



# MANUAL TRANSMITTAL

Department of the Treasury  
Internal Revenue Service

5.5.1

MARCH 18, 2020

## EFFECTIVE DATE

(03-18-2020)

## PURPOSE

- (1) This transmits a revised IRM 5.5.1, Decedent and Estate Tax Accounts.

## MATERIAL CHANGES

- (1) IRM 5.5.1.1: Subsection was renamed and expanded to include internal controls information.
- (2) IRM 5.5.1.2(11): added resource information for related IRMs.
- (3) IRM 5.5.1.3: added a bullet to see Note on possible CSED extension.
- (4) IRM 5.5.1.4(2): added resource information to use IRM 5.5.2.
- (5) IRM 5.5.1.6 (2) and (8): added resource information to use Counsel and IRM 5.5.2.
- (6) IRM 5.5.1.7(3) and (4): added information to address use of Form 56.
- (7) IRM 5.5.1.8(9) and (10): added resource information on identity theft indicator and disclosure.
- (8) IRM 5.5.1.9(1): added Note on possible CSED extension.
- (9) Editorial changes were made throughout this section to clarify language and/or to update references, titles, and/or website addresses.

## EFFECT ON OTHER DOCUMENTS

This supersedes IRM 5.5.1 dated March 26, 2010.

## AUDIENCE

Small Business/Self-Employed Collection employees

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5.5.1

Decedent and Estate Tax Accounts

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5.5.1.1  
(03-18-2020)  
**Program Scope and Objectives**

- (1) **Purpose:** This IRM section provides an introduction to decedent accounts and the complex area of law impacting the probate process. Each IRM in the decedent series expounds on technical and policy guidance to assist employees working collection accounts involving deceased taxpayers.
- (2) **Audience:** The guidance in this IRM is specifically intended for revenue officers, advisors and managers, although other employees in SB/SE and in other functions may find them useful.
- (3) **Policy Owner:** Director, Collection Policy, SBSE.
- (4) **Program Owner:** Collection Policy, SBSE, Enforcement.
- (5) **Primary Stakeholders:** SB/SE Collection and Chief Counsel.
- (6) **Program Goals:** Provide policy and procedural guidance to IRS Collection employees processing work related to collection of decedent accounts.

5.5.1.1.1  
(03-18-2020)  
**Background**

- (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.

5.5.1.1.2  
(03-18-2020)  
**Authority**

- (1) Congress has delegated to the IRS the responsibility of administering the tax laws, known as the Internal Revenue Code, found in Title 26 of the United States Code. Congress enacts these tax laws and the IRS enforces them.

5.5.1.1.3  
(03-18-2020)  
**Roles and Responsibilities**

- (1) The Director Collection Policy is responsible for overseeing policy and procedures related to collection of decedent accounts.
- (2) Collection and Advisory employees authorized to make collection determinations are responsible for ensuring procedures are properly followed.
- (3) Collection and Advisory managers are responsible for ensuring that collection actions taken by employees are in accordance with policy and procedures.

5.5.1.1.4  
(03-18-2020)  
**Program Management and Review**

- (1) Per IRM 1.4.50, *Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid*, group managers are required to review ICS and Entity reports on a monthly basis to ensure cases are being effectively worked and ensure compliance with this IRM.

5.5.1.1.5  
(03-18-2020)  
**Program Controls**

- (1) The Integrated Collection System (ICS) is used to control decedent accounts and document case work.
- (2) The ENTITY Case Management System can also generate certain, unique reports to assist in managing assigned inventory.

5.5.1.1.6  
(03-18-2020)  
**Related Resources**

- (1) IRM resources include:
  - IRM 5.5.2, *Probate Proceedings*
  - IRM 5.5.3, *Working Decedent Cases*
  - IRM 5.5.4, *Proof of Claim Procedures in Decedent Cases*
  - IRM 5.17.13, *Legal Reference Guide, Insolvency and Decedent Estates*

5.5.1.2  
(03-18-2020)**Decedent and Estate Tax  
Accounts**

## (2) Publication 559, Survivors, Executors and Administrators

- (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:
  - IRM 5.5.1, *Decedent and Estate Tax Accounts*
  - IRM 5.5.2, *Probate Proceedings*
  - IRM 5.5.3, *Working Decedent Cases*
  - IRM 5.5.4, *Proof of Claim Procedures in Decedent Cases*
  - IRM 5.17.13, *Legal Reference Guide, Insolvency and Decedent Estates*

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:
  - IRM 5.5.5, *Processing Estate and Gift Tax Extensions*
  - IRM 5.5.6, *Collection on Accounts with Special Estate Tax Elections*
  - IRM 5.5.7, *Collecting Estate and Gift Tax Accounts*
  - IRM 5.5.8, *Advisory Responsibilities for Processing Estate Tax Liens*
  - IRM 5.5.9, *Administrative and Judicial Actions for Estate 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.
- (11) An additional resource is IRM 5.17.13, *Legal Reference Guide, Insolvency and Decedents Estates*, employees may 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.

5.5.1.3  
(03-18-2020)  
**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 may **not** be deemed to be under the control of the probate court. The CSED is not suspended and collection actions can be pursued.
  - See "Note" in IRM 5.5.1.9(1) concerning possible extension of the CSED when a proof of claim is filed during a state probate proceeding to collect the unpaid tax liability.
  - **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  
(03-18-2020)  
**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.

- (2) Refer to IRM 5.5.2, *Probate Proceedings*, to guide you through evaluating and protecting the Government's interest during probate proceedings.

#### 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 (03-18-2020)

#### **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. Local law guides should be reviewed, and local Counsel should be consulted on provisions of specific state probate codes and their potential impact on collection. See additional guidance in IRM 5.5.2, *Probate Proceed-*



ings. Refer to your local law guide for specific state law information at <https://ccintranet.prod.irs.counsel.treas.gov/OrgStrat/Offices/sbse/Pages/LawGuides.aspx>.

- (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 may **not** be deemed to be under control of the probate court. Collection action may be pursued.
- (8) See "Note" in IRM 5.5.1.9(1) concerning possible extension of the CSED when a proof of claim is filed during a state probate proceeding to collect the unpaid tax liability.
- (9) 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  
(03-18-2020)  
**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) An individual representing a deceased taxpayer should sign the Form 56 to have the following effect: “ upon notice to the Secretary that any person is acting for another person in a fiduciary capacity, such fiduciary shall assume the powers, rights, duties, and privileges of such other person in respect of a tax imposed by this title, until notice is given that the fiduciary capacity has terminated. ” IRC§ 6903(a).
- (4) Essentially, after signing the Form 56, the fiduciary steps into the shoes of the taxpayer and has all the same power, rights and duties as the taxpayer. The fiduciary can sign the decedent's last tax return (see Treas. Reg. § 1.6012-3(b)(1)) or Form 872, *Consent to Extend Time to Assess the Tax*. Additional information may be found in IRM 25.6.22.6.1.4, *Decedents*.
- (5) Processing instructions for Form 56 are in IRM 3.13.5.32, *Form 56, Notice Concerning Fiduciary Relationship*.
- (6) 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.
- (7) 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  
(03-18-2020)  
**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, *No Return Secured*, 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, *IRC 6020(b) Authority*, 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.
- (9) The TC 971 AC 524 is an identity theft indicator used to lock the account of deceased taxpayers. It prevents a deceased taxpayer's TIN (SSN or ITIN) from being used as the primary, secondary or dependent TIN on a current or subsequent year federal income tax return. For more information on the transaction code see IRM 25.23.2.8.4, *Locking Decedent Accounts - TC 971 AC 524*.
- (10) For questions on disclosure, who may receive copies of tax returns or tax return information see IRM 11.3.2.4.11, *Deceased Individuals*.

## 5.5.1.9

(03-18-2020)

**Collection Statute****Expiration Dates (CSED)**

- (1) Independent, unsupervised or informal probate proceedings indicate that the assets of the deceased may **not** be deemed to be under control of the probate court. The CSED is not suspended and collection action may be pursued.

**Note:** A proof of claim filed on behalf of the Service during a state probate proceeding may be considered commencement of a "court action brought against the taxpayer to collect tax" and toll the statute of limitations in IRC § 6502(a) extending the period of time to collect. See *United States v. Estate of Chicorel*, 907 F.3d 896 (6th Cir. 2018). Contact Counsel if you have questions about extension of the CSED under these circumstances.

- (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 Operation (CLO ) 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.