



**EFFECTIVE DATE**

(09-17-2020)

**PURPOSE**

- (1) This transmits revised IRM 5.5.3, Decedent Estates and Estate Taxes, Working Decedent Cases.

**MATERIAL CHANGES**

- (1) IRM 5.5.3.1: Added Program Scope and Objectives, incorporating previous Overview section.
- (2) IRM 5.5.3.5: Added research of online records to investigative actions.
- (3) IRM 5.5.3.5.1.1: Added information relevant to different types of trusts and probate of property.
- (4) IRM 5.5.3.6: Added guidance on identifying the fiduciary and issuance of summons.
- (5) IRM 5.5.3.6.1: Added question on inherited IRAs.
- (6) IRM 5.5.3.7: Added guidance on lien attachment.
- (7) IRM 5.5.3.9.1: Added new section levy of inherited IRA.
- (8) IRM 5.5.3.10: Added sentence defining statutory executor.
- (9) IRM 5.5.3.12: Added link to guidance for TC 520 and associated closing codes.
- (10) IRM 5.5.3.13: Added new section on identity theft indicator used to lock the account of deceased taxpayers.
- (11) IRM 5.5.3.14: Added new section on disclosure.
- (12) IRM 5.5.3.15: Added new section on gifts to the United States.
- (13) Throughout IRM added section titles and updated links.

**EFFECT ON OTHER DOCUMENTS**

This supersedes IRM 5.5.3 dated March 26, 2010.

**AUDIENCE**

Small Business/Self-Employed Collection Employees

Ronald Takakjy  
Acting Director, Collection Policy



5.5.3

Working Decedent Cases

**Table of Contents**

- 5.5.3.1 Program Scope and Objectives
  - 5.5.3.1.1 Background
  - 5.5.3.1.2 Authority
  - 5.5.3.1.3 Roles and Responsibilities
  - 5.5.3.1.4 Program Management and Review
  - 5.5.3.1.5 Program Controls
  - 5.5.3.1.6 Related Resources
- 5.5.3.2 General Collection Guidelines on Decedent Accounts
- 5.5.3.3 Automated Collection System (ACS) Actions
- 5.5.3.4 Field Collection Actions
  - 5.5.3.4.1 Informal Estate Administration
    - 5.5.3.4.1.1 Assets In a Trust
- 5.5.3.5 Contact With The Fiduciary
  - 5.5.3.5.1 Probing Questions
- 5.5.3.6 Notice of Federal Tax Lien
- 5.5.3.7 Styling and Mailing of Notices
- 5.5.3.8 Notice of Levy
  - 5.5.3.8.1 Levy on Inherited IRA
- 5.5.3.9 Fiduciary or Transferee Liability
- 5.5.3.10 Closing as Currently Not Collectible
- 5.5.3.11 Advisory Referrals
- 5.5.3.12 Indications of Fraud
- 5.5.3.13 Disclosure to Persons with a Material Interest
- 5.5.3.14 Gifts to the United States



5.5.3.1  
(09-17-2020)  
**Program Scope and Objectives**

- (1) **Purpose:** This IRM section provides official policy and procedures to investigate and resolve accounts involving deceased taxpayers that owe taxes.
- (2) **Audience:** The guidance in this IRM is specifically intended for revenue officers, their managers and advisors, 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 working accounts involving deceased taxpayers.

5.5.3.1.1  
(09-17-2020)  
**Background**

- (1) Internal Revenue Manual 5.5.3 provides official procedures 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.

5.5.3.1.2  
(09-17-2020)  
**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.

5.5.3.1.3  
(09-17-2020)  
**Roles and Responsibilities**

- (1) The Director, Collection Policy, is responsible for overseeing policy and procedures related to collection of decedent tax accounts.
- (2) Collection and advisory employees authorized to collect tax accounts are responsible for ensuring procedures are properly followed.
- (3) Managers are responsible for ensuring that processing, evaluation, monitoring and timely actions are taken by employees in accordance with current law, policy and IRM procedures.

5.5.3.1.4  
(09-17-2020)  
**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 charged with ensuring employee case actions are timely and in accordance with current law, policies, and procedures. Group managers are responsible for performance evaluations to document how employees are performing their duties and responsibilities to ensure they are working efficiently and effectively to accomplish assigned tasks.
- (2) Operational and program reviews are conducted to ensure that program delivery and case actions are in accordance with administrative and compliance requirements. National quality and consistency reviews are routinely conducted to ensure program consistency and effectiveness in case processing.

5.5.3.1.5  
(09-17-2020)  
**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.

5.5.3.1.6  
(09-17-2020)

**Related Resources**

- (1) IRM 5.5.1, Decedent and Estate Tax Accounts
- (2) IRM 5.5.2, Probate Proceedings
- (3) IRM 5.5.4, Proof of Claim Procedures in Decedent Cases
- (4) Use IRM 5.17.13, Legal Reference Guide, Insolvencies 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.
- (5) Pub 590-B, Distributions from Individual Retirement Arrangements (IRAs)
- (6) Pub 559, Survivors, Executors and Administrators

5.5.3.2  
(09-17-2020)

**General Collection  
Guidelines on Decedent  
Accounts**

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

<b>If it is a joint liability and</b>	<b>Then</b>
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.

<b>If it is a partnership liability and</b>	<b>Then</b>
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, Insolvencies and Decedents' Estates and IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability.
- (7) For additional information on individuals who may have access to information regarding deceased individuals, see IRM 11.3.2.4.11, Deceased Individuals.

5.5.3.3  
(09-17-2020)  
**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 5.19.1.5.3, Deceased Taxpayers, 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, Notice of Federal Tax Lien Determinations and Filing Criteria, 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 5.19.1.5.3.1, Deceased Taxpayer - Balance Due Actions, 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  
(09-17-2020)  
**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, see Exhibit 5.12.7-2, State and Territory Filing Locations . 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 or research online if records can be viewed and printed, 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.
- (9) For guidance on the progression of probate proceedings see IRM 5.5.2, Probate Proceedings.

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 5.1.1.12, Third Party Contacts . In addition to the sources in IRM 5.5.3.5, 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  
(09-17-2020)  
**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
  - disbursement of the trust assets
- (4) Some common forms of trusts related to probate are:
  - *Inter Vivos Trust* - a trust established during the lifetime of a grantor. It avoids probate of the property it holds because the trust entity, not the deceased grantor, technically owns the property. Probate is only necessary to move ownership from the name of an individual who is deceased to the living beneficiaries
  - *Irrevocable Trust* - an inter vivos 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 typically can no longer take the property back from the trust.
  - *Revocable Living Trust or Living Trust* - an inter vivos trust 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, add or delete beneficiaries, and buy or sell assets during their lifetime; it becomes irrevocable when the grantor dies. 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.
  - *Living trusts* - both revocable and irrevocable - avoid probate of the property they hold because the trust entity and not the decedent technically owns that property. Probate is only necessary to move ownership from the name of an individual who is deceased to the living beneficiaries.
  - *Testamentary Trust* - a trust that is established under the terms and conditions of a will; the will tells the executor of the estate to create it. Such trusts take effect after the death of the person making the will. A testamentary trust can be changed while the grantor is alive but becomes irrevocable at death when the grantor is unable to change the terms of the will. A testamentary trust can't avoid probate because the property to be transferred into it remains in the decedent's name at the time of death - the trust hasn't been formed and funded yet. Probate is necessary to move that property into the name of the trust, just as it would transfer it into the names of living beneficiaries.
- (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. See IRM 5.17.2.5.3.3, Trusts and Beneficial Interests, for information on lien attachment and IRM 5.17.3.10.24, Trusts, for guidance on levy of trust assets .

- (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  
(09-17-2020)  
**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, 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) See IRM 5.5.1.7, Fiduciary Authority, for guidance on how to identify the fiduciary. If there is no executor, fiduciary or administrator appointed, then any person in actual or constructive possession of any property of the decedent may be considered a *statutory executor* and may be liable to pay taxes or have personal liability. An executor is defined in Treas. Reg. § 20.2203-1.
- (3) 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.
- (4) Ensure that information provided by a fiduciary or beneficiary regarding assets and debts is corroborated by your own investigation.
- (5) If the fiduciary does not provide the asset information requested or has not submitted required documents with the probate court, such as an accounting of estate assets, a summons can be issued to the fiduciary. The IRS should not have to request a state court judge to issue an order for the fiduciary to do what he already had a duty to perform -- file an accounting of assets. If the fiduciary chooses to ignore the summons, IRS can seek enforcement in the federal courts instead of waiting for a state court to act.

5.5.3.5.1  
(09-17-2020)  
**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?
  - Did the taxpayer have retirement accounts? IRAs?
  - 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  
(09-17-2020)  
**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 5.12.7.9, NFTL Corrections, 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.

<b>If assessment is made:</b>	<b>Then the assessment lien attaches to:</b>
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 <b>estate</b> 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) The assessment lien under section 6321 attaches to all of decedent’s property and rights and survives on property passing to the estate or passing by operation of law to others. For issues related to property held with rights of survivorship or in a tenancy by the entirety, consult Area Counsel. A NFTL may not be required to initiate levy or seizure. The assessment lien alone is sufficient where competing claimants are not protected under IRC 6323(a).

- (7) The federal tax lien remains on property that passes by a beneficiary deed (which is created by state statute). The beneficiary here does not hold property in common ownership with the decedent with rights of survivorship. Before death, the decedent has the right to revoke or change the beneficiary deed and the beneficiary does not have rights to the property before the taxpayer's death. Consult with Area Counsel concerning levy or seizure of these assets.
- (8) Probate and non-probate property are described in IRM 5.5.1.5, Probate and Non-Probate Property.
- (9) If a decedent account is under Advisory control, Advisory is responsible for filing, amending and re-filing NFTL's as necessary.
- (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.

5.5.3.7  
(03-26-2010)  
**Styling and Mailing of  
Notices**

<b>IF the liability is...</b>	<b>Then styling should include...</b>
a joint assessment,	Name: John Smith (Deceased) and Jane Smith <ul style="list-style-type: none"> <li>• Address: Jane Smith's address</li> <li>• Notices must be sent separately to the last known addresses of both spouses.</li> </ul>
an individual assessment, and a fiduciary has been appointed,	Name: John Smith (Deceased) <ul style="list-style-type: none"> <li>• Address: John Smith's last known address</li> <li>• Send notices to the fiduciary, Robert Drew, at his address.</li> </ul>
an individual assessment, and no fiduciary has been appointed,	Name: John Smith (Deceased) <ul style="list-style-type: none"> <li>• Address: John Smith's last known address</li> <li>• Send notices to John Smith's last known address</li> </ul>
based on Form 1041,	Name: Estate of John Smith <ul style="list-style-type: none"> <li>• Address: John Smith's last known address</li> <li>• Send notices to the fiduciary, Robert Drew, at his address.</li> </ul>

- (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) Generally, the Service should not 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 Letter 1058 must be sent to the fiduciary, *if* the Letter 1058 was not previously issued to the taxpayer.

5.5.3.8.1  
(09-17-2020)  
**Levy on Inherited IRA**

- (1) Inherited IRAs are not retirement funds, and thus, can be treated differently from non-inherited IRAs. Levying on retirement assets, including IRAs, has different, more restrictive standards than levying on other types of property.
- (2) There are three factors listed below that differentiate an inherited IRA from a participant-owned IRA. These factors characterize an inherited IRA as money that was set aside for the original owner's retirement and not for the designated beneficiary's retirement.
  - The beneficiary of an inherited IRA cannot make additional contributions to the account, while an IRA owner can.
  - The beneficiary of an inherited IRA must take required minimum distributions from the account regardless of how far away the beneficiary is from actually retiring.
  - The beneficiary of an inherited IRA can withdraw all of the funds at any time and for any purpose without a penalty, while an IRA owner must generally wait until age 59 1/2 to take penalty-free distributions.
- (3) IRC 408(d)(3)(C)(ii) treats an IRA as inherited if:
  - the individual for whose benefit the account or annuity is maintained acquired such account by reason of the death of another individual, and
  - such individual was not the surviving spouse of such other individual.
- (4) If the inherited traditional IRA is from anyone other than a deceased spouse the beneficiary cannot treat it as his or her own IRA, the IRA will be treated as an inherited IRA.
- (5) Review of IRPTR may lead to inherited IRAs that have passed or will pass to a beneficiary subject to a filed lien or assessment lien. IRP should be checked for the year prior to death, the year of death and the year after death to see if the deceased owned an IRA. It is possible that the IRA will pass to a designated beneficiary and not be reflected on the probate inventory.
- (6) If a distribution is made to a beneficiary, trust, or estate, Form 1099-R, Distribution From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc. is prepared using the name and TIN of the beneficiary, trust, or estate, **not that of the decedent**. If there are multiple beneficiaries, each are reported on Form 1099-R for only the amount paid to the beneficiary whose name appears on the Form 1099-R, and the percentage

is in box 9a, if applicable. It may be necessary to issue a summons for the deceased IRA owner's beneficiary designation for the SSN if the estate administrator cannot or will not provide this information. See form instructions for Form 1099-R and 5498: [http://core.publish.no.irs.gov/instrs/pdf/i1099-r\\_and\\_5498--2020-00-00.pdf](http://core.publish.no.irs.gov/instrs/pdf/i1099-r_and_5498--2020-00-00.pdf).

- (7) Code 4 is used regardless of the age of the participant to indicate payment to a decedent's beneficiary, including an estate or trust. It is also used for payments of reportable death benefits and for death benefit payments made by an employer but not made as part of a pension, profit-sharing, or retirement plan.
- (8) Information on inherited IRAs is reported on Form 5498 which IRA issuers/trustees are required to file. In the year in which an IRA holder dies, the IRA trustee must submit at least two Forms 5498:
  - one reporting the fair market value of the IRA with respect to the decedent (including any contributions made by the decedent in the year of death),
  - and another reporting the value of the IRA with respect to each beneficiary.
  - For each subsequent year, Form 5498 is issued only with respect to each beneficiary.
- (9) For additional information on inherited IRAs refer to Pub 590-A, Contributions to Individual Retirement Arrangements (IRAs), and Pub 590-B, Distributions from Individual Retirement Arrangements (IRAs).
- (10) Inherited IRAs are subject to the normal levy procedures as ordinary property without the usual considerations regarding levies on IRAs. They are not subject to the special levy procedures because they are not retirement funds. See IRM 1.2.2.6.3(5), Delegation Order 5-3, Levy on Property in the Hands of a Third Party, for levy authority.
- (11) If collection action is being pursued against estate assets of the deceased taxpayer 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 assessment tax lien attached. Collection is being pursued against the estate asset to satisfy the decedent's tax liability. In these circumstances, do not issue the Letter 1058 to the beneficiary or holder of estate assets.
- (12) However, although not entitled to CDP rights, such party may be entitled to collection appeal program (CAP) rights. For example, CAP is available where a party asserts an interest superior to the Service in the levied funds and the Service has denied a request to release the levy or to return the funds.
- (13) 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.
- (14) 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 CAP rights on the behalf of the estate.

- (15) When levying on an inherited IRA document the ICS history that the beneficiary received the inherited IRA from your deceased taxpayer and that the IRA is subject to levy since it is not retirement funds. Secure concurrence in the ICS history from the Group Manager that the case was reviewed and agrees the levy is being issued on an *inherited* IRA.
- (16) Use Form 668-A, Notice of Levy, under the section “Special instructions for certain property levied” state “This Notice of Levy attaches to an inherited IRA that is subject to levy, thus not considered to be retirement funds. You are hereby notified that the property and rights to property described below are subject to tax lien provided by IRC 6321 of the Internal Revenue Code for unpaid income taxes owed by the [Name of Decedent], using the Decedent’s Tax Identification Number [Decedent’s TIN]. Said property and rights to property are hereby levied upon and seized for satisfaction of the aforesaid tax, together with all additions as provided by law. Demand is hereby made upon you to turn over said property and rights to property, or if less, the full amount of the unpaid tax liability specified above.”
- (17) Circumstances where the holder of the inherited IRA takes a distribution to which the FTL has attached and uses it to fund the purchase of other assets, such as the purchase of a house or car, present issues not unique to inherited IRAs. In that situation, the Service may be able to assert that the now substituted property, i.e., the house, car, etc., is encumbered by the tax lien. In order to do so, the Service will need to address issues of commingled funds and tracing the encumbered distribution to the purportedly substituted property. In addition, if the tax lien attaches to the substituted property, there may be priority issues if encumbered.

5.5.3.9  
(09-17-2020)  
**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, Insolvencies and Decedents’ Estates, or IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third Party Liability, 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. Section 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) If there is no executor, fiduciary or administrator appointed, then any person in actual or constructive possession of any property of the decedent may be considered a *statutory executor* and may be liable to pay taxes or have personal liability. An executor is defined in Treasury Reg.20.2203-1.
- (5) Suit must be brought against the fiduciary under 31 U.S.C. Section 3713 within the normal 10-year period of limitations for collection *plus* any extensions of the collection period. 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.
- (6) If you determine during your fact finding research that assets were transferred before death, consult with Advisory regarding possible transferee issues.
- (7) The period of limitation under IRC Section 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.
- (8) 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.
- (9) For more information concerning suits, see IRM 5.17.4, Suits by the United States.

5.5.3.10  
(09-17-2020)

**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, Insolvencies and Decedents' Estates.
- (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  
(09-17-2020)  
**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) Guidance for TC 520 and closing codes used for CSEDs, suits and litigation are in IRM 5.1.19, Collection Statute Expiration.
- (7) Advisory may issue an Other Investigation (OI) for necessary field actions related to a decedent case under their control.

5.5.3.12  
(09-17-2020)  
**Indications of Fraud**

- (1) If you uncover indications of fraud during an investigation, follow guidelines in IRM 25.1.2, Recognizing and Developing Fraud.
- (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 unsupportable claims for debts or expenses
- deliberate falsification of affidavits pertaining to attorney's fees or executor's commissions.

- (3) 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 or secondary TIN on a current or subsequent year federal income tax return. See guidance in IRM 25.23.2.8.4, Locking Decedent Accounts - TC 971 AC 524. TC 540 also prevents a tax return from posting under the decedent's SSN after the year of death.

5.5.3.13  
(09-17-2020)

**Disclosure to Persons  
with a Material Interest**

- (1) Guidance on who may receive the returns and return information of the deceased individual is provided in IRM 11.3.2.4.11, Deceased Individuals.
- (2) Generally:
- The administrator, executor, or trustee of an estate or
  - Any heir at law, next of kin, beneficiary under the will, or a donee (recipient) of property may receive information of a deceased individual.
- (3) The requester must furnish satisfactory evidence that he/she is an administrator, executor, trustee, heir at law, next of kin, beneficiary under the decedent's will, or a donee (recipient) of property. Acceptable documentation includes, but is not limited to: birth and/or death certificates, a will, a trust, letters testamentary, or other court document.

5.5.3.14  
(09-17-2020)

**Gifts to the United  
States**

- (1) The Service has addressed circumstances when a deceased taxpayer has designated the IRS as a beneficiary in their will. Information on making gifts to the Government are provided by the Bureau of Fiscal Service at <https://fiscal.treasury.gov/public/gifts-to-government.html>.
- (2) Gifts to a specific agency are treated differently than gifts to the United States generally. Agencies must have specific statutory authority to accept a gift, otherwise it may be considered an impermissible augmentation of their appropriations.
- (3) Treasury has statutory agency gift acceptance authority but has not delegated that down to its bureaus, including the IRS, see Treasury Directive 61-09.
- (4) The Assistant Secretary for Management (ASM) or their designee is responsible for reviewing and determining whether to accept an offer of a gift to the IRS, including a bequest.
- (5) General Legal Services (GLS) facilitates the process of requesting that approval.
- (6) If the agency is interested in accepting this gift, GLS will need a description of the gift, the circumstances of the offer, and any conditions that the offeror has placed on acceptance.
- (7) GLS will draft a memo for the ASM's review, then transmit it to Treasury through General Counsel.