requested an extension on Form 4768 had until March 2012 to file their estate tax returns and pay any estate tax due. Normally, a six-month filing extension is automatically granted to estates filing this form, but extensions for time to pay are granted only for good cause. As a result, most 2010 estates that timely filed Form 4768 had until Monday, March 19, 2012 to file Form 706 or Form 706-NA. For estates of those dying late in 2010 (after Dec. 16, 2010 and before Jan. 1, 2011), the due date is 15 months after the date of death. No late-filing or late-payment penalties will be due, though interest still will be charged on any estate tax paid after the original due date.
 - Special penalty relief is provided to many individuals, estates and trusts that already filed a 2010 federal income tax return, or obtained an extension and filed by the Oct. 17, 2011 extended due date. Late-payment and negligence penalty relief applies to persons inheriting property from a decedent dying in 2010, who then sells the property in 2010, but improperly reports gain or loss because they did not know whether the estate made the carryover basis election.

5.5.5.11 (10-01-2012)

Extensions for 2011 Forms 706

1. Notice 2012-21 provides guidance that allows certain estates of married individuals who died during the first six months of 2011 an extension of the deadline to make the portability election. The portability election passes along a decedent's unused estate and gift tax exclusion amount to a surviving spouse. An extension is available to estates of married individuals with assets of \$5 million or less, but only if the decedent died in the first six months of 2011, and the executor files Form 4768 requesting an extension no later than 15 months after the decedent's date of death.
2. This notice grants to qualifying estates, for the purpose of electing under section 2010(c)(5)(A) of the Internal Revenue Code (a "portability election"), a six-month extension of time for filing Form 706. This extension applies when the executor of a qualifying estate did not file a Form 4768 within nine months after the decedent's date of death, and therefore the estate did not receive the benefit of the automatic six-month extension. An executor of a qualifying estate that wants to obtain the extension granted by this notice must file the application for a six-month extension (Form 4768) no later than 15 months after the decedent's date of death. With the extension granted by this notice, the Form 706 of a qualifying estate will be due 15 months after the decedent's date of death.
3. Thus, the first estate tax returns for estates eligible to make the portability election (because the date of death is after Dec. 31, 2010) are now due as early as Monday, April 2, 2012.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 6. Collection on Accounts with Special Estate Tax Elections

5.5.6 Collection on Accounts with Special Estate Tax Elections

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- 5.5.6.2 [IRC Section 6166](#)
- 5.5.6.3 [Qualification for IRC 6166](#)
- 5.5.6.4 [Acceleration of IRC 6166 Tax Payments](#)
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- 5.5.6.6 [Special Liens and Bonds for IRC 6166](#)
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- 5.5.6.8 [Payoffs](#)
- 5.5.6.9 [Working A Terminated IRC 6166 Account](#)
- 5.5.6.10 [IRC Section 2032A](#)
- 5.5.6.11 [IRC Section 2057](#)
- 5.5.6.12 [Assessment of Recapture Tax](#)
- 5.5.6.13 [Special Lien for IRC Section 2032A or 2057](#)

Manual Transmittal

June 19, 2013

Purpose

(1) This transmits a complete revision to IRM 5.5.6, Estate Tax Installments.

Material Changes

- (1) The former title of this section was Estate Tax Installments. The title is being changed to reflect that this section has been expanded to address all special election accounts, in addition to installment cases under IRC section 6166.
- (2) Campus procedures relating to estate tax installments are in IRM 4.25.2, *Campus Procedures For Estate Tax*.
- (3) Due to the substantial revisions, all of the subsection dates have been changed to reflect the current date.
- (4) Added new information on the following topics:
 - IRMs 5.5.6.2, 5.5.6.10 and 5.5.6.11 - qualification for various special elections
 - IRM 5.5.6.6 and 5.5.6.13 - liens related to various special elections
 - IRM 5.5.6.9 - working defaulted special election accounts
 - IRM 5.5.6.7 - collection statutes related to special election accounts

Effect on Other Documents

This transmittal supersedes manual transmittal dated June 23, 2005, titled Estate Tax Installments.

Audience

Small Business/Self-Employed Collection Employees

Effective Date

(06-19-2013)

Scott D. Reisher
Director, Collection Policy

5.5.6.1 (06-19-2013)

Section Overview

1. This section contains background information and procedures for Collection employees who must perform actions on accounts that were granted special elections under the Internal Revenue Code (IRC). Collection field employees are responsible for collection of terminated special election accounts that are assigned to them.
2. Responsibilities for determining qualification, processing and billing of special elections are coordinated between Exam Estate & Gift Speciality Tax and the Estate & Gift Tax unit in the Cincinnati Campus. These responsibilities are outlined in IRM 4.25.1, *Estate and Gift Tax Examinations* and IRM 4.25.2, *Campus Procedures For Estate Tax*.
3. The Advisory Estate Tax Lien group is responsible for making determinations concerning securing special election liens or bonds to protect the Government's interest during the extended deferral period. These responsibilities are outlined in IRM 5.5.8, *Estate Tax Liens*.
4. Knowledge of the responsibilities of these functions will enable Revenue Officers to secure the information needed to assist with investigation and resolution of collection cases.

5.5.6.2 (06-19-2013)

IRC Section 6166

1. IRC section 6166 provides an extension of time to pay Form 706 estate tax in **annual** installments. Generally the maximum amount of time for payment of deferred tax is 10 years. The executor may select a shorter period, in which case the deferral will be the period selected. It allows executors a fourteen year period to pay estate tax attributable to an estate's interest in a closely held business. It grants the estate a deferral period to make "interest only" payments for the first four years. The first tax payment along with interest payment is due on the 5th anniversary of the due date of the return. See IRM 4.25.2.1.10, *IRC Section 6166 Interest-Only Installment Payment Period - General Process*.
2. The IRC section 6166 estate tax installment plans are approved by Exam Estate & Gift Specialty Tax. The Estate & Gift Tax Campus unit will make a preliminary determination if the estate qualifies for the installment payment privilege. This election should not be confused with the one year IRC section 6161, Extensions of Time to Pay Estate Taxes, which are approved by Advisory (see IRM 5.5.5). Collection function does not have authority to approve deferred installments plans under IRC section 6166.
3. The election to pay in installments must be made on a timely filed Form 706 on page 2, Part 3 Elections by the Executor, Line 3 and by attaching a notice of election to the return containing the information specified in Treas. Reg. § 20.6166-1(b). Late filing of the return invalidates the election. However, if a return is timely filed without the election but an amended return containing the election is filed within 6 months of the **unextended** due date of the Form 706, the election is considered timely.
4. If the deferred tax due is the result of an examination deficiency, the estate must make the election within 60 days after issuance of notice and demand.

5.5.6.3 (06-19-2013) Qualification for IRC 6166

1. The criteria for qualifying for installment payments are:
 - Decedent was a citizen or resident of the United States on the date of death.
 - The Value of interest in closely held business must exceed 35 percent of the adjusted gross estate.
 - The return is **timely** filed and the IRC section 6166 election request was included on the **timely** filed return or an amended return within 6 months of the **unextended** due date of the return.
2. An interest in closely held business is defined as:
 - A proprietorship that carries on a trade or business.
 - An interest in a partnership that carries on a trade or business. Deceased partner's interest that is included in the gross estate must be 20 percent or more of the total capital interest in the partnership or the partnership has 45 or fewer partners.
 - Stock in a corporation carrying on a trade or business if 20 percent or more of the value of voting stock of the corporation is included in the gross estate, or the corporation has 45 or fewer shareholders.
3. For more details on qualification see IRC section 6166 or IRM 4.25.2.1.6, *Estate Installment Privileges under IRC Section 6166*.
4. IRC section 6166(h) provides for the election to defer the deficiency tax resulting from an examination, if the estate is not already making payments under IRC section 6166. The IRC section 6166(h)(2) election must be made within 60 days of the issuance of the notice and demand. The deficiency is prorated per the formula in IRC section 6166(a). The estate cannot defer more than the deficiency. The estate may not elect to defer any portion of a deficiency that was due to negligence, intentional disregard of rules and regulations, or fraud with intent to evade tax.
5. IRC section 6166(e) provides for the proration of deficiency installments if the estate is paying in installments under IRC section 6166 when the assessment is made. The part of the deficiency attributable to the closely-held business shall be prorated and added to the installments. The deficiency portion of an installment that is due and payable when the deficiency assessment is made shall be paid upon notice and demand.
6. **Non-deferred tax** must be paid by the return due date, unless the estate has an extension of time to pay under IRC section 6161. If the estate does not pay the non-deferred tax, procedures in IRM 4.25.2.1.9, *Estate Qualifies for IRC Section 6166 Election and Fails to Pay or Underpays the Non-Deferred Tax*, will be taken by the Estate & Gift Tax Campus unit.
7. These accounts can be identified on IDRS by status 14 or transaction code (TC) 488. The TC 488 indicates the account is in installment and/or manual billing and updates the module to status 14.

5.5.6.4 (06-19-2013) Acceleration of IRC 6166 Tax Payments

1. IRC section 6166(g)(1) provides for acceleration of installments. The balance of installments are accelerated upon notice and demand if:
 - any portion of an interest in the qualifying business is distributed, sold, exchanged or otherwise disposed of, or money or property attributable to the interest is withdrawn from the business and the aggregate of such distributions, withdrawals, etc. equals or exceeds 50 percent of the value of the entire interest, measured at the value reported on the Form 706 or as adjusted. Dispositions are cumulative, so a record should be kept of dispositions.
 - the estate fails to make all of an annual installment payment within 6 months of the due date.
 - The election may be terminated because the estate fails to provide security (lien or bond) to the Service for tax due, if the Service has determined that security is necessary. The Service may make this determination at the time of the estate's IRC section 6166 election or it may make the determination at some point during the IRC section 6166 installment agreement. Most likely this will happen when the estate has failed to pay after requesting an extension of an annual installment payment or when the Service determines that the underlying business may be in financial difficulty.
2. When accelerated, the estate will be sent a series of letters from the Advisory Estate Tax Lien group and the Campus concerning termination and demand for the tax due. Advisory procedures are explained in IRM 5.5.8.5, *Special Lien Under IRC § 6324A for Estate Tax Deferred under IRC Section 6166*, and Campus procedures in IRM 4.25.2.1.16, *Miscellaneous IRC Section 6166 Campus Termination Issues*.
3. Copies of termination letters provide a payoff of the full amount of tax due to a specified date. This payoff can be used for collection purposes until the estate provides a date it will pay the account in full. Since the account was in Status 14, the campus will need to provide a payoff when necessary. Advisory should also have copies of termination letters in their case files and copies of liens, bonds or financial information secured from the estate.
4. Once an account has been accelerated, it cannot be reinstated for reasonable cause. An account can be reinstated only if a valid extension of time to pay (under IRC section 6161) has been filed for the amount in question prior to the due date or the account was erroneously accelerated due to a processing error. A processing error is one in which a timely payment was treated as late or posted to the wrong account or type of tax. These errors should be rare and an account should be reinstated only if it meets these guidelines. Neither Examination nor Collection has the authority to request reinstatement of an account other than in the above circumstances.

5.5.6.5 (06-19-2013) Tax Court Cases

1. A balance due account may be assigned to the field while the estate is appealing allowance of the IRC section 6166 election. IRC section 7479 does not prevent collection of the tax while the taxpayer is appealing the Secretary's determination regarding the estate's section 6166 election to the Tax Court.

2. Section 7421(a) generally prevents any court from stopping collection unless one of the exceptions applies. An exception applies if the taxpayer has not yet been given an opportunity for hearing under section 6330, or if the taxpayer has timely requested a hearing. Except in cases of jeopardy, levy is prohibited until the taxpayer is issued a notice giving the taxpayer a right to a hearing to contest levy and the taxpayer fails to make a timely hearing request. Levy is also prohibited during a timely requested hearing and judicial review of the determination resulting from that hearing. During the administrative hearing or court proceeding, the Tax Court may permit levy under section 6330(e)(2) if liability is not at issue and the Service shows good cause. Good cause exists when the Service shows that the taxpayer is maintaining the hearing or proceeding for purposes of delay, the taxpayer is raising frivolous arguments, or the government will be harmed by the suspension. In this regard, special attention should be given to whether the levy suspension will harm the government's ability to enforce its Section 6324 lien rights before they expire.
3. Section 7485 allows for collection of an amount determined as a deficiency while a Tax Court decision is being appealed to the Circuit Court unless the taxpayer posts a bond.
4. Should you receive an account to collect estate taxes and the IRC 6166 election is either in Appeals or Tax Court for reconsideration, consult with the Counsel attorney assigned the case to determine if collection can proceed or should be withheld.
5. Counsel should consider whether the underlying tax amount is in dispute, how much time remains on the IRC section 6324(a) lien and collection potential on remaining estate assets when providing guidance concerning continuation of collection .

5.5.6.6 (06-19-2013)

Special Liens and Bonds for IRC 6166

1. The laws granting the estate tax installment election provide the Service certain options to secure eventual payment. These options include:
 - A. Requiring the estate to furnish a performance bond in an amount equal to the estate tax and interest being deferred. Bonds must be renewed annually and documentation provided to the Service verifying renewal.
 - B. Allowing the estate to substitute the bond with the filing of a special lien under IRC section 6324A (Form 668-J) pledging their right, title, and interest to specific property to the government.
2. The Advisory Estate Tax Lien group is responsible for making determinations concerning securing special election liens or bonds to protect the Governments interest during the extended deferral period. See IRM 5.5.8.5.1, *Advisory Bond/Lien Determinations for Estate Tax Deferred under IRC Section 6166*.
3. For IRC section 6166 elections, the Form 668-J *Notice of Federal Estate Tax Lien Under Internal Revenue Laws*, is secured and recorded by Advisory. The Form 13925, IRC Section 6324A Lien Agreement Form, reflects specific property that is pledged as collateral, the value, encumbrances and parties who consented to the lien. This lien is not recorded on the Automated Lien System (ALS) since the CSED is extended beyond the normal 10-year expiration date. A TC 582 may be on the account to reflect a lien has been recorded. You may find information in the ICS case history of Advisory actions.

LIEN	ATTACHES	DURATION
Section 6324A for Section 6166 extended payout cases.	Specific property described in the lien agreement (Forms 13925 or on 668-J)	Coincides with CSED. Must be recorded.

4. There will not be a IRC section 6324A lien in every case where the Service has agreed to a IRC section 6166 installment election. The Service will make a determination after the election whether it will need security based on the facts and circumstances of each case. The Service may require the estate to secure a bond. The estate may elect the IRC section 6324A lien in lieu of securing a bond.
5. The IRC 6324A lien is a consensual lien. Therefore, the estate does not have CDP rights. A bond may be substituted for the lien. See IRM 5.5.8.5.1, *Advisory Bond/Lien Determinations for Estate Tax Deferred under IRC Section 6166*.
6. When the election has been terminated and the tax accelerated, collection action may be taken on the asset pledged on this lien agreement. Advisory can provide copies of their lien case files to assist with collection of the tax due. Advisory will also provide the lien release when necessary. To determine the duration of the lien, the CSED is extended for the period of time that the tax was deferred, including any extensions to pay that may have been granted.
7. If the property described on Form 668-J is insufficient to pay the estate tax in full, then any other property that remains attached by the IRC section 6324(a) lien (including the like lien) and/or the IRC section 6321 liens are subject to enforcement action. Distributees of the estate property also may be held liable as transferees.

5.5.6.7 (06-19-2013)

Collection Statute Expiration Date

1. **Always** check the Collection Statute Expiration Date (CSED) when working estate tax accounts. IDRS does not accurately reflect the CSED when multiple assessments are involved or when an IRC section 6166 election has been granted.
2. For accounts with an approved IRC section 6166 election, the CSED is suspended for the period during which payment of the tax is deferred, see IRC section 6503(d). **However, running of the IRC section 6324(a) estate tax lien is not suspended.**
3. Generally the additional time to add to the CSED is the period of time between the input of the TC 488 and the TC 489. If there is no TC 488 on the account use the date the status 14 was input, found in the TXMOD history.
4. If an extension to pay under IRC section 6161 was granted for the annual installment due under IRC section 6166, the extended time for payment would also be calculated into the CSED.
5. It is possible to have multiple CSEDs if a TC 300 was assessed and a portion or all of the deficiency was deferred under IRC section 6166. If it was deferred add in the time payment was deferred - which will be different for the TC 150 and the TC 300. Determine if the payments received paid off the TC 150 (deferred) amount - in that case you would only have to deal with the CSED on the TC 300.
6. Any tax due that was **not deferred** under IRC section 6166 will have a different CSED date. The Form 4349, Computation of Estate Tax Due With Return and Annual Installment, will show what tax was deferred under IRC section 6166. The E&G Campus unit may have this information on its database or the form may be with the tax return.

Note:

In some instances the deferred amount may change due to an Appeals or Tax Court decision. The E&G Campus unit should have the most current information on the deferred amount since they prepare the annual installment billings.

7. TC 520's input as a result of CDPs or OICs filed can extend CSEDs. The following transaction Codes for judgment/litigation also impact CSEDs:
 - TC 520 with closing code 70 through 75 does not suspend the CSED.
 - TC 520 with closing code 76 through 81 and closing code 84 suspends the CSED

See IRM 5.1.19, Collection Statute Expiration, for additional information.

8. Once you determine the correct CSED, document your ICS history with the new CSED and how you arrived at the date. Be sure that the module is also updated on ICS.

5.5.6.8 (06-19-2013)

Payoffs

1. Payoffs for IRC section 6166 accounts will need to be secured from the Campus E&G unit. Once an account goes into status 14 you can no longer get a payoff through IDRS. If IDRS reflects manual assessments of penalty and interest, accrued penalties and interest need to be computed. For campus contacts see: <http://mysbse.web.irs.gov/Collection/toolsprocesses/EstateTax/EstateTax/default.aspx>
2. After an IRC section 6166 account is accelerated the Campus closes their case file. Partial information regarding these accounts are maintained on their database. The Campus may need to secure additional information from the collection case file or order their closed file in order to provide a payoff.
3. Copies of termination letters issued by the Campus provide a payoff of the full amount of tax due to a specified date. This payoff can be used for collection purposes until the estate provides a date it will pay the account in full. Advisory should also have copies of termination letters in their case files and copies of liens, bonds or financial information secured from the estate.
4. Once the status 14 is input, FTP and interest need to be calculated and manually input. The last TC 340 on the account will reflect to what date the interest has been updated. When a collection account assigned to the field is paid in full the revenue officer is required to request input of the penalties and interest to the date of payment to prevent refunds.
5. The manual assessment can be requested on Form 3244 when posting funds received or if the funds have posted request the assessment on Form 4844.
6. Submit a Form 4844, *Request for Terminal Action*, to the CCP Fort to request assessment of accruals once the balance due is paid. If there is a TC 421 beginning with a DLN 17 on the account, send your request to the Cincinnati CCP Unit at *SBSE CCP Exam Cincinnati. If the return has not been examined, send your request to CCP Fort in Philadelphia.
7. Do not abate penalties or interest assessments made by the Campus in accordance with their IRM provisions - unless you verify there was a Service error.

5.5.6.8.1 (06-19-2013)

Interrelated Payoff Computation

1. When computing payoffs on estate tax accounts, be aware that the estate may qualify for an interrelated payoff computation.
2. When Form 706 is filed, deductions against the gross estate have been claimed for the expenses incurred in administering the estate. After the return has been filed, additional expenses may be incurred for which the estate can claim a deduction by filing an amended return. Such expenses include attorney fees, accounting fees, interest due on state estate tax liabilities unpaid at the time returns are filed, and state death tax credits that have been paid in installments. Allowable expenses are explained in IRC section 2053.
3. Any additional deductions, including interest as a debt, must be requested in writing by the estate or by submitting a supplemental return. On a balance due account, interest as a debt may be limited to only the interest that has been paid, instead of all interest that is due.
4. If all or a portion of the estate tax has been deferred under IRC section 6166, the estate may request a recomputation of the tax due based on allowed additional expenses. The supplemental return with documented expenses must be provided to the E&G 6166 unit at the Campus in order to do the interrelated computation with special software and provide a payoff.
5. Tax decreases on amended and/or interrelated computations, will not be input without the taxpayer's agreement and/or payment in full per the new computation.
6. Until a determination on a supplemental return is made by the Campus, the tax is still due.

5.5.6.9 (06-19-2013)

Working A Terminated IRC 6166 Account

1. When conducting your initial analysis of the account check TXMOD for the following:
 - check the last TC 340, interest was assessed to this date only
 - is there a TC 582 lien indicator or a TC 360 for a lien fee? (is it an IRC section 6321 lien or IRC section 6324A lien – you may see "special lien" indicated. Check ICS history, archive history, or with Advisory for previous action on the account.
 - How much time, if any, remains on the IRC section 6324 (a) lien? During the time the taxes were in status 14 the 10-year estate tax lien continued to run.
 - check for TC 468, status 14 input and TC 488/489, compute the CSED and document the CSED date in your ICS history
 - check for transaction codes and TXMOD/ENMOD history for appeals, penalty abatement requests, amended returns, etc. (educate yourself on what happened with this account before it came to you – it will help you make future decisions)
2. Secure copies of the following documents:
 - letters from Campus/Advisory terminating the election (Letter 950-H or I, Letter 6335-F for balance due amounts – see IRM 5.5.8.5, IRM 4.25.2.1.15 and 4.25.2.1.16 concerning IRC 6166 procedures)
 - any related appeals or Tax Court decision or settlement (is it pending or resolved?)
 - liens filed by Advisory to determine what property was pledged as collateral on deferred tax due (Form 668-J and Form 13925) and any correspondence pertinent to collection of the tax due
 - copy of any bond secured by Advisory
3. As part of your collection investigation:
 - Research the status of the business – is it sold, bankrupt, expanding and funds went elsewhere? Investing funds hoping for big payback later? Do an internet search for information on the business. The estate had a large interest in a closely held business to qualify for this election.
 - Determine if the business was sold – if so did IRS receive any of the sale proceeds? If not where are the sale proceeds? (if more than fifty percent of the closely held business was sold the election is terminated)
 - Find out where funds used to make installments payments were coming from? (may provide a potential levy source)
 - Contact Advisory, their case file may have financial information on the business and/or estate assets used for lien collateral evaluation. Secure and review this information for collection potential.
 - Secure the 706 return. Campus and/or Advisory may be able to provide partial copies of the 706 return, until you receive the entire tax return for review.
 - Determine if the executor or other fiduciary received a discharge of liability under IRC section 2204. The application for discharge and the letter granting it, should be attached to the Form 706.
4. If a special lien was secured:

- collateral listed on 668-J lien and/or Form 13925 will provide legal description of property pledged as collateral for tax due – this is the asset to pursue for collection of tax due;
- determine the current status of property pledged as collateral;
- make demand for payment, the amount in the Letter 6335-F may be used until the estate requests a payoff, send pre-levy notice if there is seizure potential.

5. If a special lien was not secured:

- Was a section 6165 bond provided?
- What is date of death – did the IRC section 6324(a) lien expire?
- Was an IRC section 6321 lien recorded? What does it attach to?
- What estate assets remain to collect from?
- If property was sold, was a discharge of the property from any liens recorded?
- Contact executor and/or responsible parties to pay installment payments, demand payment, determine what remains to collect from
- Consider transferee against those who received estate assets or fiduciary liability against those that were liable to pay installments (see 6166 election information in the 706 return or to whom letters were sent from the Campus for annual installments)

6. After conducting your fact finding, contact the estate representative and determine how the estate will pay the tax due.

5.5.6.10 (06-19-2013)

IRC Section 2032A

1. There are also special elections taken for family-owned businesses that must be approved by Examination. The IRC section 2032A election, for valuation of farm real property used in family businesses, is reported on Schedule A-1, Section 2032A Valuation, which is attached to the 706 return. The election will be identified on Page 2 of the 706 return, see Part 3 Elections by the Executor, on line 2.
2. If the estate qualifies for the election, it receives a deduction. The qualified heir(s) must not dispose of any interest in qualified real property (other than by a disposition to a member of his family) or cease to use the qualified real property for the qualified use for 10 years after the decedent's death. If the qualified heir(s) does **not** maintain these qualifications a "recapture tax" is triggered. See the Code section for specific details concerning this election.
3. The 10-year statute of limitations for collection of the "additional estate tax" against the heirs does not begin until six months after the "triggering" disposition or cessation of qualified use. The "recapture" tax must be reported and paid on Form 706-A, *United States Additional Estate Tax Return*, or, if not reported on the Form 706-A, may be asserted in a deficiency notice.

5.5.6.11 (06-19-2013)

IRC Section 2057

1. The IRC section 2057 election for valuation of the qualified family-owned business interest is reported on Schedule T, Qualified Family-Owned Business Interest Deduction. If the family members dispose of or fail to materially participate in the business or the business is sold within 10 years after the date of the decedent's death, the recapture tax will be triggered. See the Code section for specific details concerning this election.
2. Any "recapture tax" is reported and paid on Form 706-D, *United States Additional Estate Tax Return – Under Code Section 2057*, or, if not reported on Form 706-D, may be asserted in a deficiency notice. This section does not apply to estates of decedents who died after December 31, 2003. Though the election can no longer be taken, you may receive a collection account for the recapture tax due if the qualified family-owned business did not continue to be operated by family members for the 10-year period.

5.5.6.12 (06-19-2013)

Assessment of Recapture Tax

1. The recapture tax account is assessed as a NMF account, MFT code 53, under the heir's SSN with an "N" indicator.
2. The due date for the return is within six months of the disposition or disqualification of the business.

5.5.6.13 (06-19-2013)

Special Lien for IRC Section 2032A or 2057

1. When a section 2032A or 2057 election is granted, a tax lien under section 6324B arises to protect the Government's interest should the recapture tax be assessed due to disqualification.
2. The Form 668-H, *Notice of Federal Estate Tax Lien Under Internal Revenue Laws*, is secured and recorded by Advisory and identifies the property subject to the lien. All parties with an interest in the business consent to recording of the lien on the Schedule A-1 or Schedule T.
3. These businesses and the liens are monitored by the Advisory Estate Tax Lien group. Secure a copy of the lien from Advisory to determine what assets are pledged as collateral. Collection action may be taken on the asset specified on the lien. Advisory responsibilities are outlined in IRM 5.5.8.

LIEN	ATTACHES	DURATION
Section 6324B for Section 2032A and Section 2057 special valuation cases	Specific property designated in Schedule A-1 or T and on Form 668-H	Coincides with CSED. Must be recorded.

4. These liens are not recorded on ALS. Typically the liens are recorded before a NMF account is assessed, there may not be an open module under the estate's SSN to input the TC 582. Advisory can provide copies of their lien case file and will provide the lien release when necessary.
5. These liens arise at the election and are consensual liens. Therefore, the estate or qualified heirs do not have CDP rights. All parties with an interest in the business consent to recording of the lien on the Schedule A-1 or Schedule T.
6. The property covered by the lien for the IRC section 2032A election is the interest in the qualified real property. The property covered by the lien for the IRC section 2057 election can be either real or personal property.



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 7. Collecting Estate and Gift Tax Accounts

5.5.7 Collecting Estate and Gift Tax Accounts

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Manual Transmittal

September 16, 2013

Purpose

(1) This transmits a complete revision to IRM 5.5.7, Collecting Estate and Gift Tax Accounts. This IRM section has been completely rewritten to provide direction on investigating, securing pertinent documentation, effective contact with a executor and technical guidance related to collection of estate and gift tax accounts.

Material Changes

(1) The former title of this section was Collecting Delinquent Estate Tax Accounts. The title is being changed to reflect that this section has been expanded to address gift tax accounts, in addition to estate tax accounts.

(2) Due to the substantial revisions, all of the subsection dates have been changed to reflect the current date.

(3) Added new information on the following topics:

- IRM 5.5.7.6 - collection statutes
- IRM 5.5.7.11 - finding estate assets
- IRMs 5.5.7.15, 5.5.7.16 and 5.5.7.17 amended returns, claims for refund, protective claims
- IRM 5.5.7.19 - penalties
- IRM 5.5.7.26 - gift tax collection
- IRM 5.5.7.28 - collecting generation skipping taxes
- IRM 5.5.7.29 - international estate tax accounts
- IRM 5.5.7.32 - trusts

Effect on Other Documents

Audience

SB/SE Collection Employees

Effective Date

(09-16-2013)

Scott D. Reisher
Director, Collection Policy

5.5.7.1 (09-16-2013) Section Overview

1. This IRM section provides guidance on initial analysis and working various types of estate and gift tax accounts. It includes information to identify the nature of estate and gift tax assessments, computation of CSEDs, who is responsible to pay the tax, appeal rights and enforcement of the various tax liens for effective resolution of an estate or gift tax account.
2. It does not cover all case scenarios, due to variations in each case based on Code provisions, lien law and issues unique to each estate and gift tax account.

5.5.7.2 (09-16-2013) Entity Case Codes and Sub Codes

1. Group Managers and Revenue Officers are responsible for reviewing the case code and its sub code, changing codes as warranted.
2. Estate Decedent Case Code 501 will be used for:
 - Form 706 Estate Tax Return, MFT 52
 - Form 709 Gift Tax Return, MFT 51
3. Estate Fiduciary Case Code 502 will be used for:
 - Form 706-GS Estate Generation Skipping Tax Returns, MFT 77 and 78
 - Form 1041, Estate and Trust Income Tax Return, MFT 05
4. If an estate or gift tax case is assigned to an ATAT Revenue Officer it should be sub coded 323.
5. Transaction code (TC) 971 action code (AC) 281 may be used to stop the aging on suit development cases. Group managers must document approval to input the TC 971 AC 281 in the ICS case history.
6. See IRM 5.20, *Abusive Tax Avoidance Transactions*, for more information on aging of ATAT and suit development cases.
7. In general, managers should assign taxpayer cases related to a present assignment to the same revenue officer. Related cases may include individual income tax, estate income tax or gift tax accounts. Estate assets may be levied upon for payment of related accounts assessed prior to death.

5.5.7.3 (09-16-2013) Internal Progression of Estate Tax Accounts

1. In most estate tax collection cases, executors have already had contact with employees from a specialized group within Examination, the Campus or Advisory. Information pertinent to your collection investigation may be available from files of other Service personnel who have had previous contact with representatives of the estate.
2. Audits of estate tax returns are handled by the Estate and Gift tax section of Specialty Tax (E&G Exam). Examination determines adjustments for amended returns and makes decisions on allowance of special elections such as installment payments under Internal Revenue Code section 6166. To find an E&G Exam office, check the intranet webpage at <http://mysbse.web.irs.gov/Specialty/eg/default.aspx>. Click on "Contacts" and one of the four territory links to find the address and phone number of the E&G Exam offices. If the account is undergoing an audit, coordinate with the examiner on the status and potential impact on the balance due of your account.
3. The Estate and Gift Tax unit in the Cincinnati Campus monitors accounts that are granted the IRC section 6166 installment election and extensions to pay. The Campus E&G unit is responsible for sending notices of tax due on monitored accounts. The extension unit can provide copies of requests for extensions to pay made under IRC section 6166 and determinations made concerning acceptance or rejection of the requests. The 6166 unit can provide copies of billings for annual 6166 installment payments, late notices or acceleration notices, if applicable, and payoffs on 6166 accounts that require special calculations. These accounts are put in status 14 to prevent notices from being generated systemically. A special software program is used to perform interrelated interest calculations; a payoff cannot be computed on IDRS using command code INTST. These units may be able to provide assistance with payoffs or questions regarding penalty and/or interest assessments. For contacts at the campus, see <http://mysbe.web.irs.gov/Collection/toolsprocesses/EstateTax/default.aspx>.
4. The Cincinnati Campus also has a separate unit to monitor international estate tax returns. International estate tax accounts result from assessments for Form 706-NA, U.S. Estate Tax Return for Nonresident Aliens. The Service provides a transfer certificate upon payment of taxes in full which permits the transfers of property of non-resident decedents without liability. Transfer certificates release the Federal estate tax lien on a decedent's property. This unit may be able to provide pages of the Form 706-NA return that reflect estate assets or information regarding transfer certificates.
5. The Advisory Estate Tax lien group has the responsibility of making a determination to approve requests for extensions of time to pay, working lien discharge or subordination requests, and filing or releasing liens when special elections are granted. Advisory can provide copies of liens which identify property they attach to, commitment letters and discharges when estate property is being sold. For contacts in the Advisory Estate Tax lien group, see <http://mysbe.web.irs.gov/Collection/toolsprocesses/EstateTax/default.aspx>.
6. Appeals has a centralized area to handle estate tax issues. Information is located on the E&G webpage at http://appeals.web.irs.gov/tech_services/estate_gift/estate_gift.htm.

5.5.7.4 (09-16-2013) Unfiled Estate Tax Returns

1. You may receive a delinquent return investigation to secure unfiled estate tax returns, this may result from an expired extension to file. If investigation reveals that a taxable return is required to be filed, secure it as expeditiously as possible because even though the return has not been filed, the 10 year estate tax lien continues to run. Under IRC section 6018, if the personal representative is unable to make a complete return as to any part of the gross estate due to lack of information, he or she is required to file a return giving all the information he or she does have, and a full description and the name of every person who holds a legal or beneficial interest in property for which he or she lacks sufficient information to complete the Form 706.
2. The following investigative actions should be taken:
 - Contact the executor, inquire about assets the decedent owned at date of death and solicit voluntary filing of the tax return.

- Summons the work papers of the executor or the attorney or accounting firm that prepared the extension request.
 - Conduct a county records check on the decedent for assets owned at date of death, or any assets transferred prior to death.
 - Check probate records to see if there is any inventory and appraisal of estate assets. Also see if there is any litigation of estate assets.
 - Determine if property was transferred to trusts.
 - Check Information Returns Processing Transcripts (IRPTR) for decedent's interest or dividend income from stock or a savings account or C.D. IRPTR may reflect changes in income, sales, or mortgage interest reported.
 - Check the decedent's Form 1040, before and in the year of death for assets owned.
 - Review Accurint for any information on decedent's assets.
 - Check BMFOL to see if gift tax returns were filed for gifts made.
 - Contact your local estate tax attorney group - ask questions about how they find assets when auditing an estate tax return.
3. Once you gather sufficient documentation to support the filing requirement for the tax year in question (see the form instructions for filing requirements) you can submit a Specialist Referral System application, <https://srs.web.irs.gov/>, it will be assigned to an estate tax group to evaluate. Another option is to forward a referral form, with supporting documentation, directly to E&G Exam see <http://mysbse.web.irs.gov/Collection/toolsprocesses/EstateTax/EstateTax/default.aspx>, under the IRM Guidance & Resource tab for more information.
 4. Issues regarding if discounts on value of property included in the gross estate are appropriate or that liabilities, expenses or deductions are allowable should be documented in the referral for determination by E&G Exam. Allow E&G Exam to make the decision if there is a taxable estate or not.
 5. Due to estate tax law changes in 2010, estates had the option of filing a Form 706, *Estate Tax Return*, or filing Form 8939, *Allocation of Increase in Basis for Property Acquired from a Decedent*, to report information about property acquired from a decedent. Make a referral to E&G Exam through the Specialist Referral System for assistance in determining if an estate tax return should be filed for 2010. E&G Exam maintains a database for filed Forms 8939.
 6. For suggested summons language for estate tax returns see IRM 5.5.9.21, *Using a Summons for Estate and Gift Tax Information*.

5.5.7.5 (09-16-2013)

Nature of the Assessment

1. As part of your initial analysis, review IDRS to determine the nature of the assessment. By reviewing IDRS, you can see if someone internally is working on the account and may be able to provide assistance or documentation to help you work your account. Below is a list of transaction codes (TCs) to assist you in analyzing your account.

TC Description

- 150 The original assessment for a return filed.
- 290 Additional tax as a result of an adjustment to a module which contains a TC 150 transaction. The assessment could be from an amended return or a math error. Check freeze codes.
- 291 Abates a previously posted 150 and/or 290 or 300 in whole or in part. Generates abatements (TC 197) of computer-generated interest where applicable. Releases same freezes and holds as TC 290.
- 300 Reflects an audit has been completed and an additional deficiency is assessed. You will have a different CSED for this assessment than the TC 150.
- 301 Reflects an abatement of tax.
All Form 706 returns are reviewed for audit potential, but may not be selected for an audit. TC 420 indicates the return is either being classified at the campus to review 420 the return (status code 06 on AMDIS) or has been assigned to an exam group for audit (status code 10 or 12 on AMDIS). The TC 420 will generate the "-L" freeze. If the 706 is accepted as filed a TC 300 will post for zero with DC (disposal code) 20, then a TC 421 will post.
- 421 Reflects the audit is closed (status code 90 on AMDIS).
- 460 Indicates an extension of time for filing the return and generates the extended filing date.
- 462 Corrects erroneous posting of TC 460 and restores prior status.
- 468 Reflects the account had an extension to pay. The extended due date is reflected on the module. This changes the CSED. Closing codes identify denied extensions, an extension or denial on just the TC 300 assessment, or if the denial was appealed.
- 469 Corrects erroneous posting of TC 468 and restores prior status.
- 488 Indicates the account was granted an installment agreement for annual payments under IRC section 6166 and is put into status 14.
- 489 Is input when this special election is terminated. The module will be updated to status 21 for assignment.
- 520 Indicates some type of litigation is pending.
- 971 TC 971 action code 700 indicates a protective claim has been filed.
- 976 Reflects receipt of an amended return or TC 971 with action code 010. The module should have an "-A" freeze. If an amended return has been worked, a TC 290 or TC 291 will reflect the tax adjustment and the "-A" freeze will drop off.

2. For more information on these transaction codes, see Document 6209, *IRS Processing Codes and Information*, Chapter 8.

5.5.7.6 (09-16-2013)

Collection Statute Expiration Date (CSED)

1. **Always** check the Collection Statute Expiration Date (CSED) when working estate tax accounts. IDRS may not accurately reflect the CSED when multiple assessments are involved.
2. Different CSEDs may run on different assessments. You can have a different CSED for the original TC 150 assessment and for the tax deficiency reflected as a TC 300 or an adjustment to tax under TC 290. These CSEDs generally expire 10 years from the date of assessment. **Extension of the CSED does not extend the estate tax lien.** The estate tax lien runs for 10 years from the date of death and cannot be extended or tolled.
3. TC 520's also can extend CSEDs, input as a result of CDPs or OICs filed. The following transaction Codes for judgment/litigation impact CSEDs:
 - TC 520 with closing code 70 through 75 and closing code 84 does not suspend the CSED.
 - TC 520 with closing code 76 through 81 suspends the CSED, unless a TC 550 (new CSED) is posted with a later transaction date. When a judgment is entered in a case where assessments were reduced to judgment, request input of TC 550, definer code 04, using 20 years from the date the judgment was entered as the new CSED.

See 5.1.19, *Collection Statute Expiration*, for additional information.

4. Once you determine the correct CSED, document your ICS history with the new CSED and how you arrived at the date. Update the ICS CSED. See the ICS User Guide Chapter 7, Module Summary-Module Detail, for detailed information on updating the CSED on ICS.

5.5.7.6.1 (09-16-2013)

Suspension of the CSED

- Under IRC section 6503(d), the CSED is suspended for the period of any extension of time for payment granted under IRC section 6161, 6163 or 6166. Typically a Form 4768, *Request for Extension of Time to Pay Estate Tax*, is used for this type of request on estate tax liability. An extension can be granted on either or both of the TC 150 and TC 300 assessments.
- TC 468 is input on IDRS to identify accounts that have been granted additional time to pay estate taxes due under IRC section 6161.
- Generally, the CSED is extended for the period of time from the original due date of the return to the extended payment date reflected with the TC 468 on the tax module. Under IRC section 6161, payment may be deferred for a reasonable amount of time not to exceed 12 months. Requests for extension to pay tax reported on an **estate tax** return may be applied for up to 10 years if payment imposes an undue hardship upon the estate. Amounts due as the result of a deficiency may be extended for a reasonable amount of time not to exceed 12 months. Requests for extension to pay tax due as a result of a deficiency may be applied for up to four years from the date fixed for payment of the deficiency if payment imposes an undue hardship upon the estate.
- The IRS may extend the time for payment of the amount of the **gift tax** reported on a return for a reasonable period not to exceed six months from the date the payment is due. Amounts due as the result of a deficiency of gift tax may be extended for a reasonable amount of time not to exceed 18 months from the date fixed for payment, and in exceptional cases, for a further period of 12 months. An extension may be granted only where it is shown that payment of the deficiency will result in an undue hardship to the donor. Form 1127, *Application for Extension of Time for Payment of Tax Due to Undue Hardship*, is used to request additional time to pay gift tax liability. The TC 468 is not used to reflect gift tax extensions, the TXMOD history of the account will reflect if the extension was approved and to what date.

5.5.7.6.2 (09-16-2013) TC 468/469 Transaction Code

- The TC468/469 transaction codes came into effect in January 2003. Closing codes were added in January 2004 to reflect the following:
 - CC01 = denied extension on TC 150 assessment
 - CC02 = extension on TC 300 assessment
 - CC03 = denied extension on TC 300 assessment
 - CC04 = appeals case
- On accounts that had extensions prior to 2003, all were put into status 14 to be manually monitored. This transaction code changed IDRS programming to monitor the extension period and calculate penalties and interest after expiration to send a computer generated bill. Again if the extension periods do not match IDRS cannot monitor, the account has to be manually monitored. In older cases review TXMOD history for information that an extension to pay was granted, you may also find the TC 489 indicating the last extension expired removing the account from status 14.
- You may see a TC 468 that reflects an extension date to the original due date of the return – this indicates the extension was denied.
- Another source to check is ENMOD. Any correspondex letters that are sent through IDRS, automatically show on the Entity portion of ENMOD a couple of days after they are input on IDRS. ENMOD will indicate the letter number (Letter 297-C, *Extension of Time to File and/or Pay (IMF/BMF); Denial Explained*) and for which tax period (52 000000).

5.5.7.6.3 (09-16-2013) Accounts with Two Different Extension Dates

- Accounts that have two different extension dates for the TC 460 (extension to file) and TC 468 (extension to pay) have to be put into status 14 to be manually monitored. IDRS does not know which extension date to monitor. TC 488 is input to update the module status to 14.
- In cases where you have two different extension dates you need to ignore the TC 488 and TC 489 – the time period the account was in status 14 does not get added to the CSED. Unless there is indication (possibly in the TXMOD history) there was a 6166 election also that would defer payment even longer. An indicator of an IRC 6166 account is annual TC 340 assessments, made when the estate is billed for the installment payment. To calculate the CSED use the extended payment date on the TC 468 to determine additional time the payment of tax was deferred.
- Once the status 14 is input, you can no longer get a payoff through IDRS. So FTP and interest need to be calculated and manually input. See IRM 5.5.7.12, *Notice of Tax Due*, regarding payoffs.

5.5.7.6.4 (09-16-2013) IRC 6166 Accounts

- For accounts with an approved IRC section 6166 election, the CSED is suspended for the period during which payment of the tax is deferred. However, running of the IRC section 6324(a) estate tax lien is not suspended. **Generally the additional time to add to the CSED is the period of time between the input TC 488 (or status 14) and the TC 489.** See IRM 5.5.6.7, *Collection Statute Expiration Date*, for more information specific to IRC 6166 accounts.
- If an extension to pay (IRC 6161) was granted for the annual installment due under IRC section 6166, the extended time for payment would also be calculated into the CSED.
- Any tax due (reported on return or deficiency) that was not deferred under IRC 6166 will have a different CSED date. The Form 4349, *Computation of Estate Tax Due With Return and Annual Installment*, will show what tax was deferred under IRC 6166. The Campus E&G unit may have this information on its database or the form may be with the tax return.

5.5.7.7 (09-16-2013) Initial Analysis

- Initial analysis involves examining the overall case to understand the issues involved and the steps necessary to move the case to resolution. Following are steps to be taken to develop and refine initial case actions to prepare for the initial contact.
- When receiving an account for estate taxes due, you must determine whom to contact. The contact can be:
 - The executor named on the ICS case summary screen, ENMOD or CFINK
 - Designated representative on Form 706 (may have signed the return) or
 - A person named in probate records.
- The Executor, in his or her official capacity for the Estate is responsible for handling estate affairs, gathering estate assets and paying creditors of the estate. You will always first seek payment from the executor and the estate assets first. In some cases a successor executor may be appointed to handle estate matters; in this situation your contact should be with the successor that has assumed executor responsibilities.
- If there is no executor or administrator appointed, qualified, and acting within the United States, then the executor is any person in actual or constructive possession of any property of the decedent. The term "person in actual or constructive possession of any property of the decedent" includes, among others, the decedent's agents and representatives; safe-deposit companies, warehouse companies, and other custodians of property in this country; brokers holding, as collateral, securities belonging to the decedent; and debtors of the decedent in this country. See Treas. Reg. § 20.2203-1 Definition of executor. You may seek payment of the estate tax from a section 2203 "statutory" executor to the extent of the value of the estate property within his or her possession. Such executor, may not represent the estate unless appointed by a court.

5. Check IDRS to determine what generated the assessment, has another function worked on the account, if so what actions were taken and compute the CSED. Document the ICS history with your findings.
6. A full compliance check should be performed to ensure that all of the decedent's IMF and BMF filing requirements have been met. Be aware of the possibility that the decedent's estate may consist of undistributed income producing property that requires the filing of Form 1041. If non-probate income producing assets are held in trust, it is likely that the trust has a Form 1041 filing requirement. Any related accounts should be consolidated to the same revenue officer. Estate assets may be levied upon for payment of related accounts assessed prior to death.
7. Probate records may provide information concerning litigation of estate assets and the parties making a claim against estate assets. Probate records tell the story of what the executor has done with the estate assets. You must always seek payment from the estate assets and the executor first. You must determine who has priority to the estate assets and protect the Government's lien position.
8. Check court and other county records to:
 - Determine if a probate is open, type of proceeding and if any property is under the control of the court.
 - Obtain copies of any inventory and appraisal of estate assets filed by the executor.
 - Determine if property title has been transferred and if discharges from the estate tax lien were issued by Advisory or E&G Exam.
 - Determine if there is pending litigation of any estate assets.
 - Determine if there are creditor claims that reflect encumbrances against assets.
 - Review any annual accountings for distributions and creditors paid.
 - Obtain copies of any trust documents for any related trust which had assets included in the gross estate on Form 706, and which may be liable for the estate tax.
9. Review the Form 706 return and schedules to determine:
 - What estate assets the estate tax lien attaches
 - If there are special elections
 - What assets remain in the estate to be liquidated or distributed
 - If there are assets that can be easily secured as payment such as cash, savings bonds, stock certificates, or real property
 - If heirs have received assets
10. Next determine what the estate tax lien attaches:
 - Document what assets the lien attaches.
 - Determine what happened to assets that the estate tax lien attached.
 - Determine if IRS received funds for its interest in property and if discharges of property from the lien were issued.
 - Prepare a time line of distribution of assets and knowledge of tax due.
11. Once you have completed initial fact finding you are ready to make contact with the executor to determine how the taxes will be paid. During your contact with the executor review the Form 706 and note what the executor indicates has happened to the estate assets listed on the schedules. Additional facts you gather will help you decide the next collection avenue to pursue (levy, suit, etc.) and against whom (transferee or executor).
12. If you need to order an account transcript follow these steps:
 - A. Sign into the Employee Portal Login.
 - B. Go to Request Transcript, select INDIVIDUAL, type in TIN and TP's name (no "V" indicator).
 - C. Under Product Type select ACCOUNT TRANSCRIPT, under request purpose select FEDERAL TAX.
 - D. At this point under MFT CODE 52 type in the year return was received or year of death (Do not input 000000 for tax period).

5.5.7.8 (09-16-2013)

Dependent and Independent Administration of Probate Proceedings

1. You must determine from the probate records if the proceeding is dependent, supervised or formal. The term differs by state, but all indicate that assets of the deceased are under the control of the probate court. Administrative enforcement actions are prohibited, while the assets are subject to the probate courts control. Enforcement action may be possible if it can be shown that levy or seizure of certain assets would not interfere with the work of the court, or if the court grants permission for such action. Treas. Reg. § 301.6331-1(a)(3). Consult Counsel before taking any enforced collection action. The Government may have cause to proceed if the estate tax lien is in jeopardy of expiring before all related collection actions can be completed. Additionally, you may request judicial assistance from the Department of Justice to file a motion for payment of the estate tax in the probate case if the executor refuses to pay.
2. A Notice of Federal Tax Lien (NFTL) may be recorded because probate proceedings are not subject to an automatic stay as are bankruptcy proceedings.
3. If the probate proceeding is under dependent administration, demand letters may be sent to the executor. You should continue your investigation regarding liens against non-probate assets, transferee liability and fiduciary liability. If there are non-probate or other assets not subject to the court's jurisdiction or under the control or custody of the court, then the IRS may levy on those assets.
4. If the proceeding is independent, unsupervised or informal, then assets of the deceased are not under control of the probate court. Administrative collection may be pursued.
5. To determine if the proceeding is independent or dependent, look at the will or letters testamentary, it is typically stated in these documents. The docket sheet or other filed documents usually designate the type of administration.

5.5.7.9 (09-16-2013)

Probate Assets

1. Both probate and non-probate assets are included in the gross estate. The manner in which title passes determines whether an asset is a probate asset or a non-probate asset. Both are included in the gross estate, but the distinction is the way it creates liens and personal liability.
2. Generally, probate assets are listed on schedules A, B, C, and D. Non-Probate assets are listed on schedules D, E, F, G, H and I. Schedule D deals with life insurance that is payable to the estate and to beneficiaries. Life insurance is probate if it is payable to the estate. It is non-probate if it is payable to a third party beneficiary. The associated Form 712 should reveal which type of beneficiary you have. Form 712, Part 1 lists insurance that is a probate asset, while Part 2 lists insurance that will be a non-probate asset.

3. Probate property is property the deceased owned at the time of their death or that is payable to the estate. For example: if a house, car, recreational vehicle, and bank account are all in the name of the deceased at the time of death, those items of property will have to be included in the probate estate and go through the probate proceeding before they can be legally transferred to the beneficiaries. Salary and benefits due to the deceased and money collected from debts owed to the deceased are part of the probate estate as well. These assets will be reported on the Form 706 return as part of the gross estate on Schedules A, B or C – the statutory lien attaches to these assets.
4. Probate assets that were held in the decedent's name at time of death are includible in the gross estate under IRC section 2033. The IRC section 6324(a) lien will survive the transfer of probate assets. Probate assets distributed after the IRC section 6321 lien arises will continue to be encumbered with that lien as well, subject to certain priorities under IRC section 6323.
5. See IRM 5.5.1, *Decedent and Estate Tax Accounts*, for additional information on probate and non-probate assets and IRM 5.5.2, *Probate Proceedings*.

5.5.7.9.1 (09-16-2013) Non-Probate Assets

1. Non-probate property is primarily those assets of the decedent that were transferred prior to death or were held in a way that ownership transferred automatically upon death. These assets are identified in IRC sections 2034 through 2042. Non-probate assets do not come under control of the court. They may be distributed without court approval by the executor.
2. Some examples of non-probate property include:
 - Transfers taking effect at death (payable on death accounts such as checking or savings accounts).
 - IRA's and retirement accounts that are payable to a designated spouse or survivor rather than the decedent's estate.
 - Property held jointly with rights of survivorship by decedent and any other person (such as a spouse).
 - Remainder interest where the decedent held a life estate.
 - Life insurance proceeds paid to a designated beneficiary other than the decedent's estate.
 - Property held in a revocable or living trust, with a designated beneficiary.
3. You may find non-probate assets listed on Schedules E, F, G and I of the Form 706 return. These assets, whether held by the trust or distributed to beneficiaries, are attached by the IRC section 6324(a) estate tax lien.
4. Additionally a recipient of non-probate property can be held personally liable to pay delinquent estate tax or the decedent's delinquent individual income tax to the extent of the date of death value of all non-probate property received.

5.5.7.10 (09-16-2013) Ordering 706 Returns

1. The Form 706 is your financial statement. It provides all the assets the taxpayer owned as of the date of death. One of your first steps is to secure a copy of the return. You may be able to secure a copy from Examination if the account is undergoing an audit or from the estate representative.
2. All estate and gift tax returns are now filed at the Cincinnati Campus. Older returns may have been filed at the various campuses that related to last domicile of the decedent. First order the return from the Cincinnati Campus. In some cases you may need to send Form 2275, *Records Request, Charge and Recharge*, for a special search to all campuses.
3. All 706 returns are reviewed in classification to determine if there are potential audit issues. If you are looking for a return, below is information concerning the status or location of returns after classification:
 - TC 420s post 1 cycle after TC 150 posts
 - Must go to AMDIS to see if 706 got assigned to a group after classification
 - If 706 is accepted as filed a TC 300 will post for zero with DC (disposal code) 20, then a TC 421 will post
4. 706 returns are filed by DLN, typically they are re-filed under the DLN with an "X".
5. All 706 returns that need to be re-filed after you close your case are sent back to the Cincinnati Campus on Form 3210. See the estate tax page on mysbse.web for the address of the refile unit in Cincinnati Campus.
6. When a case goes to litigation the original return is pulled and sent with the case to Counsel and possibly DOJ if they are involved. After resolution of the litigation the original return is sent back to Appeals for the final assessment/adjustment process. After, the original return should be sent to the Cincinnati Campus with the documents related to adjustments resulting from the litigation.
7. If you have difficulty finding a return, sending a special search request to all Campuses may result in finding the return.

5.5.7.11 (09-16-2013) Finding Estate Assets

1. Page 1 of the Form 706 provides the computation of the gross estate, deductions, credits and tax due. It provides information concerning:
 - Date of death - to determine when the statutory lien expires
 - Last domicile - for lien filing purposes
 - Executor name, address and SSN - responsible party to contact for payment of taxes
 - Probate court information - for records research
 - If the taxpayer died with a will - will outlines who gets estate assets and who is responsible to pay taxes
 - Total gross estate - reported value of assets at date of death
 - Balance due
2. Page 2 provides information on special elections taken, beneficiaries who receive benefits, and
 - If a special election was taken, such as IRC section 2032A, 2057 or 6166 - a special lien may have been recorded
 - Estate representative information - for contact with the return preparer
 - Spousal information - the spouse may be joint owner on property or receiving estate assets

- Information on beneficiaries who receive distributions from the estate, including the amount and beneficiaries' SSNs - who might have transferee liability
 - If Form 709 gift tax returns were filed - who received gifts from the decedent
3. Page 3 of the 706 has general questions inquiring about assets owned by the decedent, partnerships, trusts, annuities and foreign bank accounts. It also provides a quick overall recapitulation of the schedules attached to the return.
 4. Various schedules are filed to support the entries in the Recapitulation on Page 3. The schedules identify the estate assets, including details such as location of real estate and bank accounts. Generally estate assets are listed on:
 - Schedule A, *Real Estate*
 - Schedule B, *Stocks and Bonds*
 - Schedule C, *Mortgages, Notes and Cash*
 - Schedule D, *Insurance on Decedent's Life*
 - Schedule E, *Jointly Owned Property*
 - Schedule F, *Other Miscellaneous Property*
 - Schedule I, *Annuities*

Encumbrances or debts are typically listed on Schedule K, *Debts of the Decedent and Mortgages and Liens*.
 5. Use these schedules to identify estate assets the estate lien attaches to at the date of death. You will need to track the present status of those assets by checking probate records or courthouse records, or by questioning the executor to determine what is still available to pay outstanding taxes.
 6. Probate records will reflect litigation over estate assets, sale of assets, distributions of estate assets or funds that may not be reflected in the 706 return.
 7. Form 1041, *U.S. Income Tax Return for Estates and Trusts*, reports the income of the estate or trust and may provide levy sources.
 8. Income and assets are reported on the first page of the Form 1041 on lines 1 through 9. You will find various types of income paid to the estate, such as dividends, business income, and rents.
 9. The Schedule C, *Profit or Loss from Business*, provides information such as type of business, income and expenses deducted for assets owned.
 10. The Schedule K-1 reports the beneficiary's share of the estate or trust. It gives names and SSNs, which is helpful if they need to be contacted concerning distributions received. The amounts on the K-1s flow to the beneficiaries' individual Forms 1040.
 11. IRPTR documents can help identify assets owned prior to death and whether those assets have been distributed. IRPTR should be checked for the year prior to death, the year of death and the year after death. Check the SSN for the decedent and the trust EIN, as income may have been reported under either number.

5.5.7.12 (09-16-2013)

Notice of Tax Due

1. Once you determine an executor, successor executor or any other party has estate assets in their possession (for an asset you intend to levy or seize for payment on taxes) give them Form 10492, *Notice of Federal Taxes Due*, and a copy of the NFTL to notify them outstanding taxes have not been paid. This form is notice of tax due but has no CDP appeal rights. It gives the person in possession of an estate asset an opportunity to pay before enforcement action is taken.
2. This form provides the amount of tax due and a caution to fiduciaries of personal liability under 31 U.S.C. section 3713 if the taxes are not paid. Provide the Form 10492 to recipients of estate assets and explain that assets they received before taxes were paid are subject to levy to pay the unpaid taxes.
3. If a notice of levy will be issued, Letter 1058, Final Notice, must be sent to the estate administrator or executor, or if there is no executor or administrator, to the last known address of the decedent. Letter 1058 will **not** be sent to third parties in possession of estate assets. If a third party obtains the authorization of the probate court to serve as executor, he or she may represent the estate in a CDP proceeding. Provide any publications or notices as required in IRM 5.11.1.2.1, *Required Notices*.
4. See IRM 5.5.3.7, *Styling and Mailing of Notices*, for additional guidance on styling of notices and liens. Tax periods on notices or liens should match those reflected on IDRS.
5. **Check the payoff amount to ensure accurate penalty and interest are provided on ICS letters.** If status 14 was input on an account, you can no longer get a payoff through IDRS, in such case ICS may not compute accruals. **FTP and interest need to be calculated and manually input.** The last TC 340 on the account will reflect to what date the interest has been updated. If IRC 6166 is not involved you can use COMPA to calculate accrued penalties and interest.
6. You can also send a payoff request for an IRC 6161 account to e-mail address: *SBSE CCS RESTINT. This is a restricted interest group in Philadelphia that handles these types of request. If you receive only an interest calculation use COMPAF to calculate the FTP from the extended payment date on the TC 468, to your payoff date. Payoffs for IRC 6166 accounts will need to be secured from the Campus E&G unit.
7. The manual assessment of penalties and interest can be requested on Form 3244, *Payment Posting Voucher*, when posting funds received or if the funds have posted request the assessment on Form 4844, Request for Terminal Action.
8. Submit a Form 4844, to the CCP Fort to request assessment of accruals once the balance due is paid. If there is a TC 421 beginning with a DLN 17 on the account, send your request to the Cincinnati CCP Unit at *SBSE CCP Exam Cincinnati. If the return has not been examined, send your request to CCP Fort in Philadelphia.
9. Do not abate penalties or interest assessments made by the Campus E&G unit in accordance with their IRM provisions - unless you verify there was a Service error.

5.5.7.13 (09-16-2013)

CDP and Appeal Rights

1. A person must be a "taxpayer" to be entitled to a hearing under the CDP regulations. The "taxpayer" for estate tax accounts is the estate, as represented by the executor. Persons (such as beneficiaries) holding "property subject to a lien with respect to the taxpayer" are not entitled to a CDP hearing. The CDP regulation states "The person described in section 6330(a)(1) is the same person described in section 6331(a)—i.e., the person liable to pay the tax due after notice and demand who refuses or neglects to pay (referred to here as the taxpayer). A pre-levy or post-levy CDP notice therefore will be given only to the taxpayer." The taxpayer is the estate. See Treas. Reg. section 301.6330-1(a)(3) Q&A A1.
2. If collection action is being pursued against estate assets in the hands of beneficiaries, the beneficiaries do not have CDP rights since they are not the "taxpayer". The beneficiary is holding an estate asset that the estate tax lien attached. Collection is being pursued against the estate asset to satisfy the estate's tax liability. In these circumstances, do not issue the Letter 1058 to the beneficiary or holder of estate assets. See IRMs 5.5.9.12 through 5.5.9.19, for special language for levies used to seize the estate assets.
3. However, although not entitled to CDP rights, such party would be entitled to collection appeal program (CAP) rights to propose collection alternatives and raise any other issues pertaining to the levies or proposed levies.

4. In lieu of the Letter 1058, give Form 10492, Notice of Federal Taxes Due, and a copy of the NFTL to the executor, estate administrator or beneficiary holding the decedent's assets to notify them outstanding taxes have not been paid. The Form 10492 puts recipients of estate assets on notice that assets they received before taxes were paid are subject to levy to pay the unpaid taxes. This form has no CDP or appeal rights; it is a notice of tax due.
5. You must mail notices to the executor. If no executor is appointed, mail notices to the decedent's last known address. The executor has the authority to exercise CDP rights on the behalf of the estate.
6. If a CDP lien request or equivalent hearing request is filed, levy action may be appropriate if collection is at risk, see IRM 5.1.9.3.5, *Levy Action during the Period of the CDP or EH*. The expiration date of the estate tax lien needs to be considered when determining whether any levy action would be appropriate since all collection action (levy, seizure, sale) must be completed prior to the expiration of the IRC 6324 estate or gift tax lien. Follow procedures in IRM 5.1.9.3.5(4) if collection is at risk, such as it appears that the taxpayer is dissipating assets. Contact Counsel to determine if a jeopardy levy is appropriate and for approval of the jeopardy levy.

5.5.7.14 (09-16-2013)

Options to Collect Tax Due

1. If the estate tax is not paid after demand for payment to the Executor, available collection options against estate, fiduciaries and beneficiaries include:
 - Giving Notice of Federal Taxes Due to all persons holding assets that were included in the gross estate.
 - Filing notice of the IRC 6321 assessment lien.
 - Levy and seizure of undistributed probate estate assets.
 - Levy and seizure of non-probate assets in hands of trusts or initial distributees/transferees.
 - Levy and seizure, using the like lien, from those who received non-probate property.
 - Suit referral to foreclose the estate tax, gift tax or general lien.
 - Preparing a referral for Section 6901 transferee assessment or suit to obtain judgment for personal liability by Department of Justice.
 - Investigating and determining whether 31 U.S.C. § 3713 or fiduciary liability should be asserted against executors or trustees.
2. See IRM 5.5.9, *Administrative and Judicial Actions for Estate Taxes*, for further discussion on the above topics.

5.5.7.15 (09-16-2013)

Amended Returns

1. You may be assigned an estate tax account in which the executor indicates they have filed or want to file an amended return. If the executor wants to change something on a filed Form 706 return, another Form 706 should be filed with "Supplemental Information " entered on the top of page 1. An amended return may be filed to increase or decrease the tax balance reflected on the original return. Any documentation supporting the changes should be attached. See instructions to Form 706 for more information concerning necessary documentation. E&G Exam processes amended returns for Form 706.
2. Depending upon the issues, the amended return may be worked by the Campus E&G unit or may be sent back to E&G Exam for review. If the return has been selected for examination, the additional information should be provided directly to the office conducting the examination. Check command code AMDIS to see if the amended return has been assigned to an E&G examination group. If the return has been assigned, contact the examiner to determine the status and how the changes may impact collection of the balance due on your account. Until a determination on an amended return is made by Examination, the tax is still due.
3. See the estate tax page of mysbse.web for an address of the Cincinnati campus to send amended returns for processing.

5.5.7.16 (09-16-2013)

Claim for Refund

1. In some cases when you are trying to collect estate tax accounts, an executor may indicate a claim for refund will be filed. Generally, a claim for a credit or refund must be filed within:
 - three years from the date the original return was filed, or
 - two years from the date the tax is paid, whichever is later.
2. If the claim is not filed within this period, the estate is no longer entitled to a credit or refund. If an executor indicates a refund claim has been filed, determine if it is timely filed before considering delaying collection. See IRC 6511, for additional information regarding limitations on credit or refund.
3. Check the Refund Statute Expiration Date (RSED) indicator on the IDRS module.

5.5.7.17 (09-16-2013)

Protective Claim

1. A protective claim is filed to protect the estate's rights to file a claim for refund, usually because the estate's entitlement to the claim for refund is contingent upon the resolution of litigation. An example would be a protective claim that is timely filed within 3 years of the date the original return was filed, but the litigation is not resolved until after that 3 year period has run.
2. Once litigation is concluded, depending on the outcome of the litigation and its impact on the tax due, the estate must either file a Form 706 amended return or file a perfected claim for refund. Once an amended return or perfected claim is filed, it is reviewed and a determination made on the allowance.
3. TC 971 action code 700 on the account indicates a protective claim has been filed.
4. IRC section 6404(b) does not permit the taxpayer to file a claim for abatement of estate and gift taxes.

5.5.7.18 (09-16-2013)

Offers in Compromise

1. Offers may be filed on estate or gift tax cases. If an offer is submitted the revenue officer will complete and submit with the offer Form 657, *Offer in Compromise - Revenue Officer Report*. Document in Item 14 the recommendation to continue or withhold collection action during offer in compromise investigations and explain the Government's recourse to collect the tax due, such as:
 - Ability to foreclose the IRC 6324 lien on estate assets if it is in effect and if no discharge from the lien was secured. This lien attaches as of date of death, **before** taxes were assessed, to estate assets identified on the Form 706 return schedules.
 - Ability to foreclose liens recorded as the result of special elections granted in certain estate tax cases. The specific property pledged as collateral in the event of default or termination of the special election may be foreclosed upon for payment of taxes.
 - The Government's recourse to pursue seizure, or use administrative or judicial transferee remedies if any estate assets were distributed, transferred or sold.

- The Government's recourse to hold the executor personally liable (similar to the trust fund recovery penalty) if the estate is insolvent, the executor had knowledge of the taxes due or the executor made distributions of funds/assets prior to paying the tax liability. Describe what the executor did with estate assets once he had knowledge taxes were due.
 - Address any estate income from Form 1041 that can be considered in the ability to pay the estate taxes.
 - Address any non-probate distributions. The estate's reasonable collection potential (RCP) includes the amount the Service may collect under IRC 6324(a)(2) from a beneficiary who had received non-probate distributions.
 - Address any estate assets that have been dissipated with a disregard of the outstanding tax liability, the value may be included in the RCP calculation. List beneficiaries who received estate assets, they may be able to pool their resources from assets received to pay taxes and avoid transferee liability or seizure.
2. It is important to note the expiration date of the estate or gift tax lien and the need for any collection action to be completed before expiration of these liens. **The CSED may be extended when an offer is filed but the estate and gift tax liens are of a fixed 10 year duration and cannot be extended or tolled.**
 3. See IRM 5.20.5.1.2, *ATAT Revenue Officer Case Actions*, for additional information concerning offers.

5.5.7.19 (09-16-2013)

Penalties on Extended Payment Dates

1. Penalties exist to encourage voluntary compliance by supporting the standards of behavior required by the Internal Revenue Code. For most taxpayers, voluntary compliance consists of preparing an accurate return, filing it timely, and paying any tax due. Efforts made to fulfill these obligations constitute compliant behavior. Most penalties apply to behavior that fails to meet any or all of these obligations.
2. Due dates for payment and due dates for filing tax returns are specified in the related tax form instructions. Review the instructions to determine if late penalties were applied appropriately in accordance with due dates.
3. An extension to pay gives the taxpayer relief from failure to pay penalty, but **not** from interest, from the due date until the approved extended payment date. Form 4768 instructions state interest must be paid on any estate tax not paid in full by the original due date. See the section titled "Interest." An approved extension also extends the CSED, see IRM 5.5.7.6.
4. The Form 4768 must be filed timely and payment made timely to avoid additional assessments. The penalty abatement request does not meet reasonable cause criteria unless the Form 4768 is timely filed or the tax is paid by the extended payment date. See IRM 8.7.4.2.4, *Consideration of Denials to Extensions under IRC 6166 Elections*, for information on penalty consideration.
5. If the annual installment payment for the IRC section 6166 election is paid late, the late installment penalty will be assessed. See 4.25.2.1.14, *IRC Section 6166 Principal Installment Period – Paid Late*. A TC 240 is used to input the late installment penalty. There is no *reasonable cause* exception that allows the IRS to abate a late installment penalty, see IRC section 6166(g)(3). The estate may not appeal this penalty.
6. If the election is **terminated** and the tax due accelerated, the late installment penalty associated with this delinquent period is abated. A TC 241 will reflect the abated late installment penalty. The failure to pay penalty is then assessed on the account. Late installment penalty is not applicable for accounts that are accelerated.
7. Determine if the penalty was assessed in accordance with IRM and IRC guidelines when considering abatement of penalties.

5.5.7.20 (09-16-2013)

Manual Assessment of Penalties and Interest

1. If IDRS reflects manual assessments of penalty and interest, accrued penalties and interest need to be computed. This impacts payoffs and letters printed using ICS templates. **Always check payoff amounts on letters generated through ICS before they are sent.**
2. Command code COMPA can be used to compute accrued penalties and interest. The Campus E&G unit may be able to provide assistance if the account had a special election.
3. Refer to IRM 5.5.7.12, *Notice of Tax Due*, for more information on manual assessment of accruals.

5.5.7.21 (09-16-2013)

Requests for Abatement of Penalties

1. In working your case, you may receive a request for abatement of penalties. If the account has been assigned to E&G Exam for audit, send the request by Form 3210 to the Examination group conducting the audit. See IRM 4.25.1.1.6.3, *Penalties Applicable to Estate and Gift Tax*, for information on how Examination processes penalty abatement requests.
2. If the examination is closed, the penalty was addressed during the audit and a determination made that applicable penalties apply. The revenue agent's report (RAR) will state what penalties are assessed. The RAR is attached to the Form 706.
3. Documentation with the return may reflect penalty abatement was already addressed by the examiner, the Campus E&G unit, Appeals or the Tax Court. You may find an indication of the request in the IDRS TXMOD history.
4. There are many court cases sustaining assessment of penalties. Westlaw, E&G Examination personnel, Counsel, or the RAR may provide references to court cases. Below are a few examples:
 - *Estate of John R.H. Thouron et al. v. United States*, 2012-2 USTC ¶ 50,660 (E.D.Pa.) - A U.S. district court denied an estate a refund of a late-payment penalty, finding that reliance on the estate's attorney who advised that the estate didn't need to file a request for an extension to pay the taxes wasn't reasonable cause for the late payment because the executor was obligated to confirm the statutory payment deadline.
 - *Estate of Marion Derksen v. United States*, 2012-2 USTC ¶ 50,668 (E.D. Pa.) - A U.S. district court held that an estate wasn't entitled to a section 2053 deduction for a debt allegedly owed to the estate of the decedent's late husband under an informal agreement to maintain equal estates and that the estate wasn't entitled to an abatement of late-filing penalties.
 - *Margaret V. Stine v. United States*, 2012-2 USTC ¶ 50,641 (Fed. Cl.) - The Court of Federal Claims dismissed an individual's suit for a refund of a penalty and interest assessed against her for failing to timely file a gift tax return, finding that her health problems didn't provide reasonable cause for her failure to file since she was able to complete other significant financial transactions during that time.
 - *Estate of Nancy P. Young v. United States*, 2013-1 USTC ¶ 50,104 - in upholding the penalty for the late filing the Judge determined that the estate was aware of the deadline but deliberately filed the return late.
 - *Peter Knappe et al. v. United States*, 713 F.3d 1164 (9th Cir. 2013) -The Ninth Circuit, affirming a district court, held that an estate was liable for a late-filing penalty, finding no reasonable cause for the missed deadline because the executor failed to exercise ordinary business care and prudence by relying on the accountant's advice regarding the filing deadline, which was a non-substantive matter.
5. Section 6512(a) bars taxpayers from obtaining a subsequent administrative abatement, refund claim or refund suit regarding a penalty that was determined by the Tax Court. To clarify – based on this code section you **cannot abate** a penalty determined by the Tax Court.
6. Be cautious when deciding if you should abate a penalty, however that penalty is determined.

5.5.7.21.1 (09-16-2013)

Reasonable Cause

1. Reasonable cause is based on all the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise be assessed. Reasonable cause relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining their tax obligations but nevertheless failed to comply with those obligations.
2. If the return was not audited, consider the following guidance from IRM 20.1.1.3.2, *Reasonable Cause*:
 - What happened and when did it happen?
 - During the period of time the taxpayer was non-compliant, what facts and circumstances prevented the taxpayer from filing a return timely or paying tax due?
 - How did the taxpayer handle the remainder of their affairs during this time?
 - Once the facts and circumstances changed, what attempt did the taxpayer make to comply?
3. Reasonable cause **does not exist** if, after the facts and circumstances that explain the taxpayer's noncompliant behavior cease to exist, the taxpayer fails to comply with the tax obligation within a reasonable period of time.
4. Taxpayers have reasonable cause when their conduct justifies the non-assertion or abatement of a penalty.

5.5.7.21.2 (09-16-2013)

Appeal of Denied Abatement Requests

1. If the estate files an appeal of a denied abatement request, date stamp the protest and document in the case file history that the protest was received and forward the protest letter to Appeals within 30 days from the postmark date of the protest letter. Also include:
 - Documentation considered in analyzing reason for penalty assessment,
 - Case file history, and
 - Any pertinent correspondence with the taxpayer.
2. Route protest cases based on the state in which the decedent was last domiciled using the case routing list on the Appeals' website at <http://appeals.web.irs.gov/APS/bystate2.htm>. The case may be transferred to another Appeals Officer based on inventory needs.

5.5.7.22 (09-16-2013)

Unfiled Gift Tax Returns

1. You may receive a delinquent return investigation to secure unfiled gift tax returns, this may result from an expired extension to file.
2. The following actions should be taken:
 - Contact the donor and question what asset(s) were transferred that they thought required filing of a gift tax return.
 - Summons the work papers of the executor or the attorney or accounting firm that prepared the extension request.
 - Conduct a county records check on the donor for transferred assets, such as real property transferred in the year of the gift. If deceased also check probate records to see if there is litigation concerning gifts heirs may have received.
 - Determine if property was transferred to trusts.
 - Check donor's IRPTR, was there a decline in interest or dividend income - maybe stock was given away, or a savings account or C.D. (gifts of cash may decrease size of these accounts). IRPTR may reflect changes in income, sales, or mortgage interest reported.
 - Check the donor's Form 1040, did it reflect that stock was sold or a gain on Schedule D or was that income no longer reported - maybe it was sold and not gifted or just transferred (check several years for changes in assets).
 - Accurint may provide property changes or relatives that may be donees.
 - Check BMFOL to see if gift tax returns were filed in other years.
 - Contact your local estate tax attorney group - ask questions about how they find gifts when auditing the estate tax return.
3. Once you gather sufficient documentation to support the filing requirement for the tax year in question (see the form instructions for filing requirements) you can submit a Specialist Referral System application, <https://srs.web.irs.gov/>, it will be assigned to an estate tax group to evaluate. Another option is to forward a referral form, with supporting documentation, directly to E&G Exam see mysbse.web under the IRM Guidance & Resource tab for more information.
4. For suggested summons language for gift tax returns see IRM 5.5.9.21, *Using a Summons for Estate and Gift Tax Information*.

5.5.7.23 (09-16-2013)

Requests for Extension of Time to Pay Gift Tax

1. For requests of extensions of time to pay gift tax the Form 1127, *Application for Extension of Time for Payment of Tax Due to Undue Hardship*, is used. This form is also used for many other types of returns.
2. These requests are sent to Campus E&G unit for monitoring but the determination to approve or disapprove the application is made by the Advisory Estate Tax Lien group. Any account which is granted an extension to pay will have an extended CSED for the period that payment of the tax was deferred. **The gift tax lien is 10 years from the date of the gift and cannot be extended or tolled.**
3. Advisory will open a NFOI (non field open investigation) and maintain an ICS history of their actions. Check prior ICS history for information regarding the donor's ability to pay and Advisory files for related correspondence. You can also look at TXMOD history for notes from the Campus E&G unit on actions they have taken.
4. You will not find a TC 468 on a gift tax account, the programming of this transaction code is specifically for estate tax accounts only. For more information on processing Form 1127 see IRM 5.5.5.9, *Extension Requests to Pay Gift Tax*.

5.5.7.24 (09-16-2013)

Ordering Gift Tax Returns

1. The Form 709 will identify the donor and will include a description gifts. One of your first steps is to secure a copy of the return. You may be able to secure a copy from Examination if the account is undergoing an audit or from the estate representative.
2. Historical gift tax returns are stored at the C-Site in Independence, Missouri and are filed in alpha order based on the original Service Center in which they were filed, or in other words in 10 separate alpha systems.

3. A Document Locator Number (DLN) is assigned to a Form 709 at the time of processing, the return is not stored in DLN order since a taxpayer may have filed more than one gift tax return. However, a DLN is helpful in locating a historical Form 709 because the first two digits of a DLN define the Service Center in which a return was filed. The taxpayer may have changed their address and filed in different Service Centers. Therefore, when requesting a taxpayer's complete historical gift tax file, it is necessary to conduct IDRS research to secure the DLN for each historical tax return. Form 709 accounts are assessed under MFT 51, the tax period is the year the gift was made.
4. Complete Form 2275 using the DLN data from the MFTRA, BMFOL or the Retention Register. Provide all names used by the taxpayer (per MFTRA).
5. Fax Form 2275 requests to the Cincinnati Campus for action. For more detailed information on ordering 709 returns and fax numbers see <http://mysbse.web.irs.gov/Collection/toolsprocesses/EstateTax/EstateTax/default.aspx>.

5.5.7.25 (09-16-2013)

Gift Tax Information Sources

1. Below are sources of information that should be considered when investigating assets for which there is a gift tax lien or the donees, which are personally liable, and the extent of such donee liability.
2. In cases where a gift tax return has been filed, Page 1 of the Form 709 will identify the Donor, while Page 2, Schedule A of Form 709 should contain all of the necessary information to determine gift tax liens and donee liability, including:
 - Donee's name and address
 - Relationship to donor
 - Description of the gift, including any CUSIP numbers for securities, or EIN's for closely held stock
 - Date and value of the gift
3. There are 3 Parts on Schedule A. Part 1 concerns gifts for which there is no additional Generation Skipping Transfer Tax Liability. Parts 2 and 3 contain information on gifts that have, or may have, additional Generation Skipping Transfer Tax Liabilities. Thus, all of the gifts listed on Parts 1, 2 and 3 of Schedule A of the Form 709 will need to be reviewed to identify all gifts and their donees.
4. If the gift tax account has been audited, the examination files and work papers should be reviewed to identify additions or changes in the donees and the values of the gifts received by each.
5. If an examination has been challenged in the Tax Court, the petition filed by the Donor, stipulations of fact filed by one or both of the parties, and the Tax Court's decision should reflect a final determination of the names of the donees and the value of the gifts they received. Many Tax Court records are available online at www.ustaxcourt.gov/docket.htm. For those which are not available online, Chief Counsel's files for the case can be consulted, or the Clerk's office for the Tax Court can be contacted for copies of specific documents.
6. If a Tax Court case has been appealed, then the appellate decision must also be consulted to determine if any changes were made to the Tax Court's decision. Check with Counsel to obtain a copy of any appellate decisions.
7. Court decisions can also be used to prevent the donor and the donee from challenging the identity of the donee, the property subject to the gift tax lien, and the value of a gift once collection efforts have begun.
8. Estate tax returns and estate tax examination files can also be a source for identifying gifts and the donees to which they were made.

5.5.7.26 (09-16-2013)

Gift Tax Collection - Donor's Liability for Gift Taxes

1. Under Section 2501 a gift tax is imposed on all gifts. The person who made the gift is known as the "donor". The donor has the primary responsibility for paying the gift tax, and all penalties and interest on the gift tax. See, 26 U.S.C. § 2502(c).
2. If the donor dies before paying the gift tax owed, his estate will become liable for paying the gift tax debt. Treas. Reg. § 25.2502-2.
3. The CSED is 10 years from date of assessment, plus any extensions provided by law (on Form 1127).
4. Seizure and levy on the property and rights to property currently held by the donor may be used to collect any gift taxes assessed against the donor. See IRM 5.5.9.19, *Levy to Enforce Gift Tax Liens*, for special levy language.
5. Additionally, the general lien against the donor's assets and the gift tax lien against the gifted property may be used to collect the gift tax account.
6. See IRM 5.5.9.9, *The Gift Tax Lien*, for an explanation of the section 6324(b) gift tax lien, assessment lien, attachment to assets and duration.

5.5.7.27 (09-16-2013)

Donee's Personal Liability for Gift Taxes

1. The recipient of the gift is known as the "donee". When the donor fails to pay the gift tax owed, Section 6324(b) also makes each donee of any gift made during that tax period personally liable for the unpaid gift tax up to the amount of the value of the gift received by such donee.
2. The CSED for the donee's personal liability is the same as the donor's CSED on the gift account. However, this donee liability under Section 6324(b) is a type of transferee liability that must be assessed directly against the donee under Section 6901, or reduced to a judgment through a suit in district court before administrative collection actions can be taken against a donee's property that is not subject to one of the liens described above.
3. The statute of limitations for the United States to assert personal liability on transferees or donees under Section 6324(a) and (b) through a suit in district court is not limited by the term of the 10 year liens described in those subsections. Instead, the applicable statute of limitations is the period for collection against the estate or the donee under Section 6502 and runs for 10 years from the date the taxes were assessed. See *United States v. Degroft*, 539 F. Supp. 42 (D. Md.1981); *United States v. Botefuhr*, 309 F.3d 1263 (10th Cir. 2002).
4. The donee's liability is not limited to the gift tax owed on his specific gift. Instead, the donee is liable for all of the gift tax owed by the donor in the year his gift was made - up to the value of the gift he received. See *La Fortune v. Commissioner*, 263 F. 2d 186, 194 (10th Cir. 1958).
5. The donee's liability may also include penalties assessed against the donor so long as the combined tax and penalties still fall within the value of the donee's gift.
6. A donee's personal liability may also include interest. In some cases a donee's liability for interest can exceed the value of the gift received. Although Collection does not need to determine whether a donee has additional liability for interest, all referrals for Section 6901 assessment or a suit for a judgment of donee liability should include information on all donees, even if they have fully paid the value of the gift they received. This is so that Exam and Counsel can evaluate whether or not the donee has additional liability for interest.
7. Thus, where gifts have been received by multiple donees within a given year, each donee is personally liable for the entire gift tax debt (including penalties and interest) arising out of that tax year - up to the value of the gift he received. This is so even though the donee's liability might result in his payment of taxes, penalties and interest attributable to other donees' gifts.

8. In cases where a gift has been made to a trust, donee liability may be asserted against beneficiaries of a trust. Generally, the law treats a gift to a trust as a gift to the beneficiaries of the trust who held a present interest rather than a gift to the trustee or the trust itself. Because these cases are often fact dependent, you should consult with Counsel before asserting donee liability against the beneficiary of a trust.
9. The gift tax lien and donee liability can also be asserted on gifts that did not generate any part of the gift tax liability because they were subject to annual exclusion or were subject to marital exemption, charitable exemption or unified credit. However, caution should be used when collecting unpaid gift taxes from charities.
10. The Government is not required to pursue the donor before attempting to collect the unpaid account from the donee to extent of his liability. The Government is not required to pursue the donees in any particular order, or to pursue all of the donees. See *United States v. Davenport*, 484 F. 3d 321, 325 (5th Cir. 2007) and *United States v. Botefuhr*, 309 F.3d 1263, 1281, n. 13 (10th Cir. 2002) (declined to follow on other issues by Davenport).
11. The requirement of proceeding under Section 6901 or a suit under Section 7402 to establish a donee's personal liability under Section 6324(b) should not be confused with the government's independent right to immediately collect the donor's liability by enforcement of its separate in rem lien rights under Sections 6321 and 6324(b). See *Ripley v. Commissioner*, 102 T.C. 654(1994) (IRS is not required to issue a notice of transferee liability under 26 U.S.C. § 6901(a) or otherwise assess a transferee before taking steps (including levy and seizure) to enforce gift tax lien arising under 26 U.S.C. § 6324).
12. See IRM 5.5.9.19, *Levy to Enforce Gift Tax Liens*, for special levy language.

5.5.7.28 (09-16-2013)

Collecting Generation Skipping Taxes

1. The Generation Skipping Transfer Tax (GST) is a tax in addition to the estate and the gift tax. It was enacted to close a perceived loophole in the estate and gift tax system where property could be transferred to successive generations without intervening estate or gift tax consequences. There are two basic forms of generation-skipping transfers; the indirect skip, where the generation one level below the decedent receives some beneficial interest in the property before the property passes to the generation two or more levels below, and the direct skip, where the property passes directly to the generation two or more levels below the decedent.
2. Generation Skipping Taxes can be owed as the result of a gift, or as the result of a distribution from a trust or termination of a trust. Depending on the circumstances, the Generation Skipping Tax will be reported on:
 - Form 706 Estate Tax Return
 - Form 709 Gift Tax Return
 - Form 706-GS(D)
 - Form 706-GS(T)
3. The GST tax is collected in the same manner as the estate tax or the gift tax account – depending on the type of transfer which created the GST tax. In other words, the transferee/donee liability provisions of Section 6324(a) and (b) will apply to the GST tax just as though it were an estate or gift tax liability. See Sections 2603(c) and 2661. See also, *O'Neal v. Commissioner*, 102 T.C. 666, 675 n. 5 (CCH 1994). How GST arises determines its collection.
4. GST arises under MFT 52:
 - As part of estate tax on Form 706
 - For decedent's revocable trust transfers at death
 - Is combined with estate tax on MFT 52
 - It is reported under estate's TIN
 - Collect like the estate tax, IRC Sections 2603(a)(2), 2661(2) and 6324(a)
 - IRC 6324(a) lien and transferee rules apply

When the GST tax is reported or should have been reported on the estate tax return, it will be included in the estate tax account and treated as though it were part of the estate tax for internal module purposes.

5. GST arises under MFT 51:
 - As part of gift tax on Form 709
 - Results from direct gift by donor to grandchildren or persons two or more generations below the donor, IRC Sections 2613(a) and 2651
 - Is reported under donor's TIN
 - Collect like the gift tax, IRC Sections 2603(a)(2), 2661(1) and 6324(b)
 - IRC 6324(b) lien and transferee rules apply

Similarly, when the GST has been or should have been reported on a Form 709, it will be included in the gift tax module for the donor's gift tax liability, under MFT 51.

6. GST arises under MFT 77:
 - From separate Form 706-GS(T), *Generation-Skipping Transfer Tax Return For Terminations*
 - For the taxable termination of a GST trust
 - Form 706-GS(T) is filed by the trustee, assessed under MFT 77, under an EIN only
 - The return is due April 15 of the year following the year in which the termination occurred
 - Trust has primary liability for tax due
 - Collect like the gift tax, IRC Sections 2603(a)(2), 2661(1) and 6324(b).
 - IRC 6324(b) lien and donee rules apply
 - The trust is the donor (trustee in their official capacity), beneficiary is the donee
7. GST arises under MFT 78:
 - From separate Form 706-GS(D) *Generation-Skipping Transfer Tax Return for Distributions*
 - For a taxable distribution from a GST trust

- Form 706-GS(D) is filed by beneficiary, assessed under MFT 78
- If the skip-person distributee is an individual, the return is filed under the distributee's SSN; if the skip-person distributee is a trust, the return is filed under the distributee's EIN
- The return is due April 15 of the year following the calendar year when the distribution was made.
- Trustee files a Form 706(GS (D-1)), *Notification of Distribution From A Generation-Skipping Trust* with IRS. It may be recorded on Non-Master File. It is similar to Form 1099 that identifies the trust and distribution to the beneficiary. Beneficiary then has to file Form 706-GS(D).
- Beneficiary has primary liability for tax due
- Collect like gift tax, IRC Sections 2603(a)(1), 2661(1) and 6324(b)
- IRC 6324(b) lien and donee rules apply

5.5.7.29 (09-16-2013)

International Estate Tax Accounts

1. International accounts result from assessments for Form 706-NA, *United States Estate (and Generation-Skipping Transfer) Tax Return*. These accounts have a "W" indicator behind the SSN. The "W" indicator may also reflect an invalid SSN, possibly due to a transposition of numbers.
2. Non-resident aliens are subject to U.S. estate tax on certain assets situated within the United States, when the date of death value of the gross estate exceeds the filing limit of \$60,000. Generally, the calculation of this estate tax begins with the "gross estate" situated within the United States (U.S.) which is then reduced for certain U.S. property that is not subject to the estate tax, and certain expenses, mortgages and debts, to arrive at a "taxable estate" on which the U.S. estate tax is calculated. All of the assets in the gross estate are subject to collection even if they created no part of the estate tax due.
3. The executor of the estate of a non-resident decedent is liable for paying the U.S. estate tax, and once the tax is assessed, it can be collected from the assets in the non-resident decedent's estate or from a transferee who received the assets of the estate under section 6901. For assets located in the United States, the normal collection rules apply. However, there may be additional difficulties in serving and giving notice to executors who live outside of the United States. Check Part 1, lines 9 and 10 of the Form 706-NA, for U.S. addresses for purposes of contacting the executor and or the attorney for the estate.
4. Additionally, the estate tax lien and personal liability transferee provisions of Section 6324(a)(1) and (2) apply to estate taxes owed by non-resident aliens. Here, the starting point for any collection efforts should be those assets in the non-resident decedent's gross estate listed on Schedule A of Form 706-NA that are located in the United States.
5. Section 2103 of the IRC provides that the gross estate for non-residents is calculated the same way as the gross estate for residents and citizens under section 2031, but provides that the gross estate will include only assets which at the time of death are situated in the United States. Therefore, the value of all assets forming the non-resident decedent's gross estate situated in the United States should have been listed on the total line of Schedule A of Form 706-NA, and on line 1 of Schedule B.
6. Accordingly, the assets included on Form 706-NA, Schedule A are the assets against which the Section 6324(a) estate tax lien and transferee liability apply.
7. Once these assets have been identified, the enforcement of the estate tax lien against these assets can proceed under the rules for collecting an estate tax owed by a U.S. citizen or resident.
8. If the assets are located outside of the United States, collection of the tax is more difficult. Once it is determined that there are insufficient assets located in the United States to satisfy the estate tax liability of a non-resident decedent, it may be possible to seek recovery of the assets located outside of the United States through domestic judicial actions. For example, the following options may be available:
 - Suit to Appointment of a Receiver under Section 7402. A receiver may be able to repatriate assets of the taxpayer and then pay taxes owed. (IRM 5.21.3.5, *Appointment for a Receiver*).
 - Suit for a Repatriation Order. Such an order would require the taxpayer who transferred U.S. based assets offshore to transfer those assets back to the U.S. where they will be subject to tax collection. If the taxpayer refuses, an order for civil contempt of court can be enforced with the possible sanction of incarceration. (IRM 5.21.3.6, *Suit to Repatriate Property*).
9. Only in the case of assets located in either France or Canada and after all available domestic actions regarding collection of the estate tax liability are exhausted, the IRS may also pursue a Mutual Collection Assistance Request (MCAR) pursuant to the US-France Estate Tax Convention (signed 11/24/1978, amended by Protocol 12/8/2004) or the US-Canada Income Tax Convention (signed 09/26/1980, amended by Protocol 9/21/2007), as applicable. (See IRM 5.1.8.7.7, Incoming Mutual Collection Assistance Requests, IRM 5.1.12.25, Outgoing Mutual Assistance Collection Requests, and IRM 4.60.1.2.3 Contacts with Foreign Governments).

5.5.7.30 (09-16-2013)

Transfer Certificates

1. The Service provides a transfer certificate upon payment of taxes in full which permits the transfers of property of nonresident decedents without liability. Transfer certificates are releases of the Federal estate tax lien on a decedent's property.
2. The Campus E&G international unit monitors these accounts and issues transfer certificates. Their files may contain the original Form 706NA tax return or parts of the return, correspondence with the executor concerning payment of taxes, audit reports or transfer certificates that will assist in your collection investigation.
3. If a transfer certificate has been issued review the language on the form, it should describe exactly what property is being released - similar to a discharge of property from a lien.

5.5.7.31 (09-16-2013)

Collection Statutes on International Estate Tax Accounts

1. In addition to the normal 10 year CSED statutes, the CSED may be further extended if the executor is out of the country. Per Treas. Reg. § 301.6503(c)-1, the running of the period of limitations on collection after assessment prescribed in section 6502 (relating to collection after assessment) is suspended during which the taxpayer (executor) is absent from the United States if such period is a continuous period of absence from the United States extending for six months or more.
2. In a case where the running of the period of limitations has been suspended under the first sentence of this paragraph and at the time of the taxpayer's (executor's) return to the United States the period of limitations would expire before the expiration of six months from the date of his return, the period of limitations shall not expire until after six months from the date of the taxpayer's return.
3. The taxpayer (executor) will be deemed to be absent from the United States for purposes of this section if he is generally and substantially absent from the United States, even though he makes casual temporary visits during the period.
4. To summarize, the executor is primarily liable for payment of the federal estate tax. Failure of executor to pay the federal estate tax results in individual liability of the executor. If the executor is out of the country for six months or more that period of time is added to the calculation of the CSED. When there is less than six months left on the CSED and the executor leaves the U.S. and then returns to the U.S., the CSED does not expire until after six months after the taxpayer has returned.

5.5.7.32 (09-16-2013)

Trusts

1. The use of different trusts in estate tax planning is a continually developing area. The following is a non-exclusive list of the common types of trusts you may encounter when attempting to collect estate taxes. As explained below, collection of estate taxes from such trusts is dependent on whether the trust's assets were included in the "gross estate " on the estate tax return or after an examination, and not on the particular name used by the trust.

- **Revocable Trusts:** A revocable trust is any trust that the settlor (creator) can revoke and take the assets back for themselves.
- **Irrevocable Trusts:** An irrevocable trust is a trust that the settler cannot revoke and reclaim the assets for themselves.
- **Living Trusts:** A living trust is a trust created during the decedent's lifetime. Typically, is it some form of grantor trust in which the decedent retains the right to the use of income from all of the assets. When the decedent dies, the assets go to designated remainder beneficiaries who are commonly the decedent's heirs.
- **Grantor Trusts:** Grantor trust is a term used in the Internal Revenue Code to describe any trust over which the grantor or other owner retains the power to control or direct the trust's income or assets. If a grantor retains certain powers over or benefits in a trust, the income of the trust will be taxed to the grantor, rather than to the trust. (Examples, the power to decide who receives income, the power to vote or to direct the vote of the stock held by the trust or to control the investment of the trust funds, the power to revoke the trust, etc.) All "revocable trusts " are by definition grantor trusts. An "irrevocable trust " can be treated as a grantor trust if any of the grantor trust definitions contained in Internal Code Sections 671, 673, 674, 675, 676, or 677 are met.
- **Grantor Retained Annuity Trusts (GRAT):** In a grantor retained annuity trust, the grantor creates an irrevocable trust and retains the right to receive, for a specified term, an annuity based on specified sum or fixed percentage of the value of the assets transferred to the trust. A grantor retained annuity trust is specifically authorized by Internal Revenue Code Section 2702(a) (2) (B) and 2702(b). For federal income tax purposes, this trust is treated as a grantor trust.
- **Grantor Retained Income Trusts (GRIT):** In a grantor retained income trust, the grantor creates an irrevocable trust and retains the right to all trust income for the earlier of a specified term or the death of the grantor. If the grantor survives the specified term, the trust principal passes to others according to the terms and provisions of the trust instrument. For federal income tax purposes, this trust is treated as a grantor trust.
- **Grantor Retained Unitrusts (GRUT):** A grantor retained unitrust is similar to a grantor retained annuity trust. However, in a grantor retained unitrust, the grantor creates an irrevocable trust and retains, for a specified term, an annual right to receive a fixed percentage of the annually determined net fair market value of the trust assets (Treasury Regulation Section 25.2702-(c)(1)). For federal income tax purposes, this trust is treated as a grantor trust.
- **Personal Residence Trust (PRT):** A personal residence trust involves the transfer of a personal residence to a trust with the grantor retaining the right to live in the residence for a fixed term of years. Upon the earlier of the grantor's death or the expiration of the term of years, title to the residence passes to beneficiaries of the trust. This is an irrevocable trust with gift tax implications.
- **Qualified Personal Residence Trust (QPRT):** A qualified personal residence trust involves the transfer of a personal residence to a trust with the grantor retaining a qualified term interest. If the grantor dies before the end of the qualified term interest, the value of the residence is included in the grantor's estate. If the grantor survives to the end of the qualified term interest, the residence passes to beneficiaries of the trust. A QPRT is a grantor trust, with special valuation rules for estate and gift tax purposes, governed under IRC 2702.
- **Intentionally Defective Grantor Trust (IDGT):** An intentionally defective grantor trust (IDGT) is a complete transfer to a trust for estate tax purposes but an incomplete, or "defective " , transfer for income tax purposes. Because the trust is irrevocable for estate and gift tax purposes and the grantor has not retained any powers that would cause estate tax inclusion, the future value of the assets transferred is removed from the grantor's gross estate on the date of the trust's funding. However, because the grantor retains certain other powers, the trust is treated as a grantor trust for income tax purposes. As a result, the grantor is taxed on all the trust's income, even though he or she is not entitled to any trust distributions. If structured properly, the IDGT will receive the gross income generated from the trust's income-producing assets, which will accrue to the benefit of the trust's beneficiaries. The trust also allows the grantor the opportunity to remove future appreciation from the grantor's estate while maintaining control over the assets.
- **Charitable Remainder Annuity Trusts (CRAT):** A CRAT is a trust which is to pay its income beneficiaries a specified sum each year that cannot be less than 5% of the initial net fair market value of all property placed in trust. Other amounts may be paid to a charity.
- **Charitable Remainder Unitrusts (CRUT):** A CRUT is a trust which is to pay the income beneficiaries a fixed percentage each year, not less than 5% of the net fair market value of its assets, as valued annually.
- **Charitable Lead Annuity Trusts (CLAT):** A charitable lead annuity trust is a charitable lead trust paying a fixed percentage of the initial value of the trust assets to the charity for the charitable term.
- **Charitable Lead Unitrust (CLT):** A charitable lead unitrust is a charitable lead trust paying a percentage of the value of its assets, determined annually, to a charity for the charitable term.

5.5.7.33 (09-16-2013)

Collecting Estate Taxes from Trusts

1. Although there are many different types of trusts, there are generally only two ways in which trusts affect the collection of estate taxes. Trusts which are revocable by the decedent, and trusts in which the decedent retained some interest at the date of death that will be included in the "gross estate " for purposes of calculating the estate tax.
2. Generally, if the estate tax return (Form 706) has been prepared properly, or has been audited, the Schedule G of that return or the Schedule G audit adjustments should provide a starting list of the trusts whose assets are included in the gross estate. The assets of these trusts are subject to the 10 year estate tax lien under Section 6324(a) (1). The trust is considered a Section 6324(a)(2) transferee. Additionally, the trustee of such trusts is personally liable for any unpaid estate tax under Section 6324(a)(2) up to the amount of the trust's assets included in the "gross estate " .
3. As a general rule if the decedent retained a right to revoke the trust, or retained any powers, or economic interests in an irrevocable trust before death, then under Sections 2036 through 2038, all of the assets of the trust (in contrast to the decedent's interest in the trust) are included in the "gross estate " for purposes of calculating the estate tax and are subject to the 10 year estate tax lien.
4. While the traditional tools of fraudulent transfers, alter ego, nominee and state law provisions that allow creditors to reach assets of self-settled or grantor trusts may be of some use in collecting unpaid estate taxes in unusual circumstances, Section 6324(a) provides strong collection tools for the government when it seeks to collect unpaid estate taxes.

5.5.7.34 (09-16-2013)

Trust Assets Not Subject to Estate Tax Lien

1. Generally, assets transferred to an irrevocable trust in which the decedent retained no interest, will not be part of the gross estate, but may have resulted in a taxable gift that should have been reported on Form 709 or that may be picked up on Form 706 if no gift tax return was previously filed. In this way, the estate tax and the gift tax support each other by preventing untaxed transfers of wealth without consideration. In such cases, there may be an uncollected gift tax account to collect. See discussion of collecting gift taxes.
2. The estate tax lien does not attach to assets of trusts that were **not included** in the value of the "gross estate " but which were disclosed on the Form 706 for other reasons. For example, Schedule O on Form 706 may reveal the name of trusts which are to be funded as part of bequests made in the decedents will. Additionally, prior gifts to trusts are sometimes disclosed on Form 706 and may not have been included in the "gross estate " .

5.5.7.35 (09-16-2013)

The Government's State Law Rights under Trusts

1. It is common for Living Trusts to include language that obligates the trustee to pay the Decedent's last debts and any estate or gift taxes that may arise upon the decedent's death. This language can be very useful when collecting a decedent's pre-death income taxes, employment taxes, gift taxes, or a trustee's fiduciary liability arising from an insolvent trust.
2. Such language may also be useful in establishing transferee liability of the trust for unpaid estate taxes. However, in most estate tax cases, reliance on such language will not be necessary because Section 6324(a) (1) already makes the trust (through its trustee) liable for unpaid estate taxes - up to the value of the trust assets that have been included in the gross estate. Thus, reliance on these trust provisions for the payment of the decedent's estate taxes would be an additional benefit to the government in cases where there is no value limit on the trust's liability.
3. Here is an example of language to look for:
"In the event that the assets of this trust are included in the Settlor's estate for federal estate tax purposes or for purposes of any state, inheritance estate, succession, or other taxes which become payable by reason of the Settlor's death, Trustee shall pay the executor, administrator or other legal representative of the estate of the Settlor any federal estate tax, state inheritance tax, estate, succession or other taxes which become payable by reason of the Settlor's death **and which are attributable to the trust assets.**"
4. The language above, limits the trustee's obligation to the extent that the trust's assets were included in the estate, and therefore, reliance on any state law rights the government may have to enforce the provisions of this trust in its favor are no better than the remedies provided by Section 6324(a) (2) which makes the trust liable to the government to the same extent.
5. However, if the trust's assets have grown in value or new assets were added to the trust, and the words "**and which are attributable to the trust assets**" were not included in the trust instrument, the government might be able to bring a Section 6901 assessment or a suit against the trust for an amount greater than the value of its assets included on the Form 706.
6. Some states permit creditors to sue the trust directly. If the Section 6901 transferee assessment is based on the state law rights of creditors making the trust (Trustee in his official capacity) liable to those creditors in accordance with its own terms and not IRC 6324(a) or (b), the government will be able to seek an assessment of the entire estate for gift tax liability if the trust document does not limit liability to the value of the trust assets.

5.5.7.36 (09-16-2013)

Pertinent Documents to Collecting From Trusts

1. When dealing with trusts as a source of collection for unpaid estate taxes, the Form 706 estate tax return should be considered first. The estate tax return will reveal which trust assets were included in the gross estate, and therefore, are subject to the estate tax lien and trust liability for the estate tax. Forms 706 often contain numerous attachments – each documenting one of the underlying assets or debts reported on the estate tax return. These attachments are a valuable starting place to gather information and documentation about the trust and its assets. In some cases, the identity of banks, brokerage firms and account information regarding the trust's assets are listed on one or more attachments to the Form 706 estate tax return.
2. If litigation was involved, Tax Court records and Chief Counsel files may contain documentation about the trust and its assets.
3. Unlike corporations and partnerships, trusts are not required to file their organization documents or register in most states. Therefore, it may be difficult to obtain the trust instrument or the identity of the trustees and beneficiaries. It may become necessary to use a summons to obtain the actual trust instrument and records regarding its assets. Check name and address records for the last known trustee of the trust to serve a summons. Alternatively, the executor of the estate and any person who prepared the Form 706 may be summoned to identify the trusts included in the gross estate and the names of their respective trustees for service of a second summons.
4. In addition to the information regarding historical trust assets which have been included on the Form 706 estate tax return and audit files, additional information regarding potential collection sources can be found in various income tax records and returns.
5. The decedent's previous income tax returns may reveal assets or income sources that were not accounted for on the Form 706 estate tax return. Information regarding a trust's current assets and distributions to its beneficiaries can often be found by reviewing IRS internal records regarding IRPTR information, Form 1099 and K-1 information regarding the estate, the trusts and their heirs and beneficiaries. The income tax returns and related Forms K-1 filed by the estate and by the trusts may provide additional information on probate estate and trust assets. It is common for one or more related trusts to report their income and income tax liability on the same Form 1041 used by the probate estate. Section 642 of the Internal Revenue Code permits this election in certain cases. Trusts holding non-probate assets that were included in the gross estate may choose to file a separate income tax return on their own Form 1041.
6. State court records can also be a valuable source of information regarding trust assets. Each state's court system will be different in the type of court where trust issues are litigated. While many states rely on their probate courts to handle suits regarding the administration of trusts, other courts may handle suits between trusts and other parties.

[More Internal Revenue Manual](#)



Part 5. Collecting Process

Chapter 5. Decedent Estates and Estate Taxes

Section 8. Estate Tax Liens

5.5.8 Estate Tax Liens

- 5.5.8.1 [Section Overview Characteristics of Estate Tax Liens](#)
- 5.5.8.2 [General Estate Tax Lien under IRC § 6324\(a\)](#)
- 5.5.8.3 [Processing Requests for Release, Discharge of Property From, or Subordination of Unrecorded IRC § 6324\(a\) Lien](#)
- 5.5.8.4 [Special Valuation Estate Tax Lien Under IRC § 6324B](#)
- 5.5.8.5 [Special Lien Under IRC § 6324A for Estate Tax Deferred Under IRC § 6166](#)
- 5.5.8.6 [Gift Tax Lien Under IRC § 6324\(b\)](#)
- Exhibit 5.5.8-1 [Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Laws](#)
- Exhibit 5.5.8-2 [Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Laws](#)

5.5.8.1 (06-23-2005)

Section Overview Characteristics of Estate Tax Liens

1. This section covers estate tax liens. Before filing a lien on an estate tax case, give careful thought to the advantages and limitations of each type of estate tax lien.
2. In many cases, the general IRC § 6324(a) lien is the best tool to protect the government's interest. It is automatically created when any resident of the United States dies. No recorded notice is required for it to become effective. It attaches to all of the assets that are part of the decedent's gross estate and are required to be reported on Form 706, U.S. Estate Tax Return, and is security for any estate taxes that may be determined to be due. If a probate asset (assets in the name of the decedent at time of death) is transferred or liquidated without payment of the tax, but for the exceptions detailed at IRM 5.5.8.2(2), the lien continues to attach to the asset. If a non-probate asset (property described under IRC § 2034 to § 2042) is transferred or liquidated without payment of the tax, a liability equal to the value of the asset at the time of the decedent's death becomes due from the transferee. A separate assessment against the transferee is not needed. Assets of the gross estate can be sold or encumbered free of the IRC § 6324(a) lien if the proceeds from the sale or loan are used for the payment of charges against the estate or expenses of its administration that are allowed by any court having jurisdiction.
3. A limitation of the general estate tax lien is that it has an absolute life of 10 years. It cannot be extended. Estate tax attributable to an estate's interest in a closely held business may be paid over a 14-year period if an extension of time to pay under IRC § 6166 is in effect which could potentially leave the Service without lien protection for four years if a notice of lien is not recorded before the 10 years have elapsed.
4. The filing of Form 668-J (the special IRC § 6423A lien for taxes deferred under IRC 6166) will secure the deferred taxes for the duration of the extension. The collection statute of limitations under IRC § 6502 is suspended during the period of the extension.
 - A. The lien attaches only the property specified on the recorded lien and in the IRC § 6166 agreement. A lien on property with equivalent value can be substituted for the actual IRC § 6166 property upon agreement between the Service and all parties with an interest in the property.
 - B. When estate property is listed on the recorded Form 668-J, it is automatically released from the effects of the general IRC § 6324(a) estate tax lien.
 - C. The IRC § 6324A lien is a negotiated lien that is created only when both the Service and all persons and/or entities with an ownership interest in the property listed on the notice of lien agree to its recording.
5. The filing of Form 668-H - the special IRC § 6324B lien for special use valuations under IRC § 2032A or qualified family owned business interest property under IRC § 2057 will secure the potential recapture tax during the required 10 year holding period. IRC § 2057 elections may be made only on estates of decedents dying before December 31, 2003.

5.5.8.1.1 (06-23-2005)

Comparison Chart Federal Estate Tax Liens

1. The following table briefly describes the characteristics of Federal tax liens associated with federal estate tax liabilities.

Code	Section How Created	Attributes	Form Title
6321	assessment, balance owed, notice & demand	<ul style="list-style-type: none"> • attaches to all right, title and interest of the decedent in any probate property undistributed at time lien arises • 10 year life can be extended 	Form 668 Notice of Federal Tax Lien
6324(a)	at death	<ul style="list-style-type: none"> • attaches to estate assets listed on the Form 706 the value of which are the basis of the tax liability • recording not required to be choate • absolute life of 10 years • follows the probate assets if transferred or liquidated, a lien of comparable value arises upon any property of the party who received proceeds from sale or encumbrance of non-probate property 	no form
6324A	Upon election by the estate and signed agreement by all parties with an interest in the property on the lien	<ul style="list-style-type: none"> • attaches the specific property shown on the lien 	Form 668J Notice of Estate Tax Lien under Internal Revenue Laws

- must be recorded
- recorded notice lists all parties of interest and the specific property that is subject to the lien

6324B Upon election by estate of the special use 2032A or qualified family owned business interest 2057

- pertains to farm or business real estate only (2032A) or family owned business property
- notice must be recorded
- recorded notice lists all qualified heirs and has a complete legal description of the subject real property

Form 668H Notice of Federal Estate Tax Lien Under Internal Revenue Laws

5.5.8.2 (06-23-2005)

General Estate Tax Lien under IRC § 6324(a)

1. The estate tax lien provided for by IRC § 6324(a) is similar in character to the lien imposed by IRC § 6321. The general lien imposed by IRC § 6321 and the special lien for estate tax are not necessarily exclusive of each other, but can be cumulative. Whereas the IRC § 6324(a) lien arises upon death and attaches to all probate and non-probate assets comprising the gross estate, after the tax liability has been assessed, notice and demand is given, and there is a neglect or refusal to pay, the IRC § 6321 lien arises and also attaches to all as yet undistributed probate assets. Neglect and refusal to pay is generally inferred from notice and demand and an unpaid balance.
2. Even though no notice is recorded, the lien has priority over all subsequent interests in the property.

Except

purchaser of or holder of a security interest in probate property at the direction of a court having jurisdiction and proceeds are used to pay charges against the estate

purchaser or holder of a security interest in probate property after executor has been released from personal liability under IRC § 2204 if seller is an heir, legatee, devisee, or distributee

purchaser of or holder of a security interest in non-probate property

purchaser of or holder of a security interest in securities

purchaser of a motor vehicle

retail purchaser of tangible personal property

purchaser of personal property (defined at IRC § 6334(a)) valued at less than \$1,000 at a casual sale

local law lien securing the price of repairs or improvements

local real estate tax & special assessment

residential property subject to a lien for repairs & improvements

attorney's liens

certain insurance contracts

deposit-secured loans

Unless

no exception

no exception

no exception

knowledge of lien exists

knowledge of lien exists

purchaser buying with the intent to hinder, evade, or defeat collection

knowledge of lien exists or is one in a series intended to liquidate most of the assets

lienor gives up possession of property after lien arises

local law does not give them priority over other liens that are filed first

the contract price is more than \$5,000

fees are unreasonable, the lien is not valid under local law, or is subject to offset

knowledge of lien exists

knowledge of lien

3. The IRC § 6324(a) estate tax lien attaches at the date of death to every part of the gross estate, even when the property has not yet been placed under the control of the fiduciary. It attaches to the extent of the estate tax shown due on the return, and of any deficiency in estate tax found due upon review and audit. The estate tax lien continues for a maximum period of ten years after the decedent's death or until the tax is paid.
4. IRC § 6324(a)(2) provides that when the estate tax is not paid when due, any spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, nonexercise, or release of a power of appointment, or beneficiary, is liable for the payment of the estate tax to the extent of the value of any non-probate estate assets held by, or passing to such person.
5. There is no need to assess the liability against the person liable under IRC § 6324(a)(2). The collection statute under IRC § 6502 applies. IRC § 6324(a)(2) also makes all of the property of such person subject to a lien just like the estate tax lien if their transfer of estate assets divests the assets of the estate tax lien. This "like-lien" continues until the IRC § 6324(a) estate tax lien expires or the estate tax is paid.
Example: A beneficiary of a decedent's trust receives real property valued at \$100,000 on the Form 706. The beneficiary sells the property for \$125,000 and invests the proceeds. Because the property was non-probate property, the purchaser takes title free of the IRC § 6324(a) estate tax lien. However, a like-lien in the amount of \$100,000 now attaches to all of the property of the beneficiary as long as the IRC § 6324(a) lien has not expired. A separate assessment against the beneficiary is not necessary.

5.5.8.3 (06-23-2005)

Processing Requests for Release, Discharge of Property From, or Subordination of Unrecorded IRC § 6324(a) Lien

1. **Release** - Advisory occasionally receives requests for release of the unrecorded estate tax lien. However, just as there is no provision for recording a notice of the unrecorded estate tax lien, there is no provision for recording a release. Applicants should be instructed to provide documentation to potential purchasers of the decedent's property that either there was no Form 706 filing requirement, or, if Form 706 was filed and a closing letter has been provided to the estate by Estate & Gift Tax (E&G), a copy of the return, the Estate Tax Closing Letter (Letter 627, and verification of payment, are evidence that the IRC § 6324(a) lien has been satisfied.
2. **Discharge** -
 - A. Applications for discharge under IRC § 6325(c) are usually submitted on Form 4422 , Application for Certificate Discharging Property Subject to Estate Tax Lien. These applications will be processed by E&G if Form 706 has not been filed or if a closing letter has not been issued. If Form 706 has been filed and a closing letter has been issued, applications for discharge under IRC § 6325(c) will be processed by Advisory. Form 792 , United States Certificate Discharging Property Subject to Estate Tax Lien, is used to discharge property under IRC § 6325(c).
Example:An estate submits Form 4422 requesting a discharge under IRC § 6325(c). Form 706 has been filed and the reported estate tax has been paid, but a closing letter has not been issued. Because the final amount of estate tax that may be due has not yet been determined, E&G will process the application.
Example: An estate submits Form 4422 requesting a discharge under IRC § 6325(c). Form 706 has been filed and reported estate tax has been paid, but a closing letter has not been issued. Because the estate representative believes she has paid the estate tax in full, she proposes to use the proceeds from the sale of the probate property to pay other creditors. Because the final amount of estate tax that may be due has not yet been determined, E&G will process the application.
Example: An estate submits Form 4422 requesting a discharge under IRC § 6325(c). Form 706 has been filed and a closing letter has been issued, but a balance remains due for which an extension of time to pay has been granted. The estate is selling a parcel of probate real property but needs the proceeds to pay necessary administrative expenses. The estate has provided for the payment of the taxes by listing a second parcel of real property for sale. Because the final amount of the estate tax due is known, Advisory will process the application.
 - B. Applications for discharge under IRC § 6325(b) will be processed by Advisory. If Form 706 has not been filed or if a closing letter has not been issued, Advisory will consult with E&G in order to determine the government's lien interest.

3. Subordination - Applications for subordination under IRC § 6325(d) will be processed by Advisory. If Form 706 has not been filed or if a closing letter has not been issued, Advisory will consult with E&G in order to determine the government's lien interest.

5.5.8.4 (06-23-2005)

Special Valuation Estate Tax Lien Under IRC § 6324B

1. IRM § 2032A provides for special valuation for certain farms and closely held family business real property if the qualified heirs decide to continue operating the farm or business for at least 10 years. Because the property is valued at less than its fair market value, less estate tax is due. IRM § 2057 provides for a special valuation for certain qualified family owned business interests and also results in less estate tax being due. If the criteria for the IRC § 2032A or IRC § 2057 valuations do not continue during the required holding period, the savings in tax attributable to the special valuation is "recaptured" and must be repaid by the heirs who inherited the property.
2. IRC § 6324B imposes a lien attaching to the specific property valued under IRC § 2032A. IRC § 2057(h)(3)(p) imposes a lien identical to the IRC § 6324B lien to the specific property valued under IRC § 2057.

5.5.8.4.1 (06-01-2010)

IRC § 6324B Form 668-H (Advisory Actions)

1. When the executor elects the special valuation under IRC § 2032A or IRC § 2057, and secures an agreement to the election signed by all parties having an interest in the specially valued property, Estate & Gift Exam (E&G) will complete and forward Form 6111, Notice of Election Under IRC § 2032A and/or IRC § 2057, to Advisory with copies of the following documents:
 - A. First 3 pages of Form 706
 - B. Schedule A-1 and/or Schedule T
 - C. Agreement to special valuation signed by all parties with an interest in the property to be shown on the lien. Only the decedent's interest in the property is shown on the lien. If the decedent co-owned the property, the co-owner's interest is not shown on the lien and the co-owner is not required to sign the agreement.
 - D. Complete legal descriptions of property to be shown on the lien
 - E. Any power of attorney
2. Verify that each Form 6111 includes a copy of the agreement signed by all "qualified heirs" and all other parties having an interest in the property covered by the election. The agreement must designate:
 - A. an agent for dealings with the Internal Revenue Service, and
 - B. a complete legal description of the property to be shown on the lien
3. Contact the E&G group manager to resolve any inconsistencies.
4. Prepare and file Form 668-H, Notice of Federal Estate Lien Under Internal Revenue Laws, (*see Exhibit 5.5.8-1*) in the name of the estate and all qualified heirs as shown on Form 6111. Only one Form 668-H will be used unless a local jurisdiction requires separate forms. Recording a copy of the agreement to Form 668-H is not necessary. If the qualifying property consists of the decedent's interest in a closely held corporation, partnership, LLC, etc., consult with Area Counsel to determine if evidence of ownership, such as a stock certificate, must be held as collateral in order for the lien to be effective under local law.

Note:

When preparing estate tax liens, the SSN of the decedent and any qualified heirs whose names are shown on the lien will be redacted using the format XXX-XX-1234. Do not redact EINs.

5. If elections were made under both IRC § 2032A and IRC § 2057, one Form 668-H reflecting the combined maximum tax subject to recapture may be used.
6. Form 668-H must be prepared manually. However, a PDF version of the form is available on the intranet at <http://publish.no.irs.gov/catlg.html>
7. Mail the completed Form 668-H to the Centralized Case Processing Lien Operation (CLU) for recording on a Form 3210.
8. All documents sent with the lien to the recording office will be returned to CLU. The CLU will be responsible for inputting lien indicators; applicable lien fees and forwarding the recorded lien document back to the originating advisor on Form 3210, Document Transmittal, to maintain with the lien file. If a lien is returned to the Advisor due to insufficient funds, return it to the CLU for corrective action. All liens will be sent to:

Internal Revenue Service
Attn: Manager Team 208 - Stop 8420G
P.O. Box 145595
Cincinnati, OH 45250-5595

9. This CLU FORT has responsibility for logging in receipt of the estate tax liens; monitoring the recording process and forwarding the recorded liens to the advisor on a Form 3210. CLU FORT will send acknowledgement of receipt of the lien by returning the Form 3210.
10. Within 7 business days of receipt, the CLU FORT will mail the lien to the recording office for filing. See IRM 5.19.12.10.2, for CLU FORT processing procedures and lost lien research procedures.
11. Advisory is responsible for sending the lien to the lien unit on Form 3210, including the estate name, complete SSN, lien type and request for input of TC 582, TC 583 and TC 360 as applicable. Advisory is also responsible for determining if there is an open module on IDRS and will instruct CLU to input applicable lien indicator/fees. In the case of Form 668-H liens, if there is no open module on IDRS, do not request input of lien indicator/fees on the Form 3210.
12. Advisors are responsible for ensuring receipt of the recorded lien from CLU and that lien fees have been input, if applicable.
13. At local option, after coordinating payment of recording fees with the CLU, advisors may mail liens for recording directly to recording offices. However, except for exigent circumstances, advisors may not issue OI's requesting that a revenue officer deliver an estate tax lien to a recording agency for filing.
14. Advisory will maintain an ICS case in the name of the estate until the lien is released. Advisory will also maintain a file of retained lien copies with Form 6111 and associated documentation.

5.5.8.4.2 (03-01-2006)

Processing Requests for Release of IRC § 6324B Form 668-H

1. Requests for release of Forms 668-H will be processed by Advisory.
2. If the qualified heir(s) is requesting a release of lien because the 10 year special use period has elapsed, and assuming no recapture tax is due, instruct the designated agent to submit a written request that the lien be released, including a statement that during the 10 year period no events occurred that would cause recapture of any portion of the tax. The letter should be signed under penalty of perjury. Advisory will consult with the Estate & Gift Tax group manager to determine if any further verification should be secured prior to releasing the lien.

3. The qualified heir(s) may also request a release of lien because all of the property described on the lien is being sold or removed from special use. In order to receive a release of the lien, the qualified heir(s) must report the recapture event by filing Form 706-A, United States Additional Estate Tax Return (if the section 2032A election was made), or Form 706-D, United States Estate Tax Return Under Code Section 2057, and all tax and interest due must be paid in full. Interest on the Form 706-A begins to accrue at the regular underpayment rate on the date the return is due. Interest on the Form 706-D at the regular underpayment rate is computed from the original due date of the Form 706, not taking into account any extensions of time to file that may have been granted, until the date the recapture tax is paid. Each qualified heir must file a Form 706-A or Form 706-D reporting and paying the tax and interest due that is attributable to their share of the inherited property.
4. Secured Forms 706-A or 706-D, with any payments and or approved extensions, are forwarded via Form 3210, overnight mail, to: IRS, Cincinnati Submission Processing Center, 201 W. Rivercenter Blvd., Covington, KY, 41011, Attn: Mail Stop 31. Preparation of a posting voucher is not necessary unless penalties are applicable and being paid. Ensure that the return and check are identified as belonging to the heir and indicate NMF by placing "N" behind the heir's SSN on the return and the check. Enter the tax period in YYYYMM format at the top of the return. The period ended is the earliest date shown on schedule A, column C. For example, if the property disposition date is 3/10/2005, the tax period would be 200503.
5. Releases of estate tax liens are prepared by advisors and the procedures for recording described in *IRM 5.5.8.4.1*. However, follow up to obtain a copy of a recorded release is not necessary.

Note:

Whenever contact is made with an estate representative who is requesting a release of an estate tax lien, the advisor should give the representative the option of recording the release, making the representative aware that if they choose to do so, it is their responsibility to pay the recording fees.

5.5.8.4.3 (06-23-2005)

Processing Requests for Discharge of Property from IRC § 6324B Lien, Form 668-H

1. Requests for discharge of property described on Form 668-H will be processed by Advisory.
2. A discharge is necessary if part of the property described on the lien is being sold or removed from special use.
3. If issuance of a conditional commitment to discharge property from the effects of the lien is necessary, Advisory should request a draft of Form 706-A or Form 706-D from each heir who owns a share of the property being sold or removed from special use. Upon review and approval of the draft(s) by the Estate & Gift Tax (E&G) group manager, Advisory will conditionally commit to the discharge. Upon filing of the Form 706-A or Form 706-D, with full payment of any tax and interest due, the discharge certificate will be provided.
4. See *IRM 5.5.8.4.2(4)* for instructions on processing the returns and payments.
Example: A Form 668-H has been recorded in the names of an estate and 4 heirs. The property listed on the lien consists of 6 parcels of real property for which special valuation was elected under IRC § 2032A. The heirs want to convert 1 of the parcels to a non-qualified use and submit an application for discharge under IRC § 6325(b)(2)(A), along with draft copies of each of their required Forms 706-A showing the recapture tax that will be due. E&G reviews the returns and advises that they reflect the correct amount of recapture tax. Advisory issues a commitment to discharge conditioned upon the receipt of original Forms 706-A and payment of the tax and interest due.

5.5.8.4.4 (03-01-2006)

Processing Requests for Subordination of IRC § 6324B Lien, Form 668-H

1. Requests for subordination of property described on Form 668-H will be processed by Advisory.
2. Although it is possible that the qualified heir(s) may apply for a certificate of subordination under IRC § 6325(d)(2), almost all requests for subordination will be made under IRC § 6325(d)(3) which directly addresses IRC § 6324B, and provides for the issuance of a certificate of subordination if it is determined that the lien interest of the United States will continue to be adequately secured.
3. Instructions for applying for a subordination under IRC § 6325(d)(3), are contained in Publication 1153, *How to Apply for a Certificate of Subordination of Federal Estate Tax Lien Under Section 6325(d)(3) of the Internal Revenue Code*.
4. If it is determined that the lien interest of the United States will continue to be adequately secured, issue Form 669-F, Certificate of Subordination of Federal Estate Tax Lien.
Example: A Form 668-H has been recorded in the names of an estate and 2 heirs securing potential recapture tax of \$200,000. The property shown on the lien is an apartment building for which special valuation was elected under IRC § 2057. The fair market value of the property is \$1.5 million, and it is unencumbered but for the Form 668-H. The heirs want to borrow \$250,000 in order to make renovations to the building and use the property as security for the loan. They apply for a subordination under IRC § 6325(d)(3). Since the United States will be adequately secured after the subordination, Advisory may issue Form 669-F.

5.5.8.5 (06-01-2010)

Special Lien Under IRC § 6324A for Estate Tax Deferred Under IRC § 6166

1. IRC § 6166 provides that the executor of an estate may make an election to pay in as many as 10 annual installments, that portion of the estate tax attributable to assets used in a qualifying closely held business. Estate & Gift (E&G) Exam personnel or E&G Campus personnel make the determination if the estate qualifies for this special election. If property qualifies for installments, only interest on the unpaid balance is due on the first four anniversary dates after the due date. The first tax payment along with interest is due on the fifth anniversary of the due date of the return. This election to pay in installments must be made at the time the Form 706 is filed. Late filing of the return invalidates the election. If the deferred tax due is the result of an examination deficiency, the estate must make the election within 60 days after issuance of notice and demand.
2. Under IRC § 6503(d) the Collection Statute Expiration Date is suspended for the period during which payment of the tax is deferred. However, running of the IRC § 6324(a) estate tax lien is not suspended.
3. Collection field function will utilize Form 668(Y) when recording liens on balance due accounts. Advisory has the responsibility of securing a lien using Form 668-J, which is typically secured during the installment period.
4. Key elements of the lien include:
 - A. A lien describing the agreed upon property is recorded using Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Laws (see Exhibit 5.5.8-2).
 - B. An agreement to the lien under IRC § 6324A is filed with the Internal Revenue Service on Form 13925, IRC Section 6324A Lien Agreement Form. The agreement must be signed by all of the persons having an interest in the designated property (whether or not in possession) described on the lien.
 - C. Although real property is preferred, any property, either real or personal, with equity equal to the deferred taxes plus interest, and that can be expected to survive the deferral period, may be designated in the agreement. Property, other than property that was part of the gross estate, may be used to secure the lien. If at any time the value of the property covered by the agreement becomes less than the deferred taxes plus interest, the IRS can require the addition of property to the agreement.

Note:

Even though the property offered by the estate as security for the lien may be, if necessary, difficult to enforce against (such as stock in a closely held corporation), distrainability is not a factor in determining the adequacy of the value of the property offered. As long as the requirements under IRC § 6166A(b) as to the value of the property are met, and there are no indications that the property will not survive the deferral period, whatever property the estate offers as security for the lien is acceptable.

D. Any property that is part of the decedent's gross estate that is part of the agreement and described on the recorded lien is no longer subject to the unrecorded IRC § 6324(a) estate tax lien.

E. Recording of the lien acts as a discharge of the executor and/or fiduciary under IRC § 2204. See Treas. Reg. 20.2204-3.

5.5.8.5.1 (06-01-2010)

Advisory Bond/Lien Determinations for Estate Tax Deferred Under IRC § 6166

1. Advisory will receive a lien package, as described below, and set up an ICS case control.
 - A. Pages 1, 2 and 3 of Form 706 and schedules A, B, F & G and any attachments thereto (but not appraisals unless specifically requested by an Advisor) including other pertinent schedules listing assets.
 - B. Form 4349, Computation of Estate Tax Due With Return and Annual Installment.
 - C. Form 1273, Report of Estate Tax Examination Changes, and Form 3228, Adjustments to Taxable Estate or Form 6180, Line Adjustments - Estate Tax. (These forms will not be provided if the case is surveyed or accepted as filed.)
 - D. The examiner's narrative report of examination changes. (e.g. Form 886A, Explanation of Items, or similar documentation.) (This form will not be provided if the case is surveyed or accepted as filed.)
 - E. Any Form 2848, Power of Attorney and Declaration of Representative.
 - F. IRC § 6166 election and attachments to the election.
 - G. Listing of all businesses listed on the Estate tax return including name and EIN. This information may be listed separately or on the related schedule.
2. The Estate & Gift (E&G) Exam group will be responsible for sending lien packages to Advisory when the case has been assigned to the group for examination. When returns are accepted as filed or surveyed during classification, Campus will be responsible for preparing and forwarding the lien package to Advisory. E&G Campus will hold the original tax return for 90 days once the lien package is sent to Advisory, in case additional information is needed.
3. Advisory shall contact the estate's executor or representative within 60 days of receipt of lien package and request the estate voluntarily provide a bond, or in the alternative an IRC § 6324A lien, to secure the deferred estate tax. If the executor or representative agrees to provide the bond or lien, proceed with processing procedures to get the bond or lien recorded. Send a copy of the lien agreement to E&G Campus for association with the IRC § 6166 file. Encumbrances must be checked to determine adequacy of collateral. The advisor may utilize sources such as Accurint, Secretary of State, UCC filings, etc. to verify encumbrances. It may be necessary to request the estate representative provide encumbrance information. Document the above action in the case history.
4. If the estate declines to provide a bond or lien, Advisory shall review all information available to it before requesting any information from the taxpayer. Advisory shall review the following:
 - A. The lien package provided by E&G Exam,
 - B. Any information that the IRS may have such as extension requests (Form 4768), compliance with current installment/interest payments, tax returns or tax compliance information with respect to the decedent (1040), the estate or trust (1041) and closely held business (1040, 1041, 1120, 1120s, 1065, 941's),
 - C. Any information available by public record or on the Internet, such as filings with the Secretary of State.
5. Advisory will determine what additional information is required to make a determination regarding whether security is required in that case.
6. Advisory shall send a letter to request any additional information needed to determine whether security should be required. The deadline for additional document request shall be kept to 30 days. If within the 30 day period, the estate requests an extension of time, the Advisor may grant an extension for up to 30 days. Any additional extension must be approved by the Advisory Group Manager. Such approval and the reason for granting the additional extension must be documented in the case history.
7. Advisory shall determine whether a bond or lien should be required in a case based on a review and analysis of applicable factors listed below and any other pertinent information. This is not an exclusive list and no single factor will be determinative of whether to require security in any particular case.
 - A. Duration and stability of the business: This factor considers the nature of the closely held business and of the assets of that business, the relevant market factors that will impact the business's future success, its recent financial history, and the experience of its management, in an effort to predict likelihood of its success and survival through the deferred payment period. This information may be found in the appraisal, financial statements, and SEC filings. Facts relevant to this factor are information regarding any outstanding liens, judgments, or pending or anticipated lawsuits or other claims against the business, if any; age of business; and continuity and stability of management. The estate may use a sworn affidavit or other probative documents to provide this information. When considering this factor, determine whether the decedent owned a majority interest in the business. If the decedent owned a minority interest, the financial information pertaining to the business may not be as relevant because the estate may not force distributions to pay the estate tax. In this case, consider whether other assets in the estate or other income are available to pay the estate tax.
 - B. Ability to pay the installments of tax and interest timely: This factor considers how the estate expects to be able to make the annual payments of tax and interest as due, and the objective likelihood of realizing that expectation. Facts relevant to this factor may include the nature of the business's significant assets and liabilities, type of debts (subordinated, related party, guaranteed, payment terms), and the business's cash flow (both historical and anticipated). An appraisal, the business' tax return, or SEC filings may provide this information.
 - C. Compliance history: This factor addresses the business's, estate's and decedent's history regarding compliance with all federal tax payment and tax filing requirements, in an effort to determine whether the business, its management and the executor respect and comply with all tax requirements on a regular basis. The relevance of the closely held business's filing and payment compliance is proportional to the estate's ownership interest and control of the business. This factor also addresses the estate's compliance history with respect to federal tax payment and filing requirements. Review frequency of requests for extension of time to pay, amount, and ultimate payment.
8. Advisory shall fully document in the case file history:
 - A. The factors and information considered in making the determination,
 - B. A brief history outlining taxpayer's response to request for bond or lien, and;
 - C. A detailed explanation regarding why a bond or a lien was required in this case in order to protect the government's interest, and the amount of bond or lien required.
9. After Advisory has made its determination, Advisory will send the estate Letter 4283, Notification Regarding Internal Revenue Code Section 6166 Security Requirement. When preparing the letter, select the optional paragraph (1) to notify the estate that no bond is required; optional paragraph (2) to notify the estate that a bond is required after reviewing the information provided by the estate; or optional paragraph (3) to notify the estate that a bond is required when the estate did not provide the requested information within 30 days. If option (2) or (3) is selected, include the IRC § 6324A Lien Agreement, Form 13925, and Form 8821. If the estate provides a lien form other than Form 13925, Advisory will consult Area Counsel for the state of the decedent's domicile for approval of the lien form. If the designated agent on the Form 13295 or lien agreement is someone other than the executor, ensure Form 8821 is received. Fax a copy of the lien agreement and Form 8821, if applicable, to E&G Campus to associate with the file.
10. Maintain a copy of the Letter 4283 in the case file and schedule a follow up date in ICS.

11. In the case of any proposed bond, Advisory will consult with Area Counsel for drafting, if needed, and review of the bond agreement.
12. Area Counsel will also be consulted when unusual assets are pledged on the lien agreement, such as art or collectibles.
13. The Letter 4283 allows 30 days from the date of the letter to negotiate the bond or lien property. If the estate refuses to provide a bond or lien after Advisory sends Letter 4283 notifying the estate that a bond or lien is required, the Advisor will send the case to the Advisory Group Manager for preparation, selection of the appropriate optional paragraph, and issuance of a Letter 950-I – Preliminary Internal Revenue Code § 6166 Determination Letter. The Letter 950-I is the letter that notifies the estate of its right to appeal the preliminary determination. If the estate does not appeal within the time period, the IRC § 6166 election terminates. Send Letter 950-I by certified mail and maintain one copy in the case file, notating the date it is sent, also schedule a follow up date in ICS.
14. If decedent died **before** August 6, 1997, the estate should **not be sent** the 950-I letter because the estate does not have the right to appeal or go to Tax Court. Provide a narrative to the E&G Campus stating the reason for proposed termination and request the Letter 6335-F be sent.
15. Advisory will send a copy of the Letter 950-I to E&G Campus to associate with the file.
16. After the Letter 950-I is issued, the case will be controlled and monitored for expiration of the 30-day period by the Advisory Group Manager.
17. If within the 30 day period allowed in Letter 950-I the estate requests an extension of time to request Appeals consideration, the Advisory Group Manager may grant an extension for up to 30 days. In unusual cases if circumstances warrant, the Advisory Group Manager may grant an additional extension of time. Such approval and the reason for granting the additional extension must be documented in the case history.
18. If the estate does not appeal the preliminary determination within the 30-day period allowed in Letter 950-I, or as extended, or if the estate sends an untimely post-marked protest, Advisory shall terminate the election 15 days (to allow for mail time) after the expiration of the 30-day period or the extended period. Advisory must send to the E&G Campus a narrative indicating that the time for appeal has expired and that the account should be accelerated. Advisory shall instruct E&G Campus to send Letter 6335-F to the estate, certified mail, return receipt requested. E&G Campus will compute interest on the Letter 6335-F, 30 days from the date of the Letter 950-I, and will prepare the Letter 6335-F showing the total balance on the account and all additional interest.
19. If the estate requests Appeals consideration, Advisory will date stamp the protest and document in the case file history that the protest was received and forward the protest letter and the following to Appeals 30 days from the postmark date of the protest letter:
 - A. Letter 4283,
 - B. Documentation considered in analyzing whether the bond or lien was required,
 - C. Letter 950-I,
 - D. Case file history, and;
 - E. Any pertinent correspondence with the Taxpayer.
20. If the estate submits a protest containing new IRC § 6166 related issues with its request for Appeals consideration, Advisory shall determine the validity of the new issue. If Advisory disagrees with the estate on the new issue, it shall prepare a response to the protest which includes the determination reached on the new issue. Advisory shall send the response to the protest to the estate and include it in the package to be transmitted to Appeals.
21. Prepare Form 3210 forwarding case to Appeals notating "Type of Case IRC § 6166 – Termination Case, Lien Determination – This is an emerging issue. Please check the Appeals Technical Guidance issue locator on the Appeals webpage for further information". Advisory will route their protest cases based on the state in which the decedent was last domiciled using the case routing list on the Appeal's website, <http://appeals.web.irs.gov/APS/bystate2.htm>, with the understanding the case may be transferred to another Appeals Officer based on inventory needs. **Notify E&G Campus by secure e-mail that a protest has been forwarded to Appeals so that the Letter 6335-F is not sent prematurely.**
22. If no new issues are raised by the estate in its request for Appeals consideration, Advisory will not prepare a response to the protest. Appeals will consider the documentation in the case file history containing all prior analysis.
23. The Appeals Office will send the case file with the Appeals Case Memorandum (ACM) to Advisory once a decision is final, so that Advisory can proceed. Advisory shall notify E&G Campus if the election under IRC § 6166 is terminated, and shall instruct E&G Campus to send Letter 6335-F certified mail, return receipt requested. If Appeals allows the election to continue, notify E&G Campus that Appeals has determined the estate is entitled to the election. If no response is received, Advisory will follow-up with Appeals in 90 days. Advisory may contact the Appeals' Account Resolution Specialist at (559) 456-5931 to locate case or update status.

5.5.8.5.2 (06-01-2010)

Miscellaneous Documentation From Campus or Appeals

1. Advisory will receive documentation from E&G Campus concerning IRC § 6166 payments or installment payments that have not been paid. E&G Campus is sending this information to be associated with the case file. E&G Campus will forward for informational purposes copies of billings and/or protest letters that are sent to Appeals. Ol's will be maintained in ICS on accounts where informational documents are sent to Advisory from the E&G Campus.
2. This information should be used in considering creditworthiness of estate, necessity for a bond or lien, and/or necessary enforcement action.
3. Advisory may receive a courtesy investigation from the E&G Campus to collect non-deferred tax, penalties and interest. The following actions should be taken:
 - A. Contact the estate representative and demand payment of the non-deferred tax. Provide a deadline for payment and document the ICS history.
 - B. If payment is not made send final demand letter (Letter 1058) for only the non-deferred portion of tax due plus penalties and interest.
 - C. After expiration of the 30 day final demand letter the advisor will issue a courtesy investigation to initiate enforced collection (such as levy or suit referral) as necessary against assets or initiate such action themselves, as appropriate. The Advisor will coordinate collection action with the revenue officer involved.
 - D. If full payment is still not made, the IRC § 6321 lien should be recorded by the field revenue officer to attach to the remaining undistributed probate property for the non-deferred portion of the estate tax due. Document the ICS history concerning your action to protect the Government's interest. Revenue Officers must comply with collection due process rights in IRM 5.1.9.3 when utilizing the IRC § 6321 lien.
 - E. If estate is unable to pay the non-deferred tax this is an indicator/factor that the estate may be financially unstable. At this time the advisor will conduct an evaluation of the current assets, review time remaining on the IRC § 6324(a) lien (or any other lien in effect such as the IRC § 6324A lien) and determine if the Government is adequately secured for the remaining tax due during the duration of the deferral period.
 - F. If the advisor determines the Government is not adequately secured for the remaining portion of deferred estate tax, Letter 4283 will be sent to the executor/designated agent. Follow procedures in IRM 5.5.8.5.1(9).
 - G. If estate still does not pay non-deferred portion of tax and refuses to provide a lien or bond on the IRC § 6166 portion, issue letter 950-I and proceed with acceleration of the deferred portion of tax.
 - H. Revenue Officers may continue collection actions on the non-deferred portion of estate tax while the deferred portion is being accelerated.
4. Advisory will also receive documentation (copies of Letter 6335 or 6335(T)) from the E&G Campus when estates are delinquent in paying installments timely, Advisory should review the account to determine if a lien or bond has been secured. If a lien or bond has not been secured a re-evaluation of collection risk is appropriate action to ensure the Government is adequately protected. This information and advisor actions must be documented in the ICS history because a pattern of delinquency is a factor in

determining credit risk.

5. Advisory will receive from the E&G Campus documentation (copies of Letter 6335(F)) indicating installment payments have not been made and the acceleration of the tax due is in process. Advisory must upon receipt review the account and determine if a lien or bond has been secured. Advisory should review, recommend and document the ICS history regarding the most appropriate collection action based on information in their lien file. Considerations to be addressed:
 - A. what assets remain that are encumbered by the IRC § 6324(a) lien
 - B. are there specific assets pledged on the IRC § 6324A lien,
 - C. equity in assets
 - D. is there a bond,
 - E. does a seizure or levy need to be done on pledged assets, and
 - F. should a suit referral be completed.
6. Advisory shall take such action or coordinate enforced collection action.
7. Advisory will receive from the E&G Campus documentation indicating the case is in litigation contesting the termination of the election. The collection statute is not suspended during the time the case is in litigation. Advisory should determine based on the facts and circumstances of the case whether collection should be pursued during litigation and handle the case accordingly. If Advisory determines collection should be pursued during litigation, before collecting Advisory must contact the Chief Counsel attorney assigned to the case.
8. When Appeals makes a determination that an estate may continue to elect an IRC § 6166 installment election, the entire case file, including the original return shall be sent to Advisory to copy information necessary for bond or lien determination. This file should be copied within 30 days, and the return should be sent to E&G Campus to complete the installment account set-up.
9. Advisory will be responsible to set follow-ups through ICS to check status of cases that were sent to Appeals for resolution either by utilizing the Appeals Account Specialist or contacting the E&G Campus to determine if they have received the Appeals Case Memorandum (ACM) from Appeals.

5.5.8.5.3 (06-01-2010)

Monitoring Accounts During The Deferral Period (Advisory)

1. Informational documents received from the E&G Campus should be reviewed within 30 days of receipt. The advisor's evaluation of impact or harm to the Government's interest should be documented in the ICS history. This documentation may dictate frequency of monitoring an account.
2. Notice of late installment payments, preliminary IRC § 6166 election terminations or extensions to pay on IRC § 6166 installment payments should be considered as a factor in lien determination and monitoring. Accounts should be re-evaluated if any of the above actions occur.
3. Encumbrances must be checked to determine adequacy of collateral. The advisor may utilize sources such as Accurant, Secretary of State, UCC filings, etc. to verify encumbrances.
4. (4) All IRC § 6166 accounts will be re-evaluated six years into the deferral period. Schedule a follow up through the ICS system. Advisors will consider the factors described in IRM 5.5.8.5.1(7) and should also look at subsequent actions below to determine if additional action should be taken to protect the Government's interest:
 - A. What assets have been distributed?
 - B. Has the estate distributed, sold, exchanged, or otherwise disposed of 50 percent or more of the value of the estate's interest in the closely held business?
 - C. What assets have been discharged or subordinated?
 - D. Has the estate made installment payments timely and in the full amount due?
 - E. Has the estate requested extensions to pay installments?
 - F. Has the estate defaulted on other financing?
 - G. Has the estate made additional payments toward the tax liability?
 - H. Does the closely held business appear to be financially stable and able to make future installment payments?
 - I. Is the estate in compliance with filing and paying requirements?
5. Annual monitoring, considering the above factors should be conducted as the Service nears expiration of the IRC § 6324(a) lien. Each year that Advisory conducts a review, the Advisor must document their analysis and recommendations to adequately protect the Government's interest. As the Service gets closer to expiration of the IRC § 6324(a) lien, the advisor must consider securing a "replacement lien" (IRC § 6324A lien or bond) to cover the additional deferral period and the amount of deferred tax due in order to protect the Government's interest.
6. Advisory **must be aware** that if a determination is made that the Government is at risk of not collecting the remaining tax due, appropriate action (for example, a bond or lien or enforced collection action) **must be taken and completed prior to expiration of the IRC § 6324(a) lien**. Consideration must be given to allow time for the executor to exhaust any allowable appeals and potential litigation time if the estate petitions the Tax Court under IRC § 7479. If the account is accelerated, this process generally requires a minimum of six months to be completed. Timeframes of acceleration, appeals and litigation must be considered in order to complete collection actions prior to expiration of the IRC § 6324(a) lien.
7. If the advisor determines that a lien is required the advisor will send the executor Letter 4283. Follow procedures in IRM 5.5.8.5.1(9) .
8. In consideration of accounts where the estate has been in compliance with timely payment of installments, as the Service gets closer to expiration of the IRC § 6324(a) lien, the advisor must consider securing a "replacement lien" (IRC § 6324A lien or bond) to cover the additional deferral period and the amount of deferred tax due in order to protect the Government's interest.
9. Advisory must ensure annually that the value of the collateral securing the lien is equal to the outstanding IRC § 6166 balance on the account. In accordance with the Form 13925, the designated agent is required to send current valuation information annually with respect to the pledged property listed in the agreement. If the executor has provided an IRC § 6324A lien, Advisory must review the annual valuation information report from the designated agent to confirm that the value of the collateral securing the lien is equal to the outstanding IRC § 6166 balance on the account. If the financial information is not received from the designated agent, the Advisor may contact the designated agent to request that information.

5.5.8.5.4 (06-01-2010)

Processing of IRC § 6324A Form 668-J (Advisory Actions)

1. Follow the procedures found at IRM 5.5.8.4.1 for recording of estate tax liens.
2. When preparing estate tax liens, the SSN of the decedent and any qualified heirs whose names are shown on the lien will be redacted using the format XXX-XX-1234. Do not redact EINs.

3. Actual lien fees will be manually posted by CLU FORT when the lien is received back from the recording office, see IRM 5.19.12.10.2 .
4. Advisors are responsible for ensuring receipt of the recorded lien from CLU and that lien fees have been input, if applicable.
5. Advisory will maintain an ICS case in the name of the estate for which the Form 668-J was recorded until such time as the lien is released. Advisory will also maintain a file of retained lien copies and associated documentation.
6. The Cincinnati Campus Estate & Gift Tax Department, will, upon receipt of full payment of the liability secured by Form 668-J, coordinate with the Advisory Estate Tax Group to ensure that the 668-J lien is released in a timely manner. Campus will notify the Advisory, Estate Tax Group within 10 working days after receiving notification of payment, through secure e-mail, to release any Form 668-J that may have been recorded.
7. Form 669-J must be prepared manually. However, a PDF version of the form is available on the intranet at <http://publish.no.irs.gov/catlg.html>.
8. If the estate representative chooses to post a bond rather than consent to the recording of a lien, follow the procedures for processing bonds found at IRM 5.6.1.2.1, Bonds and IRM 5.6.1.2.3, Estate Tax Bonds and Other Collateral.
9. If stock certificates are pledged as collateral, the advisor will secure the actual stock certificate. This would prevent the sale of such certificates to third parties.
10. Prepare Form 2276, Collateral Deposit Record classifying the stock certificates as "safekeeping" and reflecting a zero value for revenue accounting system (RACS) purposes. The certificates must be stored in an approved safe. Follow procedures in IRM 5.6.1.8, Preparing Form 2276, Collateral Deposit Record.
11. Stock, in most instances, will be considered personal property by most state law. With respect to personal property, a lien must be filed in the office designated by state law in which the property subject to the lien is situated.

5.5.8.5.5 (03-01-2006)

Processing Requests for Release, Discharge of Property From, or Subordination of IRC § 6324A Form 668-J

1. Requests for release of Form 668-J, and discharge and subordination applications will be processed by Advisory.
2. **Releases-** The criteria under IRC § 6325(a) for issuance of a certificate of lien release - liability satisfied or unenforceable or bond accepted - are applicable to Form 668-J. Follow the procedures found at IRM 5.5.8.4.2 for processing estate tax lien releases.
3. **Discharge** - Requests for discharge will normally be made under IRC § 6325(c). Provided property equal to the amount of the remaining deferred balance of tax and interest will remain subject to the lien, a certificate may be issued discharging a portion of the property listed on Form 668-J from the lien. As an alternative, under IRC § 6324A(d)(5), the estate representatives may substitute other property in order to obtain a discharge of all or part of the property listed on the lien. If the disposition of property will result in accelerated payment of all or part of the deferred tax, or if the equity in the remaining property will not equal the remaining deferred balance of tax and interest, the application should be made under IRC § 6325(b)(2).
4. **Subordination** - Requests for subordination will normally be made under IRC § 6325(d)(2). Provided it is determined that the amount realizable by the United States from the property will ultimately be increased, or that the ultimate collection of the tax liability will be facilitated by the subordination, a certificate may be issued.

5.5.8.6 (06-23-2005)

Gift Tax Lien Under IRC § 6324(b)

1. The provisions of the gift tax lien are also delineated in IRC § 6324 and parallel those for the general estate tax lien.
2. The special gift tax lien imposed by IRC § 6324(b) attaches to all gifts made during the calendar year for the amount of the gift tax imposed upon the gifts made during such year. If the gift tax is not paid by the donor when due, the donee of any gift becomes personally liable for the tax to the extent of the value of the gift. The gift tax lien extends for a period of ten years from the time the gifts were made or until or the tax is paid, whichever date is sooner.

Exhibit 5.5.8-1

Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Laws

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1. SB/SE Area ___
2. Leave blank
3. Name of estate from ENMOD
4. Qualified Heirs: Names & TINs
5. From Form 6111
6. Amount of tax subject to recapture (from Form 6111)
7. Complete legal description of property
8. Add this statement: "This notice of lien is filed for the purpose of giving notice that the United States has lien rights against any rights, title or interest that the above named may have in the above described property. This notice of lien does not attach to any other real or personal property in which the above named may have an interest except the property described herein."
9. Name and location of office where lien is recorded
10. City and state of Advisory office where lien is prepared
11. Title of person signing lien

Exhibit 5.5.8-2

Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Laws

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1. SB/SE Area ___
2. Leave blank
3. Name of estate from ENMOD
4. Owners of Record: Names & TINs
5. From lien agreement
6. TC 150 date

7. Current unpaid balance of assessments, plus or minus any unassessed TC 300 or TC 301 from Form 1273, Report of Estate Tax Examination Changes
8. Complete legal description of property
9. Add this statement: "This notice of lien is filed for the purpose of giving notice that the United States has lien rights against any rights, title or interest that the above named may have in the above described property. This notice of lien does not attach to any other real or personal property in which the above named may have an interest except the property described herein."
10. Name and location of office where lien is recorded
11. City and state of Advisory office where lien is prepared
12. Title of person signing lien

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