



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.5.7

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EFFECTIVE DATE

(04-02-2024)

PURPOSE

- (1) This transmits revised IRM 5.5.7, Decedent, Estate and Gift Taxes, Collecting Estate Tax.

MATERIAL CHANGES

- (1) IRM 5.5.7, Collecting Estate Tax, was revised throughout to update citations, web links, contacts, IRM titles, and IRM numbers.
- (2) IRM 5.5.7.16, Estate Tax Adjustments and Claims for Refund: Removed reference to Interim Guidance Memorandum (IGM) NHQ-01-1121-0004. Added link to IRM 10.10.1.3.1.1, Acceptable Forms of Electronic Signatures, which now incorporates IGM NHQ-01-1121-0004.

EFFECT ON OTHER DOCUMENTS

This transmittal supersedes manual transmittal dated December 16, 2022, titled **Collecting Estate Tax**.

AUDIENCE

Small Business/Self-Employed Collection Employees

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5.5.7
Collecting Estate Tax

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- 5.5.7-1 Pattern Letter P-300 Revised for Estates

5.5.7.1
(12-16-2022)
**Program Scope and
Objective**

- (1) **Purpose:** This IRM section provides the following:
 - Information to begin an estate tax collection investigation
 - Guidance on applicable liens for estate tax
 - Instructions to collect on estate tax liabilities and to secure delinquent estate tax returns
- (2) **Audience:** This IRM is used by Field Collection revenue officers investigating estate tax balance due and delinquent return cases. Field Collection revenue officers use this IRM when protecting the government's interest and pursuing collection action on estate tax liabilities.
- (3) **Policy Owner:** Director, Small Business/Self-Employed Division (SB/SE), Headquarters, Collection Policy.
- (4) **Program Owner:** Collection Policy, Global Strategic Compliance, oversees policy and guidance for the estate and gift tax collection program.
- (5) **Primary Stakeholders:** SB/SE Collection. Other functions that are affected by, or have input to, the procedures include Chief Counsel, IRS Independent Office of Appeals, Estate and Gift Examination, Campus Estate and Gift, and the Taxpayer Advocate Service.

5.5.7.1.1
(12-16-2022)
Background

- (1) Some estates do not pay their estate tax liability or file their estate tax return. This IRM provides guidance on collection issues that are unique to estate tax including locating assets, analysis of assets, and collection against estate assets.

5.5.7.1.2
(12-16-2022)
Authority

- (1) The authority to collect a tax assessment is addressed in IRC 6502, Collection after Assessment. Collection principles are described in IRM 1.2.1.6, Policy Statements for the Collecting Process. This explains why enforcement is a necessary component to move the taxpayer towards compliance with the tax laws and to promote a system of voluntary compliance. Delegation orders for various collection activity are in IRM 1.2.2, Servicewide Delegations of Authority.
- (2) IRM 1.2.65.3, SB/SE Functional Delegation Orders - Collection, provides delegation orders that are specific to the Small Business/Self Employed Collection organization.
- (3) Internal Revenue Code and Treasury Regulations related to this section include the following:

U.S. Code (USC) Section	Treasury Regulation Section	Treasury Regulation or USC Title
IRC 2032A	26 CFR 20.2032A-8	Election and agreement to have certain property valued under section 2032A for estate tax purposes

U.S. Code (USC) Section	Treasury Regulation Section	Treasury Regulation or USC Title
IRC 2056A	26 CFR 20.2056A-1	Restrictions on allowance of marital deduction if surviving spouse is not a United States citizen
IRC 2501	26 CFR 25.2501-1	Imposition of Tax
IRC 2603	No regulation	Liability of Tax
IRC 2661	No regulation	Administration
IRC 6161	26 CFR 1.6161-1	Extension of time for paying tax or deficiency
IRC 6163	26 CFR 20.6163-1	Extension of time for payment of estate tax on value of reversionary or remainder interest in property
IRC 6165	26 CFR 20.6165-1	Bonds where time to pay tax or deficiency has been extended
IRC 6166	26 CFR 20.6166-1	Election of alternate extension of time for payment of estate tax where estate consists largely of interest in closely held business
IRC 6321	26 CFR 301.6321-1	Lien for taxes
IRC 6323	26 CFR 20.6323-1	Validity and priority against certain persons
IRC 6324	26 CFR 301.6324-1	Special liens for estate and gift taxes; personal liability of transferees and others

U.S. Code (USC) Section	Treasury Regulation Section	Treasury Regulation or USC Title
IRC 6324A	26 CFR 20.6324A-1 26 CFR 301.6324A-1	Special lien for estate tax deferred under section 6166 or 6166A Election of and agreement to special lien for estate tax deferred under section 6166 or 6166A
IRC 6324B	26 CFR 20.6324B-1	Special lien for additional estate tax attributable to farm, etc., valuation
IRC 6325	26 CFR 20.6325-1 26 CFR 301.6325-1	Release of lien or partial discharge of property; transfer certificates in nonresident estates Release of lien or discharge of property
IRC 6326	26 CFR 301.6326-1	Administrative appeal of the erroneous filing of notice of federal tax lien
IRC 6330	26 CFR 301.6330-1	Notice and opportunity for hearing before levy
IRC 6331	26 CFR 301.6331-1	Levy and distraint
IRC 6334	26 CFR 301.6334-1	Property exempt from levy
IRC 6335	26 CFR 301.6335-1	Sale of seized property
IRC 6502	26 CFR 301.6502-1	Collection after assessment
IRC 6601	26 CFR 301.6601-1	Interest on underpayments

U.S. Code (USC) Section	Treasury Regulation Section	Treasury Regulation or USC Title
IRC 6901	26 CFR 301.6901-1	Procedure in the case of transferred assets
IRC 6902	26 CFR 301.6902-1	Burden of proof
IRC 7401	26 CFR 301.7401-1	Authorization
IRC 7402	No regulation	Jurisdiction of district courts
IRC 7403	26 CFR 301.7403-1	Action to enforce lien or to subject property to payment of tax

5.5.7.1.3
(12-16-2022)
**Roles and
Responsibilities**

- (1) These procedures apply to Internal Revenue Service (IRS) Field Collection employees who are responsible for investigating and collecting liabilities arising from Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States. These procedures also apply to Civil Enforcement Advice and Support Operations (CEASO) employees that review certain revenue officer actions.
- (2) Director, Field Collection, is the executive responsible for all Field Collection programs.
- (3) Director, Collection Policy, is the executive responsible for the policies and procedures followed by Field Collection employees.
- (4) Field Collection Area Directors, Territory Managers and Group Managers are responsible for ensuring Field Collection employees comply with these procedures.
- (5) Field Collection revenue officers are responsible for following the procedures in this IRM.
- (6) Field Collection CEASO employees and Counsel provide advice and may review some of the Field Collection revenue officer collection activity described in this IRM.

5.5.7.1.4
(12-16-2022)
**Program Management
and Review**

- (1) IRM 1.4.50, Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid, addresses responsibilities of managers in Field Collection case work.
- (2) IRM 1.4.53, Resource Guide for Managers, Advisory and Property Appraisal and Liquidation Specialist Group Manager Operational Aid, addresses responsibilities for Civil Enforcement Advice and Support Operations (CEASO) group managers.

- (3) 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 conducted to ensure program consistency and effectiveness in case processing. See IRM 5.13.1, Embedded Quality Collection Field Organizations Administrative Guidelines.

5.5.7.1.5
(12-16-2022)

Program Controls

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

5.5.7.1.6
(12-16-2022)

Terms and Acronyms

- (1) Throughout this IRM, references to IRC 6321 assessment lien should be interpreted as the statutory federal tax lien that arises under IRC 6321, Lien for taxes.
- (2) The following table includes common acronyms used in estate tax cases:

Acronym	Definition
AC	Action Code
AIMS	Audit Information Management System
ASED	Assessment Statute Expiration Date
ATAT	Abusive Tax Avoidance Transactions
BMF	Business Master File
CC	Command Code
CDP	Collection Due Process
CEASO	Civil Enforcement Advice and Support Operations
CFR	Code of Federal Regulations
CSED	Collection Statute Expiration Date
DOJ	Department of Justice
DLN	Document Locator Number
E&G	Estate & Gift
GST	Generation-Skipping Transfer
ICS	Integrated Collection System
IDRS	Integrated Data Retrieval System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
MFT	Master File Tax
NFTL	Notice of Federal Tax Lien

Acronym	Definition
RAR	Revenue Agent Report
SB/SE	Small Business Self Employed
SRS	Specialist Referral System
SSN	Social Security Number
TIN	Taxpayer Identification Number
U.S.	United States
USC	United States Code

5.5.7.1.7
(12-16-2022)

Related Resources

(1) Related resources include the following:

IRM Number	IRM Title
IRM 4.25.2	Campus Estate and Gift
IRM 4.25.11	Special Examination Procedures
IRM 5.1.9	Collection Appeal Rights
IRM 5.1.15	Abatements, Reconsiderations, and Adjustment
IRM 5.1.19	Collection Statute Expiration
IRM 5.5.5	Processing Estate and Gift Tax Extensions
IRM 5.5.6	Collection on Accounts with Special Estate Tax Elections
IRM 5.5.8	Advisory Responsibilities for Processing Estate Tax Liens
IRM 5.5.9	Collecting Gift Tax and Generation-Skipping Transfer Tax
IRM 5.10	Seizure and Sale
IRM 5.11	Notice of Levy
IRM 5.12	Federal Tax Liens
IRM 5.17.2	Federal Tax Liens
IRM 5.17.4	Suits by the United States
IRM 5.17.13	Insolvencies and Decedents' Estates
IRM 5.17.14	Fraudulent Transfers and Transferee and Other Third-Party Liability
IRM 5.17.6	Summonses
IRM 25.3.2	Suits by the United States

IRM Number	IRM Title
IRM 25.5.6	Summonses on Third Party Witnesses

5.5.7.2
(12-16-2022)
**Estate Tax Entity Case
Codes**

- (1) Group managers and revenue officers are responsible for ensuring the correct case code and sub code are reflected on Integrated Collection System (ICS) based on the type of master file tax (MFT) owed or unfiled return as shown on Integrated Data Retrieval System (IDRS).
- (2) ICS Code 501 (ESTATE-DECEDENT) is used for MFT 52 cases on Form 706 and Form 706-NA estate tax accounts.

Note: ICS Code 501 is also used for MFT 51 cases on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. See IRM 5.5.9, Collecting Gift Tax and Generation-Skipping Transfer Tax.
- (3) If an Abusive Tax Avoidance Transactions (ATAT) revenue officer is assigned to an estate tax case, the case should include subcode 323 (ATAT ESTATE AND GIFT).
- (4) Transaction code (TC) 971 action code (AC) 281 may be input on IDRS to stop the aging on suit development cases. Group managers must document the ICS history with their approval to input TC 971 AC 281. See IRM 5.20.2.4, Aging of ATAT and Suit Development Cases.
- (5) Related cases may include individual income tax, estate income tax, and gift tax accounts. Managers should typically assign related cases to the same revenue officer. Estate assets may be levied upon for payment of related accounts assessed prior to death.

5.5.7.3
(04-02-2024)
Estate Tax Assessments

- (1) Decedent accounts involve tax liabilities that accrued before the death of the taxpayer and remain unpaid. The unpaid taxes may result from assessments for Form 1040 income tax, trust fund recovery penalty, business taxes due from a sole proprietorship, or other taxes. These types of accounts should not be confused with an estate tax assessment which is levied on the transfer of assets the decedent had an interest in at the date of death that comprise the taxable estate. Guidance on decedent accounts is in IRM 5.5.1, Decedent and Estate Tax Accounts, IRM 5.5.2, Probate Proceedings, IRM 5.5.3, Working Decedent Cases, and IRM 5.5.4, Proof of Claim Procedures in Decedent Cases.
- (2) For the estates of United States (U.S.) citizens and certain U.S. residents, non-citizens, an executor is required to file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, when the value of the gross estate and the amount of adjusted taxable gifts exceeds the basic exclusion amount in effect for the calendar year of the decedent's death. The gross estate includes all world-wide assets in which the decedent had an interest at the date of death, and it may be reduced by certain allowable deductions to arrive at the taxable estate. Some common deductions include a deduction for charitable bequests, transfers to the surviving spouse, debts of the decedent, and estate administration expenses. You can find the filing threshold, i.e., the basic

exclusion amount, for the year of death in the *Form 706 Instructions*, or you can find this information in *Knowledge Management Estate Tax Assessments*.

- (3) Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States, is filed for the estate of non-U.S. residents non-U.S. citizens that owned certain U.S. situs assets as of the decedent's date of death. Executors are required to file Form 706-NA when U.S. situs assets in the estate exceed \$60,000.00. This filing requirement threshold does not change each year. Estate and Gift examiners determine if there are allowable deductions and if international tax treaties apply to the account.
- (4) The tax for Form 706 and Form 706-NA is based on the value of the gross estate assets as of the date of death, plus the amount of adjusted taxable gifts, minus any allowable deductions. When estate tax is owed, the debtor is the estate, and not the deceased taxpayer. An estate is a taxable entity separate from the decedent that comes into effect upon the death of that individual.
- (5) Form 706 and Form 706-NA are due nine months from the decedent's date of death.
- (6) An estate may qualify for an IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business. This election allows an estate to pay the tax in up to 14 annual installments when more than 35% of the estate assets include an interest in a closely held business or businesses. In addition, an estate may be eligible for an IRC 2032A special use valuation election if the gross estate includes specially valued real property, such as a farm. More information regarding these elections is in IRM 5.5.6, Collection on Accounts with Special Estate Tax Elections, and IRM 5.5.8, Advisory Responsibilities for Processing Estate Tax Liens.
- (7) An estate can file Form 4768, Application for Extension of Time to File and/or Pay U.S. Estate Tax, to request a six-month extension of time to file Form 706 or Form 706-NA. Integrated Data Retrieval System (IDRS) should show a transaction code (TC) 460 when an extension of time to file has been granted. If the executor is outside of the country, the estate can request an additional six-month extension of time to file so that the estate has an extension of up to one year to file the return. IDRS should show an additional TC 460 in these cases. The failure to file penalty is not assessed while an extension of time to file is in effect.
- (8) An estate can also file Form 4768 to request an extension of time to pay estate tax on an original tax assessment, on an additional or audit assessment, or on an IRC 6166 installment. IDRS should show a TC 468 for each extension of time to pay that has been requested. The failure to pay penalty is not assessed while an extension of time to pay is in effect. See IRM 5.5.5, Processing Estate and Gift Tax Extensions.
- (9) Interest is owed on tax that was not paid by the due date of the estate tax return even if an estate received an extension of time to file and/or extension of time to pay estate tax.
- (10) Estate tax accounts are assessed on IDRS as follows:

- The taxpayer identification number (TIN) is normally the decedent's social security number (SSN) with a "V" indicator. The format is XXX-XX-XXXXV.
 - If the decedent did not have an SSN, the IRS will assign a TIN that will usually begin with the number "9" and end with a "W". The format is 9XX-XX-XXXXW.
 - The Master File Tax account (MFT) is 52 and the tax period is 000000.
 - Estate tax is a BMF liability. Therefore, information related to this tax can be obtained using IDRS command code (CC) BMFOL. An example of the BMFOLT format is BMFOLTXXX-XX-XXXXV52000000.
- (11) When a TC 150, Return Filed & Tax Liability Assessed, posts on an estate tax account, an Audit Information Management System (AIMS) base is opened, and a TC 420, Examination Indicator, will post on IDRS. The estate tax return will either be accepted as filed or assigned to Estate and Gift (E&G) Examination for further review.
- (12) A TC 421, Reverse Examination Indicator, will post after the IRS either accepts the return as filed or after the E&G examination is completed, and the case will then be closed on AIMS.
- (13) If the TC 420 has not been reversed, AMDIS can be checked to determine if an E&G Examination group is assigned to the examination of the return. If the case is assigned to an E&G Examination group, that group can be contacted for copies of returns, status of the examination, and asset information. See *Knowledge Management Estate & Gift Examination Contacts* for a link to locate E&G Examination employees.
- (14) Some common codes seen on AMDIS on estate tax cases include the following:

Status Code	Definition
06	Return is in Kansas City awaiting classification when the IRS will determine to either accept the return as filed or to forward the return through the review process for a possible examination of the return.
08	Return selected for further review. Return may still be later accepted as filed or return may be examined. Return not yet assigned for examination.
10	Assigned to Estate and Gift Examination.
12 and 14	Started examination in Estate and Gift Examination.
90	Closed examination.

Note: See *Document 6209 Code Retriever* for other status codes on AMDIS.

- (15) See IRM 5.5.7.4.1, Estate and Gift Examination Actions, for more information on actions by Estate and Gift Examination on estate tax accounts.

5.5.7.4
(12-16-2022)
**Internal Progression of
Estate Tax Accounts**

- (1) In many estate tax collection cases, executors have already had contact with employees from Estate and Gift (E&G) Examination, Campus E&G, Advisory Estate Tax Lien Group, or IRS Independent Office of Appeals E&G Group. Information pertinent to a collection investigation may be available from their files.

5.5.7.4.1
(12-16-2022)
**Estate and Gift
Examination Actions**

- (1) Estate and Gift (E&G) Examination groups are located throughout the country. They have the following responsibilities related to estate tax returns:
 - Examining estate tax returns.
 - Reviewing some amended returns, supplemental returns, and claims for refund for adjustments.
 - Making determinations on allowance of IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business elections and IRC 2032A special use valuation elections and referring those cases to Advisory Estate Tax Lien Group to secure collateral. See IRM 5.5.6, Collection on Accounts with Special Estate Tax Elections, and IRM 5.5.8, Advisory Responsibilities for Processing Estate Tax Liens, for more information on these special elections.
 - Granting IRC 6163 remainder/reversionary interest elections. See IRM 5.5.8.18, IRC 6163 Remainder/Reversionary Interest Cases, and IRM 4.25.11.11, IRC 6163 Election Examination, for additional information.
 - Granting IRC 2056A qualified domestic trust elections. See IRM 5.5.8.21, Qualified Domestic Trusts, and IRM 4.25.4.6.2, Qualified Domestic Trust, for additional information.
- (2) If Integrated Data Retrieval System (IDRS) shows an unreversed Transaction Code (TC) 420, the case may be assigned to E&G Examination. To determine the status of an examination, review IDRS command code (CC) AMDIS for the status code. The status code is a two-digit code on the left side of AMDIS underneath the section "CURRENT-STATUS-CD/DATE". Go to *Document 6209 Code Retriever*. At the drop-down menu, go to Exam Status Code and input the two-digit status code obtained from CC AMDIS. Also see IRM 5.5.7.3, Estate Tax Assessments, for commonly seen AMDIS status codes on estate tax cases.
- (3) To locate an E&G Examination employee, check IDRS command code (CC) AMDIS for the group assignment number. Then check *Knowledge Management Estate & Gift Examination Contacts* for the contact information of the E&G Examination group assigned to the case. If E&G Examination is reviewing the estate tax return, coordinate with the examiner on the status of the examination, obtain copies of the estate tax return and schedules, and determine the potential impact of the examination on the collection account.

5.5.7.4.2
(12-16-2022)
**Campus Estate and Gift
Actions**

- (1) Campus Estate and Gift (E&G) is located at the Cincinnati Campus. They have the following responsibilities related to estate tax:
 - Approve or deny requests for extensions of time to file estate tax returns and some IRC 6161 extensions of time for paying tax.
 - Send notices and monitor accounts with approved and some denied requests for IRC 6161 extensions of time for paying tax.
 - Send notices and monitor accounts of estates with IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business elections.

- Terminate IRC 6166 elections and send final demand notices on terminated elections.
 - Refer certain IRC 6166 election cases and IRC 2032A special use valuation election cases to Advisory Estate Tax Lien Group to secure collateral.
 - Review some adjustments on supplemental or amended estate tax returns and claims for refund.
 - Review some abatement of penalty requests that are not assigned to E&G Examination or Collection.
 - Issue transfer certificates on international estates.
- (2) Campus E&G can provide a copy of an estate's request for an IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election while the election is in effect, and they can provide the E&G determination to accept or reject an IRC 6166 election. Campus E&G can provide copies of billings for annual IRC 6166 installment payments, late notices, and IRC 6166 acceleration of tax notices. If an IRC 6166 election goes into default, Campus E&G's documents related to the election will be with the Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, case file. See IRM 5.5.7.8, Ordering Estate Tax Returns, for information on how to obtain these documents.
- (3) Campus E&G ensures that accounts with IRC 6166 elections are put into status 14 to prevent notices from being generated systemically. They also use a specific software to perform interrelated interest calculations. Since IRC 6166 cases include restricted interest, a payoff cannot be computed on Integrated Data Retrieval System (IDRS) using command code (CC) INTST. Campus E&G can provide the amount of tax that was deferred under IRC 6166 and the amount of tax that was not deferred, and they will provide payoffs on accounts with IRC 6166 elections. They can also answer questions regarding penalty or interest assessments. To contact the Campus E&G unit that handles IRC 6166 elections, see IRM 4.25.2.9.6.3, Payoff Requests, for their e-mail information.
- (4) Campus E&G monitors international estate tax accounts to provide transfer certificates once the tax is paid in full, and the IRS has completed the review of the estate tax return. Transfer certificates allow the transfers of property of non-resident decedents without fiduciary liability. See IRM 5.5.7.20, International Estate Tax Accounts, and IRM 5.5.7.20.4, Transfer Certificates. For Campus E&G assistance on international estate tax returns, contact them by e-mail at **SBSE EEF CIN E&G*. Taxpayers can use fax number (855) 201-8011.
- (5) For other estate tax inquiries, Campus E&G can be contacted at telephone number (866) 699-4083.

5.5.7.4.3 (12-16-2022)

Advisory Estate Tax Lien Group Actions

- (1) The Advisory Estate Tax Lien group is a centralized Advisory group that is responsible for the following:
- Making determinations to approve or deny some IRC 6161 extensions of time for paying tax requests.
 - Working estate tax lien discharge and subordination requests.
 - Filing and releasing liens on estates with IRC 2032A special use valuation elections.

- Determining if collateral should be required from estates with IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business elections.
 - Filing and releasing liens and securing bonds on estates with IRC 6166 elections.
 - Monitoring and releasing collateral on IRC 2056A qualified domestic trust cases and IRC 6163 remainder/reversionary interest cases.
- (2) Advisory can provide copies of recorded estate tax liens, extensions of time to pay estate tax approvals and denials, and copies of discharge and subordination documents from their case files. Integrated Collection System (ICS) histories can also be reviewed for prior actions of the Advisory Estate Tax Lien Group. Their contact information is on *Knowledge Management Advisory Estate Tax Lien Group*.

5.5.7.4.4
(12-16-2022)
**IRS Independent Office
of Appeals Actions**

- (1) IRS Independent Office of Appeals has a centralized group to handle estate tax issues. They make determinations on the following cases:
- Appeals related to the examination of estate tax returns
 - Denied IRC 6161 extensions of time for paying tax
 - Denied IRC 2032A special use valuation elections
 - Requirements for an estate to provide collateral on IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business elections
 - Terminations and denials of IRC 6166 elections
 - Denied estate tax lien discharges and subordinations
- (2) To determine the status of a case assigned to IRS Independent Office of Appeals, review the *Appeals Centralized Database System (ACDS)*. Each Field Collection group should have a point of contact to access this system.
- (3) If the case is not yet assigned to an IRS Independent Office of Appeals employee, send an e-mail to **AP Inquiries* for assistance.
- (4) If a case has a closed examination issue resolved by IRS Independent Office of Appeals, the closed documents should be with the original estate tax return. See IRM 5.5.7.8, Ordering Estate Tax Returns, to obtain information on requesting an estate tax return.

5.5.7.5
(12-16-2022)
**Estate Tax IDRS
Transaction Codes**

- (1) As part of your case analysis, review Integrated Data Retrieval System (IDRS) to determine the nature of the assessment and prior events that may have affected the estate tax case. Determine if another employee is working on the account or previously worked the account. They may be able to provide assistance or documents from their case file. The following is a list of transaction codes (TC) to assist you when reviewing an estate tax account:

IDRS TC	Description
150	The original assessment for a filed return.
290	Additional tax due to an adjustment to a module which contains a transaction code (TC) 150. The assessment could be from an amended return or a math error. Check freeze codes. The TC 150 assessment and the TC 290 assessment will have different collection statute expiration dates (CSEDs).

IDRS TC	Description
291	Abates a previously posted TC 150, 290, or 300 in whole or in part. This transaction code generates abatements of computer-generated interest (TC 197), when applicable.
300	Additional tax assessed due to an examination or adjustment from IRS Independent Office of Appeals. The TC 150 assessment and the TC 300 assessment will have different CSEDs.
301	Reflects a partial or full abatement of the TC 300 assessment.
420	When a TC 150 posts on an estate tax account, an AIMS base is opened and a TC 420, Examination Indicator, will post on IDRS. The estate tax return will either be accepted as filed or assigned to Estate and Gift (E&G) Examination for further review. TC 420 will generate an “-L” freeze on the account.
421	Reflects that IRS either accepted the return as filed or examination of the return has been completed. If the estate tax return is accepted as filed, a TC 300 will post for zero with disposal code (DC) 20 then a TC 421 will post. Once a TC 421 is input, the “-L” freeze will be removed from the account.
460	Indicates an extension of time for filing the estate tax return has been requested. The extended filing date will be to the far right of the TC 460.
462	Corrects erroneous posting of TC 460.
468	Indicates the estate had requested an IRC 6161 extension of time to pay estate tax. If granted, the extended due date is reflected on the module to the far right of the TC 468. This changes the collection statute expiration date (CSED). See IRM 5.5.7.6.1, CSED - IRC 6161 Extension of Time to Pay Requests.
469	Corrects erroneous posting of TC 468 and restores prior status.
488	Indicates an estate was granted an IRC 6166 election. This puts the account into status 14. Occasionally, a TC 488 is input to put an account with an IRC 6161 extension of time to pay request into status 14.
489	Input when an IRC 6166 election is terminated. The status on the account will be updated to collection status for collection assignment.
520	Litigation or appeal
971	TC 971 action code 010 indicates an amended return has been filed. TC 971 action code 700 indicates a protective claim has been filed.
976	Reflects receipt of either a duplicate return or an amended return. The module should have an “-A” freeze. If review of an amended return has been completed, a TC 290 or TC 291 will reflect the tax adjustment and the “-A” freeze will drop off the account.

- (2) For more information on these and other transaction codes, see *Document 6209 Code Retriever*.

5.5.7.6
(12-16-2022)
**Estate Tax Collection
Statute Expiration Date
(CSED)**

- (1) Always check the Collection Statute Expiration Date (CSED) when working estate tax accounts. Integrated Data Retrieval System (IDRS) may not accurately reflect the CSED when multiple assessments are involved.
- (2) There will be a different CSED for the IDRS original transaction code (TC) 150 assessment and for any TC 300 tax deficiency assessment or TC 290 adjust-

ment to tax. The collection statute expires ten years from the date of assessment unless an event occurs to extend or suspend the collection statute.

Note: An extension of the CSED does not extend the unrecorded IRC 6324(a)(1) estate tax lien which runs for ten years from the date of death and cannot be extended or tolled. See IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien, for an explanation of the IRC 6324(a)(1) estate tax lien.

- (3) The CSED may be extended due to a TC 520 input due to litigation or bankruptcy. See IRM 5.1.19, Collection Statute Expiration, IRM 21.5.6.4.46, -W Freeze Code, and IRM 25.3.8, TC 520 - W Freeze Servicewide Guide, for more information.
- (4) Other common events that may extend the collection statute on estate tax cases include the following:
 - Offer in compromise (TC 480)
 - Collection due process lien (TC 520 CC 76) or levy (TC 520 CC 77)
 - Taxpayer living outside of the country (TC 550 definer code 09)
 - Majority of assets under jurisdiction of the probate court (TC 550 definer code 02)
 - IRC 6161 extension of time to paying tax (TC 468)
 - IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election (TC 488)

Note: See IRM 5.1.19, Collection Statute Expiration, for additional information on events that impact the CSED.

- (5) Once you determine the correct CSED, document your ICS history with the CSED and how you arrived at the date.
- (6) To update the CSED on ICS and IDRS, see *ICS User Guide, Chapter 7, Module Summary-Module Detail*.

5.5.7.6.1

(12-16-2022)

CSED - IRC 6161

Extension of Time to Pay Requests

- (1) An estate can request an IRC 6161 extension of time to pay estate tax if payment imposes an undue hardship or if the estate has reasonable cause. Extension of time to pay requests can only be granted as follows for up to one year at a time:
 - For an original tax assessment with Integrated Data Retrieval System (IDRS) Transaction Code (TC) 150, an extension of time to pay may be granted, up to one year at a time, for up to ten years from the due date of the return. The extension of time to pay estate tax request must be made by the estate tax return due date.
 - For an assessment due to a tax deficiency with IDRS TC 290 or TC 300, an extension of time to pay may be granted, up to one year at a time, for up to four years from the date fixed for the payment of the deficiency. The extension of time to pay estate tax request must be made by the due date on the notice and demand for payment of the deficiency.
 - An estate can also request an IRC 6161 extension of time to pay an IRC 6166 installment payment. See IRM 5.5.7.6.2, CSED - IRC 6166 Deferred Tax, for more information on this type of request.

- (2) A TC 468 is usually input on IDRS when an estate has requested an IRC 6161 extension of time to pay estate tax. TC 468 puts the account into status 14 which keeps the account out of collection status.
- (3) On occasion, Campus Estate and Gift (E&G) may input a TC 488 on an account to reflect an IRC 6161 extension of time to pay. TC 488 also puts the account in status 14 to keep the account out of collection status. This is done in the following circumstances:
 - If penalties and interest are charged to the account prior to the extension of time to pay being granted.
 - If a TC 460 was input first to reflect an extension of time to file for one date, then a TC 468 was later input to reflect an extension of time to pay for a different date.

Note: If a TC 468 is input to reflect an extension of time to pay before the TC 460 is input to reflect an extension of time to file, the account will go into status 14 which keeps the account out of collection status without the need to input a TC 488.

- (4) The date that the extension of time to pay estate tax is granted to is listed on the right side of the TC 468 next to "Ext-Dt>."

Example:

Transaction Code	Date	Amount	Variable Data
468	02202017	\$0	Ext-Dt>02072018

In this example, according to the **Extension Date** indicated with the TC 468, the estate was granted an extension of time to pay to 2/7/2018. The date of 2/20/2017 is the date that the Campus E&G employee had input the TC 468.

- (5) The TC 468 may, or may not, have an additional transaction code as follows:
 - CC01 = Denied extension on TC 150 assessment
 - CC02 = Extension on TC 300 assessment
 - CC03 = Denied extension on TC 300 assessment
 - CC04 = Appeals case
- (6) The collection statute is suspended for the period that an IRC 6161 extension of time to pay estate tax is granted. See IRC 6503(d), Suspension of running of period of limitation, Extensions of time for payment of estate tax.
- (7) To update the CSED on Integrated Collection System (ICS) and on IDRS, see IRM 5.5.7.6, Estate Tax Collection Statute Expiration Date (CSED).
- (1) For an initial IRC 6161 extension of time to pay estate tax request on tax that is due on an estate tax return as originally filed or on additional tax owed after an adjustment or examination assessment, the collection statute is suspended from the date of the assessment of the tax to the extended payment date as shown on Integrated Data Retrieval System (IDRS) transaction code (TC) 468 next to "EXT-DT>."

5.5.7.6.1.1
(12-16-2022)
**CSED - Initial IRC 6161
Extension of Time to
Pay Requests**

Example: Form 706 due date was 02/7/2017. The return was filed, and the TC 150 was input on 2/14/2017. According to the "Extension Date" indicated with the TC 468, the estate was granted a one-year extension of time to pay from the return due date of 2/7/2017 to 2/7/2018.

Transaction Code	Date	Amount	Variable Data
150	02142017	\$500,000.00	(Intentionally blank)
468	02202017	\$0	EXT-DT>02072018

Although the extension of time to pay estate tax is granted from the return due date, the tax, in this example, was assessed after the return due date. Therefore, the suspension of the collection statute occurs from the date of the assessment of the tax to the date that the extension of time to pay was granted through.

In this example, the collection statute was suspended from the tax assessment date of 2/14/2017 to the extension date of 2/7/2018. The collection statute was no longer suspended on the following day of 2/8/2018. The new collection statute expiration date (CSED) is ten years from 2/8/2018 making the new CSED 2/8/2028.

Reminder: The transaction date of the TC 468 is the date that the Campus employee input the transaction code 468 onto IDRS. The TC 468 date does not reflect the date that the extension of time to pay request was received. The date the extension of time to pay was granted to is shown to the far right of the TC 468 as **EXT-DT>**.

5.5.7.6.1.2 (12-16-2022)

CSED - Subsequent IRC 6161 Extension of Time to Pay Requests

- (1) If an estate makes an additional IRC 6161 extension of time to pay estate tax request, the request must be made on or before the date the prior extension of time to pay was granted through. In this case, the collection statute is suspended for an additional period from the prior extension of time to pay date to the new extension of time to pay date.
- (2) The subsequent extension of time to pay would be shown on Integrated Data Retrieval System (IDRS) with an additional TC 468.

Example:

Transaction Code	Date	Amount	Variable Data
150	02142017	\$500,000.00	(Intentionally blank)
468	02202017	\$0	EXT-DT>02072018
468	02182018	\$0	EXT-DT>02072019

If the prior extension of time to pay period expired on 2/7/2018, and the estate was granted an additional extension of time to pay for a year, the collection statute suspension would continue through the next extension of time to pay date of 2/7/2019.

In this example, the collection statute is suspended from the assessment date of 2/14/2017 through 2/7/2019. The collection statute begins running the following day of 2/8/2019. The new collection statute expiration date (CSED) is ten years from that date which is 2/8/2029.

Reminder: The transaction date of the TC 468 is the date that the Campus employee input the transaction code 468 onto IDRS. The TC 468 date does not reflect the date that the extension of time to pay request was received. The date the extension of time to pay was granted to is shown to the far right of the TC 468 as **EXT-DT>**.

5.5.7.6.1.3
(12-16-2022)
**CSED - Denial of IRC
6161 Extension of Time
to Pay Requests**

- (1) The collection statute is not suspended if an IRC 6161 extension of time to pay request has been denied.
- (2) In these cases, the date shown next to the “EXT-DT>” on the right side of the TC 468 may reflect the last due date for payment of the tax.

Example: If an initial request for an extension of time to pay is denied, the date on the right side of the TC 468 “EXT-DT>” would reflect the due date of the return. If a subsequent request for an extension of time to pay is denied, the date on the right side of the TC 468 “EXT-DT>” would reflect the same date as the last approved extension of time to pay.

- (3) For subsequent extension of time to pay requests that are denied, it is possible for the collection statute to be suspended due to prior approved IRC 6161 extensions of time to pay. The running of the collection statute would resume if a subsequent extension of time to pay request was denied.

Example:

Transaction Code	Date	Amount	Variable Data
150	02142017	\$500,000.00	(Intentionally blank)
468	02202017	\$0	EXT-DT> 02072018
468	02182018	\$0	EXT-DT> 02072019
468	02112019	\$0	EXT-DT> 02072019

In this example, the collection statute was suspended from the assessment date of 2/14/2017 through 2/7/2019 since the first two extensions of time to pay estate tax requests were approved. Since the third extension of time to pay request was denied, the third TC 468 date shows the “extension to” date

as 2/7/2019 which is the date the last extension of time to pay was approved through.

Due to the denial of the third extension of time to pay request, there were no further suspensions of the collection statute beyond 2/7/2019. The collection statute resumes the next day of 2/8/2019. The CSED, in this example, would be ten years later which is 2/8/2029.

Reminder: The transaction date of the TC 468 is the date that the Campus employee input the transaction code 468 onto IDRS. The TC 468 date does not reflect the date that the extension of time to pay request was received. The date the extension of time to pay was granted to is shown to the far right of the TC 468 as **EXT-DT>**.

5.5.7.6.2
(12-16-2022)
**CSED - IRC 6166
Deferred Tax**

- (1) An estate may make an IRC 6166 election for an extension of time to pay estate tax that is attributable to an interest in a closely held business when the estate files a timely Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, or on a Form 706 examination assessment. The IRC 6166 election allows for the deferral of payment of estate tax when an estate has an interest in a closely held business or businesses that exceeds 35% of the adjusted gross estate assets. Estates must meet certain criteria, as approved by an Estate & Gift (E&G) examiner, to be granted the IRC 6166 election.
- (2) The IRC 6166 election typically allows for an estate to pay up to four years in annual interest only installments then up to ten years of annual principal and interest installments. Some IRC 6166 elections are for shorter periods as determined by an E&G examiner. See IRM 5.5.6, Collection on Accounts with Special Estate Tax Elections, and IRM 5.5.8, Advisory Responsibilities for Processing Estate Tax Liens, for more information on IRC 6166 Elections.
- (3) The collection statute that is based on the assessment of tax is suspended while an IRC 6166 election is in effect. See IRC 6503(d), Suspension of running of period of limitations, Extensions of time for payment of estate tax. However, the statute on the unrecorded IRC 6324(a) estate tax lien is not suspended when the IRC 6166 election is in effect. See IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien, for a discussion of this lien.
- (4) Some indicators on Integrated Data Retrieval System (IDRS) that an estate had been granted an IRC 6166 election include the following:
 - If Submission Processing correctly identifies the IRC 6166 election, the account will have a payment indicator 1, which restricts the account and places it in Status 14. This payment indicator is on TXMOD and shown as **PYMT-IND>1**.
 - If Submission Processing did not input **PYMT-IND>1**, Campus E&G will input a TC 488 to put the account into status 14.
 - Accounts with annual TC 340 assessments of interest with associated TC 290 assessments.
 - Accounts that were in status 14 on IDRS. However, this can also be an indicator of an IRC 6161, Extension of Time for Paying Tax.
 - TXMOD history with statements such as "6166 SETUP", "To 6166", "Default 6166", or "950-H Letter."

- TC 489 input on IDRS. This is the date that the IRC 6166 election went into default.
 - TC 582 input with the note "Special Lien."
- (5) The estate may have an IRC 6166 election on all the estate tax due or on only a portion of the estate tax due. For the portion of tax that the estate does not have an IRC 6166 election, the tax is due by the return due date.
 - (6) Form 4349, Computation of Estate Tax Due with Return and Annual Installment, is completed by Estate & Gift (E&G) Examination, Campus E&G, or IRS Independent Office of Appeals. It will show the amount of tax that was deferred under IRC 6166, and the amount of tax that was not deferred. Campus E&G may have this information on their database, Advisory Estate Tax Lien Group may have this information, or the form may be with the tax return. To contact Campus Examination E&G on IRC 6166 accounts, see IRM 4.25.2.9.6.3, Payoff Requests, for their e-mail information. To contact Advisory Estate Tax Lien Group, see *Knowledge Management Advisory Estate Tax Lien Group*. To order a copy of the estate tax return, see IRM 5.5.7.8, Ordering Estate Tax Returns.
 - (7) An estate can request an IRC 6161 extension of time for paying tax on an IRC 6166 installment payment for up to one year at a time. Both the IRC 6166 election and the IRC 6161 election suspend the collection statute. When more than one action suspends the running of the collection statute, and the suspensions overlap, the collection statute is suspended only once. See IRM 5.1.19.3, Case Actions That Can Suspend And/Or Extend A CSED. In these situations, the calculation of the CSED should be based on the time that the estate had the IRC 6166 election since the IRC 6161 extension of time to pay the annual installment would overlap with the IRC 6166 election.
 - (8) To update the CSED on Integrated Collection System (ICS), see IRM 5.5.7.6, Estate Tax Collection Statute Expiration Date.

5.5.7.6.2.1
(12-16-2022)
**CSED - All Tax Deferred
Under IRC 6166**

- (1) When an estate has been granted an IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election when Form 706 is filed, the suspension of the collection statute begins with the transaction code (TC) 150 tax assessment on Integrated Data Retrieval System (IDRS). For tax due on an adjustment to tax assessment or on an examination assessment, the suspension of the collection statute begins with the TC 290 or TC 300 assessment date. If all the tax due is deferred under IRC 6166, then the collection statute is suspended on the full tax liability.
- (2) If the IRC 6166 election goes into default, the statute suspension ends when the TC 489, Installment Defaulted, indicator is input on IDRS. The running of the statute resumes the day after the TC 489 date.

Example:

Transaction Code	Date	Amount
150	09202018	\$300,000.00
488	10022018	\$0
489	11052020	\$0

In this example, the statute is suspended from the TC 150 assessment date of 9/20/2018 to the TC 489 date of 11/5/2020. Even though the TC 488 was input after the TC 150 date, the IRC 6166 election was taken when the return was filed so the suspension of the collection statute goes back to the assessment date.

The collection statute begins running on 11/6/2020 which is the next day after the IRC 6166 election defaulted. The new collection statute expiration date (CSED) is ten years from 11/6/2020 which is 11/6/2030.

Note: The transaction date of the TC 488 is the date that the Campus employee input the transaction code 488 onto IDRS.

5.5.7.6.2.2
(12-16-2022)

**Multiple CSEDs - Tax
Deferred Under IRC 6166
and Tax Non-Deferred**

- (1) When an estate has been granted an IRC 6166 election, all the tax may qualify for the election or only a portion of the tax may qualify. If only a portion of the tax qualifies, there will be two different collection statute expiration dates (CSED) - one for the tax that qualifies for the IRC 6166 election and one for the tax that does not qualify for the election.

Example: An estate filed Form 706 indicating tax due of \$1,000,000. Of that amount, \$400,000 is not deferred under IRC 6166, and \$600,000 is deferred under IRC 6166.

The amount of non-deferred tax and deferred tax are combined under the TC 150 on IDRS which reflects total tax of \$1,000,000.

Transaction Code	Date	Amount
TC 150	04092016	\$1,000,000.00
TC 488	05132016	\$0
TC 489	09122019	\$0

For the portion of the tax (\$400,000) that did not qualify for the IRC 6166 election, the collection statute expires ten years from the TC 150 assessment date of 4/9/2016 making 4/9/2026 the CSED on that portion of the tax.

For the portion of the tax (\$600,000) that did qualify for the IRC 6166 election, the collection statute was suspended from the TC 150 date of 4/9/2016 to the TC 489, Installment Defaulted, date of 9/12/2019. The collection statute starts running the next day 9/13/19. The new CSED on the tax that qualified for the IRC 6166 election (\$600,000) is ten years from 9/13/19 which is 9/13/29.

5.5.7.7
(12-16-2022)

Initial Case Analysis

- (1) Initial analysis involves examining the overall case to understand the issues and the necessary actions to move the case to resolution. The following are steps to take for initial case analysis on estate tax collection cases to prepare for the initial contact.
- (2) When you receive an estate tax account, you must determine who to contact. The contact may be with the executor or the designated representative.

- (3) The executor (also sometimes called the personal representative, administrator, or fiduciary) is the individual responsible for handling the affairs of the estate. Sometimes there is more than one executor. Executor information can be found as follows:
- The executor may be named on Integrated Collection System (ICS) case summary screen or on Integrated Data Retrieval System (IDRS) command code (CC) ENMOD or INOLES when the executor has previously filed Form 56, Notice Concerning Fiduciary Relationship, with the IRS.
 - The executor's information is shown on the first page of the estate tax return.
 - The information may be in the probate records under the letters of administration, letters testamentary appointing the executor, or a similar document.
- (4) Since the executor, in his or her official capacity for the estate, is responsible for gathering estate assets and paying creditors of the estate, seek payment from the executor 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.
- (5) If there is no executor or administrator appointed, qualified, and acting within the United States, then the "statutory" executor is any person in actual or constructive possession of any property of the decedent. See 26 CFR 20.2203-1, Definition of executor. You may seek payment of the estate tax from an IRC 2203 "statutory" executor to the extent of the value of the estate property in the "statutory" executor's possession. A "statutory" executor may not represent the estate unless appointed by a court.
- (6) If the estate has a designated representative, contact should be made with that individual, and they should be copied on any correspondence. This information can be found as follows:
- On Form 2848, Power of Attorney and Declaration of Representative, signed by the executor of the estate.
 - IDRS Command Code (CC) CFINK when Form 2848 was previously filed with the IRS and uploaded by Centralized Authorization File (CAF).
 - Page 2 of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, and Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States, have a section that allows the executor of the estate to designate an authorized representative when that section of the form is completed on a signed estate tax return.

Reminder: A third party authorization (Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization) executed prior to the decedent's death expires with the death of the taxpayer. The executor (also sometimes referred to as administrator, fiduciary, or personal representative) of the estate is the individual authorized to execute a Form 2848 or Form 8821 on behalf of the decedent's estate.

- (7) Check IDRS to determine what generated the assessment and to determine if another department has worked on the account. See IRM 5.5.7.4, Internal Progression of Estate Tax Accounts. Gather any relevant information from the

other department and determine what actions were taken. Review the Integrated Collection System (ICS) history for prior case action, and document ICS with your findings.

- (8) A full compliance check should be conducted to ensure that all the decedent's individual and business filing requirements have been met. Estate assets may be levied upon for payment of related accounts owed by the decedent prior to death. Compliance reviews should include the following:
- Check compliance for delinquent returns or balances owed under the decedent's social security number. This may include Form 1040, U.S. Individual Income Tax Return, and trust fund recovery penalty assessments.
 - Form 1041, U.S. Income Tax Return for Estates and Trusts, if the estate or trust has \$600 or more in income in a tax year. There should be a separate Employer Identification Number (EIN) if there is a Form 1041 filing requirement.
 - Form 709, United States Gift (and Generation - Skipping Transfer) Tax Return. This return is assessed under the donor's social security number with a "V." The donor is the individual that gave the gift.
 - Any other employment tax or other liabilities that may be associated with the decedent or with the decedent's estate.
- (9) Secure a copy of the estate tax return and schedules to determine the following:
- Assets the decedent had an interest in as of the date of the decedent's death.
 - If there are special elections such as an IRC 6166 extension of time to pay estate tax attributable to an interest in a closely held business election or an IRC 2032A special use valuation election in which real property is specially valued. If the estate was granted one of these elections, see IRM 5.5.6, Collection on Accounts with Special Estate Tax Elections.
 - Assets in the estate that can be easily secured as payment, such as cash or funds in a checking account.
 - Any other assets in the estate that can be liquidated to pay the tax due, such as savings bonds, stock certificates, or real property.
 - Assets that may have been distributed to heirs.
- (10) When there is an estate tax return filing requirement, all assets includable in the gross estate of the decedent have an unrecorded IRC 6324(a)(1) estate tax lien that attaches to the assets as of the decedent's date of death. The IRC 6324(a)(1) estate tax lien only applies to estates with an estate tax return filing requirement. See IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien. In addition, a Notice of Federal Tax Lien may have been filed. See IRM 5.5.7.11.3, Estate Tax IRC 6321 Assessment Lien.
- (11) Determine the assets that the IRC 6324(a)(1) estate tax lien and IRC 6321 assessment lien attaches:
- Document the assets to which the estate tax lien or the IRC 6321 assessment lien attaches, and what happened to those assets. Determine if the IRS received funds for the government's interest in property and if discharges of property from the lien were issued.

- Prepare a timeline of distribution of assets and knowledge of tax due to determine ownership of assets and to determine if there is potential liability of the transferee or fiduciary. See IRM 5.5.7.22.3.1, Estate Tax Liability of Transferee, and IRM 5.5.7.22.3.2, Estate Tax Liability of Fiduciary.
- (12) Once you have completed initial fact finding, contact the executor or power of attorney for the executor, if applicable. If the estate does not full pay, determine how the estate intends to pay the liability. During your contact, review the estate tax return and notate what the executor or power of attorney indicates has happened to the estate assets listed on the estate tax return. Additional facts you gather will help you decide the next collection avenue to pursue (levy, suit, etc.) and against whom (transferee or executor).
 - (13) 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. Under MFT CODE 52, type in the year of death (Do not input 000000 for tax period).
 - (14) If a Field Collection employee will be contacting a third party, follow the procedures in IRM 25.27.1, Third-Party Contact Program, for procedures to follow.

5.5.7.8
(12-16-2022)
**Ordering Estate Tax
Returns**

- (1) Field Collection employees should obtain a copy of the estate tax return when an estate indicates an inability or unwillingness to pay. The schedules attached to Form 706 and information on Form 706-NA estate tax returns should provide a list of all the assets the taxpayer had an interest in as of the date of the decedent's death, encumbrances, and allowable deductions. Therefore, the information on Form 706 and Form 706-NA can be used like a financial statement. The estate fiduciary or representative may be able to provide a copy of the estate tax return.
- (2) If the account is still under examination by Estate & Gift (E&G) Examination, Field Collection employees may be able to obtain a copy of the estate tax return from E&G Examination. An open transaction code (TC) 420, Examination Indicator, on Integrated Data Retrieval System (IDRS) may indicate E&G Examination assignment. IDRS AMDIS should be reviewed to determine if an examination has been started. Once E&G Examination completes their review of the estate tax return, or if the return is accepted as filed, the TC 420 is reversed with a TC 421, Reverse Examination Indicator, and the E&G Examination employee may no longer have a copy of the estate tax return.
- (3) If you are looking for an estate tax return, the following information may assist you with determining the status or location of a return:
 - A TC 420 will post one cycle after the TC 150 posts on IDRS.
 - Check IDRS command code (CC) AMDIS to determine if the return is in classification or assigned for an examination.
 - If the estate tax return is accepted as filed, a TC 300 will post for zero with disposal code (DC) 20, then a TC 421 will post on IDRS.

- See IRM 5.5.7.3, Estate Tax Assessments, for common Examination status codes on IDRS CC AMDIS to determine the status of the examination of the return.
- (4) Some returns processed January 2020 or later may have been scanned, and an electronic copy of the return may be available. See *Knowledge Management Ordering Estate & Gift Tax Returns* for the current process to follow to possibly obtain a copy of a scanned estate tax return. The date associated with the TC 150 on IDRS can be reviewed to determine if an estate tax return was processed January 2020 or later.
 - (5) Estate tax returns are stored at Kansas City Campus Files until they are retired to the Federal Records Center. The IRS keeps these returns for 40 years. Form 706 and Form 706-NA are filed in storage by a document locator number (DLN). This number can normally be obtained from IDRS next to the tax assessment information. If a return has been refiled, the DLN to locate the return may be found on IDRS CC TXMOD with an "X" next to the number.
 - (6) If an electronic copy of a return cannot be secured, Field Collection employees can request an estate tax return by sending Form 2275, Records Request, Charge and Recharge, for a special search under the DLN. See *Knowledge Management Ordering Estate & Gift Tax Returns* for the fax number to send Form 2275. Be sure that a signature is included on Line 10 of Form 2275. The signature may be digital.
 - (7) On an international return, if Form 2275 indicates that the return is charged out to Campus E&G, they may have the return to issue a transfer certificate to the estate. Transfer certificates are issued on certain international estates after the IRS completes a review of the return, and all the tax is paid, or they may be issued if the IRS receives the government's interest in the property. The transfer certificate releases the fiduciary from personal liability related to a specific asset. See IRM 5.5.7.20.4, Transfer Certificates. To secure a copy of an international estate tax return that is charged out to Campus E&G, send your request to e-mail **SBSE EEF CIN E&G*.
 - (8) To locate a copy of an estate tax return on a case that is assigned to IRS Independent Office of Appeals, see IRM 5.5.7.4.4, IRS Independent Office of Appeals Actions.
 - (9) Adjustments may have already been made to the tax by Estate & Gift Examination, Campus E&G, IRS Independent Office of Appeals, or in Tax Court. After the adjustments have been made, the documents related to the tax adjustments should be associated with either the original paper return or with the scanned return. Secure a copy of the digital or paper return with attachments since the examination papers may provide additional asset information.
 - (10) When the estate tax return is no longer needed, see *Knowledge Management Locations to Return F709, F706, and F706-NA* for the location to send the return back to Service Center Files.

5.5.7.9
(12-16-2022)
Finding Estate Assets

- (1) Page one of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return provides the computation of the tax and the following information:
 - Date of death: To determine when the statutory lien expires.
 - Decedent's last domicile: To locate assets and for lien filing purposes.

- Executor name, address, and social security number: Responsible party to contact for payment of tax.
 - Probate court information, if applicable: Source for records research.
 - If the taxpayer died with a will: Document outlines who gets estate assets and who is responsible to pay taxes.
 - Total gross estate: Reported value of assets at date of death.
- (2) Page two of Form 706 provides information on special elections taken by the estate and information on beneficiaries who may have received assets. It includes the following:
- The estate may have requested an IRC 2032A special use valuation election or an IRC 6166 election for an extension of time to pay estate tax that is attributable to an interest in a closely held business. If one of these elections is granted, a Notice of Federal Estate Tax Lien (Form 668-J or Form 668-H) may be recorded. See IRM 5.5.6, Collection on Accounts with Special Estate Tax Liens, for additional information.
 - The estate can make an election for alternate valuation. This allows the estate to include the value of the estate property as of six months from the date of death instead of listing the date-of-death value. If an asset is sold between the date of death and the six-month period, the asset is valued at the sales date. This election may benefit an estate if asset values decreased during this six-month period since the tax is based on the value of the assets.
 - If Form 706 is signed by the executor and part four is completed with the return preparer information, this allows the return preparer to act as the authorized representative for the estate. See IRM 11.3.3.4(8), Distinction Between Disclosure to Designees and the Conference and Practice Requirements.
 - Spousal information should be provided. The spouse may be joint owner on property and may have received estate assets.
 - Information on beneficiaries who are supposed to receive distributions from the estate, including the amount to be received and the beneficiaries' social security numbers should be provided. If assets were distributed to the beneficiaries, these individuals may be liable as transferees.
- (3) Page three of Form 706 has general information about assets owned by the decedent including interests in partnerships, trusts, annuities, and foreign bank accounts. It also provides a recapitulation which is a summary of assets based on each of the schedules attached to the return.
- (4) Various schedules are filed to support the entries in the Recapitulation section on page three of Form 706. The schedules identify the estate assets including details such as location of real estate and bank accounts along with values of the estate assets.
- (5) For Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States, information about the decedent, executor, and attorney for the estate are on page one, along with the taxable estate indicating the reported value of U.S. situs assets minus any allowable deductions. The assets in the estate are listed on page two. If there are multiple assets, the estate may attach schedules listing each of the assets. When part three of Form 706-NA is completed with the return preparer information on a signed return, this allows the return preparer to act as the authorized representative for the estate. See IRM 11.3.3.4(8), Distinc-

tion Between Disclosure to Designees and the Conference and Practice Requirements, for additional information.

(6) On Form 706, estate assets are listed on the following schedules:

- 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 G, Transfers During Decedent's Life
- Schedule H, Powers of Appointment
- Schedule I, Annuities

(7) On Form 706, deductions are listed on the following schedules:

- Schedule J, Funeral Expenses and Expenses Incurred in Administering Property Subject to Claims
- Schedule K, Debts of the Decedent and Mortgages and Liens
- Schedule L, Net Losses During Administration and Expenses Incurred in Administering Property Not Subject to Claims
- Schedule M, Bequests, etc. to Surviving Spouse
- Schedule O, Charitable, Public, and Similar Gifts and Bequests

(8) When estate assets pass to or for the benefit of the surviving spouse, the estate may be eligible for an unlimited marital deduction. These assets are listed on Schedule M. The estate may also be entitled to an unlimited charitable deduction for any assets passing to an organization described in IRC 2055(a), and these assets are listed on Schedule O.

(9) Use the schedules to identify estate assets. When determining equity in assets, consider any liens or mortgages that were in effect as of the date of the decedent's death as shown on Schedule K of Form 706. Secured encumbrances on assets that were in effect at date of death have priority over the IRS on an estate tax liability. Determine the present status of estate assets by checking probate records which may reflect litigation, sale and distributions of assets, and funds that may not be reflected on the estate tax return. Review courthouse records and question the executor or power of attorney to determine what assets are still available to pay outstanding taxes.

(10) If any of the assets have been sold or liquidated, determine if the proceeds were used to pay the estate tax or other allowable administration expenses. Determine if the IRS has provided a discharge of the IRC 6324(a)(1) estate tax lien from property by issuing Form 792, United States Certificate Discharging Property Subject to Estate Tax Lien, to the estate. This form is normally recorded by the estate in the county public records where the property is located. If assets were distributed, determine who received the assets.

(11) Probate records may provide information on estate assets and other creditor claims against estate assets. These records should also include an accounting of assets, distributions, income, and expenses of the estate. Ask the clerk to help identify these documents if you aren't familiar with them. If litigation or enforcement action is likely, obtain certified copies of pertinent documents. Check probate records for the following:

- Will and related testamentary documents.

- Letter of appointment for each executor.
 - Type of probate proceeding and to determine which property is under the control of the court.
 - Inventory and appraisals of estate assets.
 - Accountings to show income and expenses of the estate.
 - If property has been transferred and if discharges from the estate tax lien were issued by Advisory or Estate and Gift Examination.
 - Pending litigation pertinent to your investigation.
 - List of beneficiaries.
 - Other creditor claims.
 - Annual accountings for distributions to beneficiaries and for information on payment to other creditors.
 - Copies of any trust documents for any related trusts which had assets included in the gross estate and for information on trustees who may be liable for the estate tax.
- (12) Form 1041, U.S. Income Tax Return for Estates and Trusts, is filed to report income over \$600.00 received by the estate or trust. Information from this form may provide levy sources. The type of income and amount received are reported on Lines 1 through 8 of Form 1041 to include income from dividends, business income, interest, rent, capital gains, and other income. A Form 1041 filing requirement may indicate that the estate or trust consists of undistributed income producing property.
- (13) If an estate or trust has a Form 1041 filing requirement, Schedule K-1 is issued to report any income distributed from the estate or trust to a beneficiary, and it includes the name and social security number (SSN) of the beneficiary. The amounts received by the beneficiary as shown on Schedule K-1 should be reported as income by the beneficiary on their individual Form 1040, U.S. Individual Income Tax Return.
- (14) Integrated Data Retrieval System (IDRS) command code (CC) IRPTR information can help identify assets owned prior to death and may indicate if assets were distributed. IRPTR should be checked for the year prior to death, the year of death, and the year after death. Check the social security number for the decedent and under the trust or estate employer identification number (if applicable), since income may have been reported under any of these numbers.
- (15) Review county tax assessor and public records to locate property records related to the estate and any transferred assets. Look for any transfers that occurred after the filing of the Notice of Federal Tax Lien (NFTL) or after date of death when the IRC 6324(a)(1) estate tax lien went into effect. If you intend to take enforcement action against an estate asset, secure copies of property records and recorded NFTLs.

5.5.7.10
(12-16-2022)
Estate Administration

- (1) Assets that pass through local probate may be under the control of the probate court if the probate proceeding is dependent, supervised, or formal.
- (2) If the proceeding is independent, unsupervised, or informal, then assets of the decedent might not be under control of the probate court. Consult with Counsel to determine if the IRS can take enforced collection on assets included in an independent, unsupervised, or informal probate proceeding.

- (3) The terms related to probate differ by state. The docket sheet or other probate documents, such as the will or letters testamentary, usually designate the type of administration.
- (4) Both probate and non-probate assets may be includable in the gross estate on an estate tax return. The manner that a title passes determines whether an asset is a probate asset or a non-probate asset. There is a distinction between the two in the way they create liens and personal liability. See IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien, for a discussion of the estate tax lien on probate and non-probate assets.
- (5) See IRM 5.5.1, Decedent and Estate Tax Accounts, and IRM 5.5.2, Probate Proceedings, for additional information on probate and non-probate assets.

5.5.7.10.1
(12-16-2022)
Probate Assets

- (1) Probate property is property that was owned by the decedent at date of death or that is payable to the decedent's estate. These assets are includable in the gross estate under IRC 2033, Property in which the decedent had an interest.

Example: If rental property and stock in a corporation were in the name of the decedent at date of death and did not pass automatically to a joint tenant upon the decedent's death, these assets would typically be included in the probate estate and go through a probate proceeding before they can be legally transferred to the beneficiaries.

- (2) Probate assets are typically listed on the following Form 706 schedules:
 - Schedule A, Real Estate
 - Schedule B, Stocks and Bonds
 - Schedule F, Other Miscellaneous Property
- (3) Assets on the following schedules may be probate assets **if there is no named beneficiary or if the named beneficiary is the estate:**
 - Schedule C, Mortgages, Notes and Cash.
 - Schedule D, Insurance on Decedent's Life. See Form 712, Life Insurance Statement, which should be attached to the estate tax return, to determine if there is a named beneficiary.
 - Schedule I, Annuities

Note: If upon the death of the decedent, there is a named beneficiary that automatically received the asset includable on Schedule C, D, or I, the asset would be a non-probate asset.

- (4) Review records filed in probate. See IRM 5.5.7.9(11) for items to review in probate files.
- (5) Probate rules vary from state to state. In some states, even if the asset was in the decedent's name at date of death and the asset didn't transfer automatically at date of death, the heir may be able to secure title of the property outside of the probate court. For example, in some states, a child of a decedent can have the title of a vehicle transferred to their name by presenting a death certificate. The vehicle, in this example, is technically a probate asset, but the heirs can cause the transfer of the property to occur without petitioning

the probate court. Another example is a state that allows an informal or unsupervised probate so that real property can be transferred to the heir without petitioning the probate court.

- (6) Administrative enforcement actions are prohibited on assets that are subject to the jurisdiction of the probate court unless the court grants permission for such action. To request judicial actions, prepare a memo to Counsel with documentation, and submit the request through the local Advisory group. See IRM 5.5.2.10, Referral to Area Counsel for Judicial Action, for additional information on making this type of referral to IRS Counsel.

Example: If the estate tax lien is in jeopardy of expiring before collection actions can be completed, a revenue officer may make a request through IRS Counsel for Department of Justice to file a motion for payment of the estate tax through the probate court. The government may also seek removal of a fiduciary for misconduct.

- (7) A Notice of Federal Tax Lien (NFTL) may be recorded in the name of the taxpayer estate because probate proceedings are not subject to the automatic stay like they are in bankruptcy proceedings.
- (8) Continue your investigation regarding potential collection against non-probate assets. See IRM 5.5.7.10.2, Non-probate Assets. Also consider transferee liability against beneficiaries and personal liability of fiduciaries. See IRM 5.5.7.22.3, Estate Tax Transferee and Fiduciary Liability.
- (9) The collection statute is suspended if all, or substantially all, of the estate assets were under the control of the probate court. See IRC 6503(b), Assets of taxpayer in control of court. The collection statute suspension only relates to the assets that were under control of the court. If a revenue officer has questions regarding whether the collection statute was suspended, consult with Counsel.
- (10) Normally a proof of claim is not filed for estate tax because it may not be necessary due to the powerful collection tool of the IRC 6324(a)(1) lien. See IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien. However, there may be situations in which it is in the government's best interest to file a proof of claim. In those cases, revenue officers can request the filing of a proof of claim through their local Advisory group as listed in Pub 4235, Collection Advisory Offices Contact Information. See IRM 5.5.4, Proof of Claim Procedures in Decedent Estates.

5.5.7.10.2
(12-16-2022)
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 manner that ownership transferred automatically upon death. Administrative action may be pursued against non-probate assets includable on the estate tax return. Types of non-probate assets are identified in the following Internal Revenue Code sections:
- IRC 2034, Dower or curtesy interests
 - IRC 2035, Adjustments for certain gifts made within 3 years of decedent's death
 - IRC 2036, Transfers with retained life estate
 - IRC 2037, Transfers taking effect at death
 - IRC 2038, Revocable transfers
 - IRC 2039, Annuities

- IRC 2040, Joint interests
 - IRC 2041, Powers of appointment
 - IRC 2042, Proceeds of life insurance
- (2) Non-probate assets do not come under control of the probate court. They may be distributed to the beneficiaries without court approval.
- (3) Some examples of non-probate property include the following:
- Transfers taking effect at death. For example, payable on death accounts such as checking or savings accounts that had a named beneficiary.
 - Individual Retirement Accounts (IRA) and other retirement accounts that are payable to a designated spouse or survivor rather than the decedent's estate.
 - Property held jointly with right of survivor by the decedent with any other person (such as a spouse).
 - Remainder interest where the decedent held a life estate.
 - Certain assets transferred into a trust prior to date of death.
 - Life insurance proceeds when there is a named beneficiary that is not the estate.
- (4) Non-probate assets are typically listed on the following schedules.
- Schedule E, Jointly Owned Property - Property listed on this schedule is typically property that was owned joint with right of survivor or tenants by the entirety property.
 - Schedule G, Transfers During Decedent's Life - This includes trust property when the decedent retained an interest or certain powers over the assets. See IRM 5.5.7.21.1, Collecting Estate Tax From Trusts. Schedule G property also includes certain property transferred within three years of the decedent's death. The value of an asset is includable in the decedent's gross estate if the decedent transferred the retained interest or relinquished the retained power or incidents of ownership during the three-year period ending on the decedent's date of death. See IRC 2035, Adjustments for certain gifts made within three years of decedent's death.
 - Schedule H, Powers of Appointment - Determines who will own or enjoy the property subject to the power of appointment and when they will own or enjoy it.
- (5) Assets on the following schedules may be non-probate assets **if there is a named beneficiary that is not the estate**:
- Schedule C, Mortgages, Notes and Cash.
 - Schedule D, Insurance on Decedent's Life. See Form 712, Life Insurance Statement, which should be attached to the estate tax return, to determine if there is a named beneficiary.
 - Schedule I, Annuities.
- Note:** If there is not a named beneficiary for assets listed on these schedules or if the estate is named as the beneficiary, then the assets on these schedules are part of the probate estate.
- (6) The IRC 6324(a)(1) estate tax lien attaches to non-probate assets that are includable in the estate. See IRM 5.5.7.11.1 and IRM 5.5.7.11.2 for a discussion

on the effect of the IRC 6324(a)(1) lien on non-probate assets. The IRS may take collection action on non-probate assets to collect on estate tax since non-probate assets are not under the control or custody of the probate court.

- (7) A recipient of non-probate property can be held personally liable to pay delinquent estate tax for up to the date-of-death value of all non-probate property that recipient received, or the amount of the balance owed to the IRS, whichever is less. See IRC 6324(a)(2), Liability of Transferees and Others, and see IRM 5.5.7.22.3.1, Estate Tax Liability of Transferee, for a discussion of this personal liability provision.

5.5.7.11
(12-16-2022)
**Liens on Estate Tax
Liabilities**

- (1) The chart below provides information on liens associated with estate tax, the assets they encumber, and the duration of the liens.

Lien:	Attaches to:	Duration:
IRC 6324(a)(1) Estate Tax Lien	If there is an estate tax return filing requirement, this unrecorded lien attaches to all assets includable in the decedent's gross estate, plus any appreciation on those assets.	Lien goes into effect at the date of the decedent's death, and it lasts for ten years from date of death. Nothing extends the duration of the lien.
IRC 6324(a)(2) "Like Lien" for Estate Tax	When a recipient of non-probate property transfers that property to a purchaser or security interest holder, the transferred property is divested of the IRC 6324(a)(1) estate tax lien, and an IRC 6324(a)(2) "like lien" then attaches to all the transferee's other property. This lien is not recorded.	The "like lien" arises when the transfer to the purchaser or security interest holder occurs. The duration of the "like lien" is the same as an estate tax lien which is ten years from date of death. Nothing extends the duration of the lien.

Lien:	Attaches to:	Duration:
IRC 6321 Assessment Lien	<p>Assets that were in the probate estate at the date of the tax assessment.</p> <p>Does not attach to non-probate assets even if they were included in the gross estate.</p> <p>To compete against other creditors, a Notice of Federal Tax Lien (NFTL) can be recorded in the name of the taxpayer estate.</p>	Arises on date of assessment and remains until the liability is satisfied or the collection statute expires.
IRC 6324A, Special lien for estate tax deferred under IRC 6166	<p>Specific property described in the lien agreement (Form 13925).</p> <p>Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324A, is recorded on the property listed on the Form 13925 lien agreement.</p>	Coincides with the CSED.

Lien:	Attaches to:	Duration:
IRC 6324B, Special lien for additional estate tax attributable to farm, etc. valuation, created by the IRC 2032A special use valuation election	<p>Specific property designated in the lien agreement on Schedule A-1 of Form 706.</p> <p>Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, is recorded on the property that qualified the estate for the IRC 2032A election.</p>	<p>The lien is created when an estate makes an IRC 2032A election, and it continues until one of the following occurs:</p> <ul style="list-style-type: none"> • The IRS has confirmed that no event occurred to trigger the tax during the ten year period following the decedent's death; or • If the additional estate tax is triggered and assessed on Form 706-A, United States Additional Estate Tax Return, the lien continues until the tax is paid or through the Form 706-A collection statute expiration date (CSED).

- (2) The assessment lien under IRC 6321 and the estate tax lien under IRC 6324(a)(1) are not exclusive of each other. They are independent and cumulative. The IRC 6324(a)(1) estate tax lien is broader than the IRC 6321 assessment lien because an assessment lien only attaches to probate property, but the estate tax lien attaches to both probate and non-probate property that is includable in the gross estate. See IRM 5.5.7.11.1 for a discussion of the estate tax lien. See IRM 5.5.7.11.3 for a discussion of the IRC 6321 assessment lien.
- (3) Collection action on the IRC 6324A lien due to an IRC 6166 election and on the IRC 6324B lien due to an IRC 2032A election are discussed in IRM 5.5.6, Collection on Accounts with Special Estate Tax Elections. These Notices of Federal Estate Tax Liens are not on the Automated Lien System (ALS) since they are manually prepared and manually released because they are property specific. If the collection statute is suspended or extended, these liens do not need to be refiled since there is no refiling date on the recorded documents.

5.5.7.11.1
(12-16-2022)
**IRC 6324(a)(1) Estate
Tax Lien**

- (1) An unrecorded IRC 6324(a)(1) estate tax lien attaches to all property included in the gross estate for ten years from the date of the decedent's death. An assessment, notice, or demand are not necessary to create the lien. The estate tax lien only pertains to Form 706 and Form 706-NA estate tax. It does not pertain to Form 1040, Form 941, Form 1041, or any other tax owed by the decedent or by the decedent's estate.
- (2) Features of the IRC 6324(a)(1) estate tax lien include the following:
 - Lien arises at the date of death of the decedent and attaches to all the estate assets even if the estate tax return is not filed.
 - Lasts for ten years from the date of decedent's death. Nothing can extend the duration of this lien.
 - The lien attaches automatically to all the assets includable in the estate. This includes both probate and non-probate assets.
 - The estate tax lien is unrecorded.
 - Since the lien attaches automatically, and it is not recorded, the estate does not receive Collection Due Process (CDP) or Collection Appeals Program (CAP) rights on this lien.
- (3) When there is an estate tax return filing requirement, the IRC 6324(a)(1) estate tax lien attaches to all the estate assets includable in the decedent's gross estate no matter how the assets were titled at date of death. This includes any assets in the name of the decedent, assets held in a revocable trust created by the decedent, and the decedent's interest in assets owned jointly with right of survivor.
- (4) The IRC 6324(a)(1) estate tax lien attaches to the extent of the current value of the property. The property may appreciate or depreciate after the date of the decedent's death.
- (5) The estate tax lien is inferior to superpriority liens described in IRC 6323(b), Validity and Priority Against Certain Persons, such as mechanics liens and ad valorem property tax liens. It is also inferior to pre-existing encumbrances that were in effect at date of death such as mortgages or pledges that attached to assets during the decedent's lifetime.
- (6) If **probate** property is transferred, sold, or encumbered by the executor, the IRC 6324(a)(1) estate tax lien will continue to encumber the property unless the lien expires, or the estate receives a discharge of the property from the lien.

5.5.7.11.1.1
(12-16-2022)
**Exceptions to Estate Tax
Lien**

- (1) In certain circumstances, the estate tax lien may be divested from assets used for the payment of charges against the estate and expenses of administration allowed by any court having jurisdiction over the estate. Review court records for such orders and consult with Counsel, if necessary, if you need assistance with determining if this applies in your case. The decision by an executor to use estate assets to pay expenses of administration does not divest those assets of the estate tax lien unless approved by a court.
- (2) An executor can request a discharge from personal liability under IRC 2204 by making written application for determination of the amount of the tax and discharge from personal liability. See IRM 5.5.7.22.3.2, Estate Tax Liability of Fiduciary, for more information on an IRC 2204 discharge of fiduciary from personal liability. If the executor that was granted an IRC 2204 discharge from personal liability transfers property to a purchaser (i.e., by selling the property

for fair market value) or to a security interest holder (i.e., by encumbering the property and removing the recipient's equity), and the tax due as originally reported on the estate tax return was paid, the IRC 6324(a)(1) estate tax lien will be divested from the asset. The estate tax lien will then attach to the consideration received from the purchaser or holder of the security interest so that the IRS can collect from these proceeds to pay any examination assessments. See IRC 6324(a)(3), Continuation after discharge of fiduciary.

5.5.7.11.1.2
(12-16-2022)
**Discharge of Property
from Estate Tax Lien**

- (1) An executor can apply for a discharge of property from **estate tax lien** by submitting Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien, with the documents listed in the instructions on Form 4422.
- (2) The *Advisory Estate Tax Lien Group* processes estate tax lien discharge requests, provides conditional commitments to discharge property from federal estate tax lien, and issues Form 792, U.S. Certificate Discharging Property Subject to Estate Tax Lien. If the sale of property occurred prior to June 2016, the discharge application may also have been processed by Estate and Gift Examination since they were previously working some discharge of property from estate tax lien requests.
- (3) Determine if a discharge of property from the estate tax lien was issued by the IRS by doing the following:
 - Check public records for a copy of the recorded discharge document.
 - Contact the Advisory Estate Tax Lien Group for copies of any discharge applications, or case activity may be documented in the case history on Integrated Collection System (ICS).
 - A copy of the discharge document may be with the estate tax return if the discharge was provided by Estate and Gift Examination.
 - Request copies of discharge documents from the estate executor or representative.
- (4) If **probate** property included in the gross estate is transferred to a purchaser (i.e., by selling the property for fair market value) or to a security interest holder (i.e., by encumbering the property and removing the equity), and the estate did not receive a discharge of property from the estate tax lien, the IRC 6324(a)(1) estate tax lien will continue to attach to the property. In that case, collection by levy or seizure can be pursued against the property. Secure or summons for copies of closing documents from the title company when pursuing a seizure of property that was not discharged from the estate tax lien. Typically, if the title company has issued a title policy, they will pay the sale proceeds to the IRS to clear the title. If necessary, a suit to foreclose the tax lien can be referred through Advisory and Counsel to request Department of Justice to enforce the government's lien position.
- (5) An estate does not need to request a discharge of property from estate tax lien when **non-probate property** is transferred to a purchaser (i.e., by selling the property for fair market value) or security interest holder (i.e., by encumbering the property and removing the equity). Non-probate property is automatically divested of the IRC 6324(a)(1) estate tax lien when it is transferred to a purchaser or security interest holder, and a "like lien" is then created on the personal assets of the recipient of the non-probate property. See IRM 5.5.7.11.2, IRC 6324(a)(2) Like Lien.

5.5.7.11.1.3
(12-16-2022)
**Estate Tax Lien
Expiration**

- (1) The IRC 6324(a)(1) estate tax lien expires ten years from the decedent's date of death and cannot be extended or suspended. All enforcement action (seizure, sale, levy) and litigation against estate assets based on the estate tax lien must be completed before the expiration of the lien.
- (2) If the estate tax lien expires, collection action based on the IRC 6321 assessment lien may still be possible.

5.5.7.11.2
(12-16-2022)
IRC 6324(a)(2) Like Lien

- (1) Non-probate property may be part of the gross estate assets. This includes property that passed directly to a specified person by designation or by operation of law. It also includes property the deceased taxpayer had transferred prior to death that is includable in the decedent's gross estate under IRC 2034 to IRC 2042, inclusive, such as property the decedent transferred to a trust and retained a power or interest.
- (2) If the recipient of non-probate property transfers property includable in the decedent's gross estate to a purchaser (i.e., by selling the property for fair market value) or to a security interest holder (i.e., by encumbering the property and removing the recipient's equity), the transferred property is divested of the IRC 6324(a)(1) estate tax lien, and an unrecorded IRC 6324(a)(2) "like lien" then attaches to all the personal assets of the recipient that sold or encumbered the property.

Note: In addition to the "like lien" created under IRC 6324(a)(2), this Internal Revenue Code section also creates a personal liability of the recipient of non-probate assets to the extent of the date of death value of the asset received by the recipient. See IRM 5.5.7.22.3.1, Estate Tax Liability of Transferee.

- (3) The IRC 6324(a)(2) "like lien" expires ten years from the decedent's date of death. This lien cannot be suspended or extended. The government can take administrative enforcement action using the IRC 6324(a)(2) "like lien", or the government can file a suit to collect on this lien. See IRM 5.5.7.22.1.4, Seizure and Levy Based on IRC 6324(a)(2) Like Lien, and see IRM 5.5.7.22.4, Preparing Suit Referrals on Estate Tax.

5.5.7.11.3
(12-16-2022)
**Estate Tax IRC 6321
Assessment Lien**

- (1) After the estate tax has been assessed, notice and demand is given, and there is a neglect or refusal to pay, the IRC 6321 assessment lien arises and attaches to the probate assets in the estate at the time of assessment. The unrecorded IRC 6324(a)(1) estate tax lien operates separately and independently of the IRC 6321 assessment lien. If the IRC 6324(a)(1) estate tax lien expires, the IRS can still use the IRC 6321 assessment lien to collect the liability. The IRC 6324(a)(1) estate tax lien and the IRC 6321 assessment lien are cumulative. The IRS has the right to use either lien to collect on an estate tax liability. See IRM 5.5.7.11.1 for a discussion of the IRC 6324(a)(1) lien.
- (2) If there is a neglect or refusal to pay, a Notice of Federal Tax Lien (NFTL) may be filed to protect the interest of the government against purchasers and other creditors. The NFTL should only include the name of the estate, and it should not include the name of the executor. Filing the NFTL will put other creditors, potential buyers, transferees, and title companies on notice of unpaid estate tax. The IRS may lose its lien priority in assets between the expiration of the IRC 6324(a)(1) estate tax lien and the filing of the IRC 6321 assessment lien.

See IRM 5.12.1, Lien Program Overview, and IRM 5.17.2, Federal Tax Liens, for more information on the IRC 6321 assessment lien.

- (3) NFTLs must be filed in the proper jurisdiction to protect the government's interest against other creditors. State law dictates the place of filing. See IRM 5.12.7-2, State and Territory Filing Locations.
- (4) The IRC 6321 assessment lien applies for ten years from the date of assessment unless an event occurs to suspend or extend the collection statute. A NFTL can be refiled if the collection statute has been suspended or extended. See IRM 5.5.7.6, Collection Statute Expiration Dates, for more information on actions that suspend or extend the collection statute on estate tax cases.
- (5) Administrative levy or seizure may be taken to enforce the lien when a NFTL has been filed. For judicial enforcement, a suit to foreclose the IRC 6321 assessment lien may be referred to Department of Justice. See IRM 5.17.12, Investigations and Reports, IRM 5.5.7.22.4, Preparing Suit Referrals on Estate Tax, IRM 25.3.2, Suits by the United States, and *Knowledge Management Litigation* for more information on suits.
- (6) If the estate is selling an asset subject to the IRC 6321 assessment lien, the estate may apply for a discharge of the property from the lien by completing Form 14135, Application for Certificate of Discharge of Property from Federal Tax Lien. The *Advisory Estate Tax Lien Group* handles any lien discharges on Form 706 or Form 706-NA estate tax liabilities.

5.5.7.12
(12-16-2022)

Estate Tax Penalties and Interest

- (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 the return timely, and timely paying any tax due. Most penalties apply to behavior that fails to meet any of these obligations. A failure to file penalty may be assessed on an estate tax return if the return is not filed on time, and a failure to pay penalty may be assessed if the tax is not timely paid.
- (2) Form 706 and Form 706-NA and payments on these returns are due nine months from date of death. The estate may have received a six-month extension of time to file. If the executor was out of the country, an additional six-month extension of time to file may have been granted. Integrated Data Retrieval System (IDRS) will show a transaction code (TC) 460 with the date the extension of time to file was granted through. There is no failure to file penalty while an extension of time to file is in effect.
- (3) The estate may also be granted an IRC 6161 extension of time to pay estate tax. See IRM 5.5.7.12.1, Penalties on Extended Payment Dates.
- (4) Review Integrated Data Retrieval System (IDRS) to ensure failure to file and failure to pay penalties were correctly applied in accordance with due dates or extended due dates. Interest is still owed from the return due date if the estate did not pay the tax even if the estate had been granted an extension of time to file or an extension of time to pay.

5.5.7.12.1
(12-16-2022)

**Penalties on Extended
Payment Dates**

- (1) If an estate had been granted an IRC 6161 extension of time to pay estate tax, Integrated Data Retrieval System (IDRS) will show one or more transaction code (TC) 468 with the date the extension of time to pay or multiple extensions of time to pay were granted through. This date is located to the far right of each TC 468 after "EXT-DT". The failure to pay penalty is not assessed while an extension of time to pay estate tax is in effect.
- (2) If the estate has an IRC 6166 election for an extension of time to pay estate tax that is attributable to an interest in a closely held business election, and the estate fails to make their annual installment payment, or the payment is late, a TC 240, late installment penalty, will be assessed. The estate may not appeal the TC 240, late installment penalty. This penalty only applies to accounts which are in an active IRC 6166 status in which the tax has not been accelerated due to a termination of the election.
- (3) If the IRC 6166 election is terminated, the late installment penalty associated with the delinquent installment is abated. A TC 241 will reflect the abated late installment penalty. The failure to pay penalty is then assessed on the account.

5.5.7.12.2
(12-16-2022)

**Manual Assessment of
Penalties and Interest**

- (1) When a case was previously in status 14 on Integrated Data Retrieval System (IDRS) due to a prior granted IRC 6161 extension of time to pay estate tax or a defaulted IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election, IDRS may reflect manual assessments of penalties and interest. In these cases, accrued penalties and interest may need to be manually computed, and balances reflected on Integrated Collection System (ICS) might not include these penalty and interest accruals. Since this can affect letters generated on ICS, always check payoff amounts.
- (2) For accounts with defaulted IRC 6166 elections, Campus Estate & Gift can assist with calculating the accrued penalties and interest. To request their assistance, see IRM 4.25.2.9.6.3, Payoff Requests, for their e-mail information.
- (3) For accounts that had an IRC 6161 extension of time to pay estate tax, contact the restricted interest group in Philadelphia at e-mail address **SBSE CCS RESTINT* for penalty and interest calculations.
- (4) Another alternative is to calculate the accrued interest using IDRS command code COMPA. The last TC 340 on the account will reflect the date that interest had been last updated. Accrued interest can be calculated from that date. IDRS command code COMPAF can be used to calculate the failure to pay penalty from the extended payment date, shown on the far right of transaction code (TC) 468 on IDRS, or from the last failure to pay penalty assessment to the payoff date that the failure to pay penalty is calculated through.
- (5) On accounts that require a manual calculation of penalties and interest, request that the calculated accruals be added to IDRS. To request assessment of the accruals at the same time you are forwarding a payment for processing, make the request on Form 3244, Payment Posting Voucher, and send the request to the Teller Unit with the payment. To make a request for assessment of accruals on IDRS when you are not also forwarding a payment for processing, make your request on Form 4844, Request for Terminal Action, and send your request to *Centralized Case Processing - Collection (CCP)*.

5.5.7.12.3
(12-16-2022)
**Estate Tax Penalty
Abatement Requests**

- (1) You may receive a request for abatement of penalties on a collection case. If the account is currently assigned to Estate and Gift (E&G) Examination due to an examination, forward the penalty abatement request to the Examination employee conducting the examination. See IRM 4.25.7.2, Assessing or Abating Penalties in Estate and Gift Tax Cases, for information on how Examination processes penalty abatement requests. See *Knowledge Management Estate & Gift Examination Contacts* for the contact information for E&G Examination groups.
- (2) If an examination of the estate tax return is closed, the Revenue Agent Report (RAR) should address any assessed penalties or non-assertion of penalties during the examination. The RAR may be attached to the estate tax return, or it may be available electronically. See IRM 5.5.7.8, Ordering Estate Tax Returns, for information on how to obtain a copy of the estate tax return with the RAR report. Do not abate penalties already determined by E&G Examination, in accordance with their IRM provisions, unless you verify there was an IRS error.
- (3) Other documentation with the estate tax return may reflect penalty abatement requests that were previously addressed by E&G Examination, Campus E&G, IRS Independent Office of Appeals, or Tax Court. You might also find an indication of a prior penalty abatement request in the Integrated Data Retrieval System (IDRS) TXMOD history.
- (4) Do not abate penalties previously determined in Tax Court. Taxpayers are barred from obtaining a subsequent administrative abatement, refund claim, or refund suit if a determination was made in Tax Court that the penalty is owed. See IRC 6512(a), Effect of position to Tax Court.
- (5) Address any penalty abatement requests that have not already been considered by the IRS or in Tax Court. If the penalty abatement request is due to an IRS error, determine if the penalties were assessed in accordance with IRM and IRC guidance. If the request for abatement is based on reasonable cause, follow the procedures in IRM 20.1.1.3, Criteria for Relief from Penalties, to determine if the reasonable cause criteria has been met. Also see IRM 5.1.15.16, Penalty and Interest Abatements.
- (6) If an abatement is warranted, prepare Form 3870, Request for Adjustment, and fax your request to Campus E&G to fax number (855) 386-5127 or (855) 386-5128. Include the documentation provided by the estate requesting abatement of the penalties with Form 3870. Penalty abatements on estate tax cases cannot be requested through the Reasonable Cause Assistant (RCA) program because of the "V" or "W" that follows the taxpayer identification number.
- (7) If a penalty abatement request is denied, notify the taxpayer in writing. See IRM 20.1.1.3.5.3, Taxpayer Not Entitled to Relief. If the estate files an appeal, date stamp the protest and document in the case file history that the protest was received. Forward the protest letter to IRS Independent Office of Appeals within 30 days from the postmark date of the protest letter. Also include the following:
 - Documentation considered in analyzing reason for penalty assessment
 - Case file history
 - Any pertinent correspondence with the taxpayer

- (8) Route the penalty denial protest to IRS Independent Office of Appeals. The routing information is on the *IRS Independent Office of Appeals Case Routing* website.
- (9) There are many court cases sustaining assessment of penalties. Below are a few examples:
 - Estate of Marion Derksen v. United States, 2012-2 USTC ¶ 50,668 (E.D. Pa.) - The U.S. district court held that an estate wasn't entitled to an abatement of late filing penalties that was offered to the estate in an informal agreement because the court found that the estate failed to enter into a binding agreement.
 - Estate of Nancy P. Young v. United States, 2013-1 USTC ¶ 50,104 (D. Mass. Dec. 17, 2012) - In upholding the penalty for the late filing, the U.S. district court determined that the estate was aware of the deadline, but deliberately filed the return late based on the advice of its tax advisors that there would be no late filing penalty because the estate had already paid more than its tax liability.
 - 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.

5.5.7.13
(12-16-2022)
**Locating Missing Estate
Tax Payments**

- (1) Since the taxpayer identification number is usually the decedent's social security number (SSN) with a "V" added to the end of the SSN, a payment on an estate tax case may get misapplied to a related Individual Master File (IMF) account under the decedent's SSN without the "V". When looking for a missing payment on an estate tax case, check the IMF account to determine if the payment was misapplied.
- (2) For international estates, if the decedent did not have a social security number (SSN), a taxpayer identification (TIN) will be assigned to the estate with a "W." Sometimes multiple numbers are assigned at different times on these cases such as when an estate submits an extension of time to file then later files the return. Additional research may be needed to locate a payment. Campus Estate and Gift (E&G) may have records with various assigned TINs on international estates. They can be contacted by e-mail at **SBSE EEF CIN E&G* or by fax number (855) 201-8011.
- (3) Some common command codes (CC) on Integrated Data Retrieval System (IDRS) to research a missing payment on estate tax include the following:
 - BMFOLI - Check for outstanding credits that may have been applied to a different tax module such as to Master File Tax (MFT) 51, Form 709, accounts.
 - BMFOLP or IMFOLP - Use an appropriate date range that includes dates before and after the date the taxpayer indicated the payment was made.
 - IMFOLI - Check to determine if the payment posted to an IMF account if the decedent had a United States SSN.
 - INOLES - Check to determine if the SSN is valid and for cross reference TINs.
 - UPTIN - Check to determine if the payment went unpostable.

- URINQ - Check to determine if the payment went to unidentified remittances.
- XSINQ - If the payment is more than a year old, check to see if the payment was put into excess collections.

- (4) The *Remittance Transaction Research (RTR)* System can also be checked to locate a payment, or it may provide a document locator number (DLN) that you can use for further research. Also check the note section of the detail screen for any additional information that may help you locate the payment. Revenue officers can also research payments using the IAT Tool bar. See IRM 5.1.15.14, Tracing Payments, for additional information to locate missing payments and to request payment transfers. See *SERP Alert 20A0304* for instructions to resolve an unpostable payment.
- (5) If all research has been completed, and the payment is still not found, obtain a copy of the front and back of the missing payment, and follow procedures in IRM 5.1.15.14.1, Requesting Campus Tracing, to submit Form 4446, Payment Tracer Research Record.

5.5.7.14
(12-16-2022)
**Taxpayer Rights on
Estate Tax Cases**

- (1) Like other collection cases, the estate is entitled to taxpayer rights including Collection Appeals Program (CAP), Collection Due Process (CDP) rights, and notification of third-party contacts. See IRM 5.1.9, Collection Appeal Rights, for more information on taxpayer rights.
- (2) Provide any publications or notices as required in IRM 5.11.1.3.2, Required Notices, before issuing a levy. When making a third-party contact, follow the notification procedures in IRM 25.27.1, Third-Party Contact Program.
- (3) When collection action is being taken on estate assets subject to the IRC 6324(a)(1) estate tax lien or the IRC 6321 assessment lien, and those assets are in the possession of a third-party or beneficiary, those individuals are entitled to CAP rights, but they are not entitled to CDP rights.

5.5.7.14.1
(12-16-2022)
**Letter 1058 Final Notice
on Estate Tax**

- (1) If a notice of levy will be issued, Letter 1058, Final Notice, must first be sent to the estate executor. If there is no executor, send Letter 1058 to the last known address of the decedent. The executor of the estate has the authority to exercise Collection Due Process (CDP) appeal rights on behalf of the estate. Since other individuals holding estate property are not entitled to a CDP hearing, do not send Letter 1058 to beneficiaries or third parties in possession of estate assets. Instead provide those individuals with Form 10492, Notice of Federal Taxes Due. See IRM 5.5.7.15, Notice of Tax Due. If a beneficiary or third party later obtains the authorization of the probate court to serve as executor, that individual may then receive Letter 1058 and represent the estate in a CDP proceeding.
- (2) If a CDP lien request or equivalent hearing request is filed, levy action may be appropriate if collection is at risk. Situations when the government may be at risk include the dissipation of assets or when the unrecorded estate tax lien is about to expire since this lien cannot be extended. See IRM 5.1.9.3.5.1, Levy Action During the Period of the CDP or EH. Contact Counsel to determine if a jeopardy levy is appropriate, and see IRM 5.17.15.4, Jeopardy Collection, for criteria and procedures.

- (3) If an account was previously in status 14, follow the procedures in IRM 5.5.7.12.2, Manual Assessment of Penalties and Interest, to obtain an updated payoff when issuing a final demand notice.

5.5.7.15
(12-16-2022)

Notice of Tax Due

- (1) If you intend to levy or conduct a seizure on assets in the possession of an executor, successor executor, beneficiary, or any other party, provide that individual with Form 10492, Notice of Federal Taxes Due, along with a copy of the recorded Notice of Federal Tax Lien, to notify the individual that outstanding taxes have not been paid. Form 10492 is a notice of tax due, but it does not provide Collection Due Process (CDP) appeal rights. The form can be sent to the following individuals:

- Executors
- Beneficiaries that received estate property
- Third party recipients of estate property

- (2) Form 10492 can be provided to executors to notify them of the amount of tax due. It also provides a caution to executors of personal liability under *31 USC 3713* if they don't pay. This form can be sent to executors with Letter 1058, Final Notice, and with a copy of the Notice of Federal Tax Lien (NFTL).

- (3) Form 10492 can be provided to beneficiaries and third party recipients of estate assets to notify them that assets they received are subject to levy to pay the unpaid tax. This gives the recipient of the asset an opportunity to pay before the IRS takes enforcement action against the asset in their possession. Beneficiaries and third party recipients of estate property have Collection Appeal Program (CAP) rights to propose collection alternatives and to raise any other issues pertaining to levies.

Note: Redact the taxpayer identification number (TIN) when issuing Form 10492 to beneficiaries or other third parties.

- (4) If an account was previously in status 14, you will need to follow the procedures in IRM 5.5.7.12.2, Manual Assessment of Penalties and Interest, to obtain an updated payoff when issuing Form 10492.

5.5.7.16
(04-02-2024)

Estate Tax Adjustments and Claims for Refund

- (1) During a collection investigation, an estate may make a request for adjustment of tax or a claim for refund. The following may occur in your case:

- Protective claim
- Amended/supplemental estate tax return
- Claim for refund

- (2) If you receive one of these requests, check Integrated Data Retrieval System (IDRS) command code (CC) AMDIS to determine if the case is currently assigned to an Estate and Gift (E&G) Examination group. If the return is currently under examination, the documents should be provided directly to the E&G Examination group for their review. See *Knowledge Management Estate & Gift Examination Contacts*.

- (3) If one of these requests are received, and the case is not assigned to an E&G Examination group, fax the document to Campus E&G to fax number (855) 386-5127 or (855) 386-5128. IRM 10.10.1.3.1.1, Acceptable Forms of Elec-

tronic Signatures, allows for taxpayer submission of these requests to be sent with images of handwritten signatures. Documents can also be sent to the following address:

Internal Revenue Service
Estate & Gift Tax Group, MS 824G
7940 Kentucky Drive
Florence, KY 41042

- (4) If any other type of adjustment is needed on an estate tax account, fax Form 3870, Request for Adjustment, with any back-up documentation to Campus E&G fax number (855) 386-5127 or (855) 386-5128.
- (5) If the adjustment results in satisfaction of the tax liability and conclusion of the collection investigation on the taxpayer entity, it may be beneficial, but it is not required, to keep the case open on ICS until the closing action posts to IDRS, and the account goes to status 12 to ensure that the account is properly resolved. See IRM 5.1.15.5, Adjustments - General Procedures Form 3870, for more information on adjustments.

Note: Use caution if issuing Letter 4222, Field Collection Case Resolution, to notify an estate of a resolved account. Be sure that there is no pending estate tax or examination additional tax liabilities.

5.5.7.16.1
(12-16-2022)
**Protective Claim on
Estate Tax**

- (1) A protective claim may be filed at any time before the expiration of the assessment statute expiration date (ASED) to protect the estate's right to file a future claim for refund or amend the return. It is usually requested when the estate's entitlement to the claim for refund is contingent upon the resolution of litigation, and the estate anticipates that the litigation might not be resolved until after the ASED.
- (2) Once litigation is concluded, depending on the outcome of the litigation and its impact on the tax due, the estate can file either a supplemental estate tax return to amend the return with the new information, or they may file Form 843, Claim for Refund and Request for Abatement.

Example: An executor of an estate includes an asset on the estate tax return that they believe the decedent had an interest in at the date of her death. However, there are other individuals claiming to own the asset, and the decedent's interest is subject to litigation. The executor files a protective claim in case it is later determined that the decedent did not have an interest in the asset.

If, after litigation, it is determined that the decedent did not have an interest in the asset, the executor can then file a supplemental estate tax return to remove the asset from the gross estate which will reduce the estate's tax liability. The protective claim allows the executor to make this request even if the ASED has expired on the account.

- (3) Integrated Data Retrieval System (IDRS) may show transaction code 971, action code 700 which indicates a protective claim has been filed. Estate and Gift Examination determines if a protective claim should be allowed. See IRM

5.5.7.16, Estate Tax Adjustments and Claims for Refund, for the location to send a protective claim received during a collection investigation.

5.5.7.16.2
(12-16-2022)
**Supplemental or
Amended Estate Tax
Return**

- (1) An executor can amend a previously filed estate tax return by filing another estate tax return with "Supplemental Information" on the top of page one, or the return may be marked as "Amended." A supplemental return or amended return may be filed to increase or decrease the tax balance reflected on the original return. It must be submitted prior to the assessment statute expiration date (ASED) unless the estate had filed a protective claim. See IRM 5.5.7.16.1, Protective Claim on Estate Tax. Any documentation supporting the changes should be attached to the supplemental return. See *Instructions for Form 706* or *Instructions for Form 706-NA* for more information concerning necessary documentation.
- (2) See IRM 5.5.7.16, Estate Tax Adjustments and Claims for Refund, for the location to send an amended or supplemental estate tax return.

5.5.7.16.3
(12-16-2022)
**Claim for Refund on
Estate Tax**

- (1) While working an estate tax collection account, an executor may indicate that they intend to file a claim for refund. Generally, a claim for a refund must be filed within three years from the date the original return was filed, or two years from the date the tax was paid, whichever is later. If the estate does not file a claim within this period, the estate is normally no longer entitled to a claim for refund unless they had previously filed a timely protective claim. See IRM 5.5.7.16.1, Protective Claim on Estate Tax.
- (2) Form 843, Claim for Refund and Request for Abatement, is typically used for the following:
 - **Claim for refund** - The IRS can consider a claim for refund for estate tax.
 - **Request for abatement of Tax** - Although Form 843 can be used to request abatement of tax in other types of cases, IRC 6404(b) does not permit a taxpayer to file a claim for abatement of estate tax.
- (3) If you receive an 843 claim during your investigation, forward the request to Estate and Gift Examination or to Campus Estate and Gift. See IRM 5.5.7.16, Estate Tax Adjustments and Claims for Refund, for locations to send Form 843.

5.5.7.17
(12-16-2022)
Beneficiary Information

- (1) Beneficiary information may be found on Page two of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. There is no place on Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return of Estate of nonresident not a citizen of the United States, to provide beneficiary information. However, the information is sometimes attached to Form 706-NA.
- (2) Form 8971, Information Regarding Beneficiaries Acquiring Property from Decedent, may be an additional source to locate beneficiary contact and estate asset information. An executor that is required to file an estate tax return is also required to file Form 8971. The executor of the estate should send this form to Campus Estate and Gift.
- (3) Campus Estate and Gift will input a transaction code (TC) 971 action code (AC) 368 when they receive Form 8971, and they will associate Form 8971

with the original estate tax return. See IRM 5.5.7.8, Ordering Estate Tax Returns, for information on how to obtain an estate tax return package.

5.5.7.18
(12-16-2022)
**Offer in Compromise on
Estate Tax**

- (1) An offer in compromise (offer) may be filed on an estate tax collection case. If an offer is submitted, Field Collection should forward Form 656, Offer in Compromise, to the Centralized Offer in Compromise site along with completed Form 657, Offer in Compromise - Revenue Officer Report.
- (2) For doubt as to collectibility offers, Field Collection should complete Item 16 on Form 657 with the following information to assist the offer specialist with making a reasonable collection potential (RCP) determination on the offer in compromise request:
 - Ability to take administrative or judicial action against estate assets based on the IRC 6324(a)(1) estate tax lien if this lien is still in effect. The IRC 6324(a)(1) lien attaches to both probate and non-probate assets includable in the decedent's gross estate. See IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien.
 - Ability to take administrative or judicial action against estate assets based on the recorded Notice of Federal Tax Lien. See IRM 5.5.7.11.3, Estate Tax IRC 6321 Assessment Lien.
 - Ability to foreclose on an IRC 6324B lien related to an IRC 2032A special use valuation election or on an IRC 6324A lien related to an IRC 6166 election 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 hold the executor personally liable if the estate is insolvent, if the executor had knowledge of the taxes due, and the executor made distributions of funds/assets to other inferior creditors or beneficiaries prior to paying the tax liability. Describe what the executor did with estate assets once the executor had knowledge taxes were due. See the note below regarding separate *31 USC 3713*, Priority of Government claims, assessments that cannot be compromised.
 - Address any estate income as reported on Form 1041, U.S. Income Tax Return for Estates and Trusts, that can be considered in the ability to pay the estate taxes.
 - Address any non-probate distributions. The estate's RCP includes the amount the IRS may collect under IRC 6324(a)(2) from a beneficiary who had received non-probate distributions. See IRM 5.5.7.22.3.1, Estate Tax Liability of Transferee.
 - Address any estate assets that have been dissipated (distributed, transferred, or sold) without payment towards the outstanding tax liability. See IRM 5.8.5.18, Dissipation of Assets, for information on inclusion of these assets in the reasonable collection potential (RCP) calculation. Beneficiaries who received estate assets may be able to pay the estate tax liability and avoid transferee assessments or seizure of estate assets.

Note: If a **separate assessment** has been made against a fiduciary under *31 USC 3713*, Priority of Government claims, a doubt as to collectibility, doubt as to liability, or an effective tax administration offer in compromise cannot be considered on that separate assessment. That is because IRC 7122(a) authorizes the IRS to compromise only those liabilities arising under Title 26, the internal revenue laws, and a liability arising under 31 USC 3713(b) does not arise under Title 26. See IRM 5.8.4.24.3, IRC Section 6901 Transferee

Liability. If such an offer is submitted, forward the information to the Centralized Offer in Compromise site to make the offer processability determination and to issue the appropriate letter.

- (3) It is important to note the expiration date of the estate tax lien and the Notice of Federal Tax Lien. Administrative collection or judicial action will need to be completed before expiration of these liens. The collection statute, based on the tax assessment, may be extended when a processable offer in compromise is being considered. However, the unrecorded IRC 6324(a)(1) estate tax lien is fixed for a ten-year duration and cannot be extended or tolled. See IRM 5.5.7.11.1 IRC 6324(a)(1) Estate tax Lien.
- (4) No collection action should be taken while an offer is pending unless a jeopardy situation exists, or it is confirmed the offer was submitted solely to delay collection. See IRM 5.8.4, Offer in Compromise, Investigation.
- (5) See IRM 5.8, Offer in Compromise, for additional offer in compromise information.

5.5.7.19
(12-16-2022)

Summons for Estate Tax Information

- (1) Form 2039, Summons, is the general, all-purpose summons form to issue for first-party or third-party summonses. Issue Form 2039 to summons an executor of an estate for testimony or books and records, or both. The executor is the person authorized to act on behalf of the estate. 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. See IRC 2203, Definition of Executor.
- (2) Form 2039 can also be used when summoning third parties, such as accountants, title companies, banks, and investment companies. For procedural guidance and additional forms for third-party summonses, refer to IRM 25.5.2, Summons, Preparation, IRM 25.5.6, Summonses on Third Party Witnesses, and IRM 5.17.6, Legal Reference Guide for Revenue Officers, Summonses.
- (3) In cases in which the estate has failed to file Form 706 or Form 706-NA, the following is an example of wording that may be used on a summons so that the IRS can prepare a substitute for return.

Example: “All documents in your possession or control relating to all property and rights to property, whether real, personal, tangible or intangible, in which the decedent (name the decedent) held an interest at the time of their death, or which is otherwise includable in the decedent’s gross estate. These documents include, but are not limited to, all documents relating to the existence or value of any of the following:”

- “Bank accounts, brokerage accounts, stocks, bonds, mutual funds, retirement accounts, other investments, mortgages, notes, accounts receivable, contracts, patents, copyrights, proprietorships, joint ventures, partnerships, corporations, limited liability companies, voting rights, household goods, furniture, clothing, automobiles, boats, aircraft, jewelry, gems, antiques, art, collections, annuities, life insurance policies, reversionary rights, rights to revoke, alter or amend transfers, powers of appointment, and other real or personal property, in which the decedent had any interest (including as joint tenants with rights of survivor, as tenants by the entirety, as joint account holders, or with a payable on death designation), at the date of death.”

- “Gifts made by the decedent within three years of his or her death and information on gift tax paid by the decedent on those gifts.”
- “Property held in trust for which decedent was a trustee, held a power of appointment, or was a beneficiary, at the date of death.”
- “Decedent’s last will and testament, any prior amendments, and information on any probate proceedings in state court.”

5.5.7.20
(12-16-2022)
**International Estate Tax
Accounts**

- (1) Collection employees may work an international estate due to one of the following circumstances:
 - **United States (U.S.) citizen** dies while residing in another country and the value of the decedent’s world-wide assets at date of death exceed the estate tax return filing threshold, i.e., the basic exclusion amount, for the year of death.

Example: A U.S. citizen lived in France at the date of his death in 2022. The decedent’s estate includes world-wide assets valued at \$40M which are includable on the estate tax return.
 - **U.S. resident non-U.S. citizen** dies and the value of the decedent’s world-wide assets at date of death exceeds the estate tax return filing threshold, i.e., the basic exclusion amount, for the year of death. Certain requirements must be met for a decedent to meet the residency requirements for estate tax purposes as determined by Estate and Gift (E&G) Examination.

Example: A citizen of Norway lived in the United States for 20 years prior to death. E&G Examination has determined the citizen of Norway had met the U.S. resident requirements prior to her death in 2020. The decedent’s estate includes world-wide assets valued at \$50M which are includable on the estate tax return.
 - **Nonresident not a citizen of the United States** dies with U.S. situs assets that exceed \$60,000.00.

Example: A citizen of Mexico, who resided in Mexico at the date of his death, owns real property in California valued at \$800,000.00. Since the value of this U.S. situs asset exceeds the estate tax return filing threshold, i.e., the basic exclusion amount, the decedent’s estate must file a U.S. estate tax return listing the U.S. asset.
- (2) There are special rules that apply to certain expatriates and residents of United States territories. If there is a question regarding which category a taxpayer estate falls under and the estate’s filing requirement, contact E&G Examination through the *Specialist Referral System*.
- (3) Field collection employees that need assistance from Campus E&G on an international estate can send an e-mail to *SBSE EEF CIN E&G, send a fax to (855) 201-8011, or call (866) 699-4083.
- (4) The IRS sometimes receives international documents related to estate tax cases that are in a foreign language. Collection employees can request the estate to have these documents translated to English. The IRS also has trans-

lation services available. To request translation of a document, employees can send an e-mail to linguistic.services@irs.gov.

5.5.7.20.1
(12-16-2022)

U.S. Citizen with Last Domicile in a Foreign Country and U.S. Resident Non-U.S. Citizen Estates

- (1) United States (U.S.) citizen estates and some U.S. resident non-U.S. citizen estates are subject to U.S. estate taxation with respect to their worldwide assets. These estates must file Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, when the value of the gross estate and the amount of adjusted taxable gifts exceeds the filing threshold, i.e., the basic exclusion amount. See *Form 706 instructions* for the filing threshold for the year of the decedent's death.
- (2) Assets includable in the gross estate on Form 706 should be listed on the schedules that are submitted with the estate tax return or on examination documents. See IRM 5.5.7.8 for information on ordering an estate tax return.
- (3) The estate may be eligible for foreign death tax credit, and treaties may affect the U.S. tax liability as determined by Estate and Gift Examination.
- (4) Assets may be in the United States or in other countries. In addition, probate proceedings, or the equivalent of a probate, may be open in a foreign country to administer the decedent's assets. Different executors may administer assets in different jurisdictions. Administration of these estates may be time-consuming when estates must work with multiple courts in foreign jurisdictions.

5.5.7.20.2
(12-16-2022)

Non-Resident Non-U.S. Citizen with U.S. Assets

- (1) When a non-resident non-U.S. citizen decedent owned United States (U.S.) situs assets that exceed \$60,000.00 at date of death, the decedent's estate is required to file Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States. Examples of U.S. assets include real estate, personal property, securities, and stock of U.S. companies that have a U.S. situs even though the certificates may have been held abroad.
- (2) When doing a compliance check on other possible tax delinquencies, remember there might not have been a Form 1040, U.S. Individual Income Tax Return, filing requirement for the decedent if the decedent never had U.S. income.
- (3) Since these decedents were not U.S. citizens, they might not have been assigned a U.S. social security number. In these cases, the IRS Service Center assigns a taxpayer identification number (TIN) which usually begins with the number "9". There is normally a "W" at the end of these assigned TINs. These accounts are in the format, 9XX-XX-XXXXW on Integrated Data Retrieval System (IDRS).
- (4) When there has been an assigned TIN, additional TINs may get assigned to the case at different stages of the case. For example, a TIN may be assigned if the estate requests an extension of time to file, and a different TIN may be assigned when the return is posted. If you suspect assignment of multiple TINs, research IDRS command codes NAMEI, NAMES, ENMOD, INOLE, and IAT Name Search to locate potential TINs. You can also contact Campus Estate & Gift (E&G) at *SBSE EEF CIN E&G or fax number (855) 201-8011 to check their files for additional TINs that may be associated with the estate.

- (5) The U.S. assets includable on Form 706-NA are listed on Schedule A and on examination documents. Collection action can be taken on these assets. The IRC 6324(a)(1) estate tax lien attaches to the U.S. gross estate assets, and personal liability transferee provisions of IRC 6324(a)(2) apply to these estates. See IRM 5.5.7.8 for information on ordering an estate tax return.
- (6) Executor information on Form 706-NA is listed on Part 1, Line 9, and the information may be available on IDRS command code INOLES or ENMOD.

5.5.7.20.3
(12-16-2022)
**Collection on
International Estate
Assets**

- (1) If there are insufficient assets located in the United States (U.S.) to satisfy the estate tax liability, it may be possible to seek recovery of assets located outside of the U.S. through domestic judicial actions. The following options may be available:
 - **Suit for a Repatriation Order:** Such an order would require a 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 an executor refuses, an order for civil contempt of court can be enforced with the possible sanction of incarceration. See IRM 5.21.3.7, Suit to Repatriate Property - Repatriation Orders.
 - **Suit for Appointment of a Receiver:** A receiver may be appointed by the court to administer estate assets. The receiver may be able to repatriate assets of the estate to pay taxes owed. See IRM 5.21.3.6, Appointment of a Receiver.
 - **Levy on a U.S. branch of a foreign bank:** The U.S. bank office that is issued the levy must be a branch of the foreign bank home office. The levy notice must specify it is reaching overseas deposits. Include the statement, "The Area Director intends to attach funds held outside the U.S. or U.S. Territory." Further instructions are available in IRM 5.21.3.3, Levy on a Domestic Branch of a Financial Institution.
- (2) The IRS can request assistance from some of our treaty partners to collect taxes owed by an estate administered or with assets located in the treaty country by submitting a Mutual Collection Assistance Request (MCAR). See IRM 5.21.7.4, Mutual Collection Assistance Requests (MCAR), for procedures. The three mutual collection estate tax treaty partners are France, Canada, and Japan. After all reasonable domestic collection actions are exhausted, the IRS may then pursue a Mutual Collection Assistance Request (MCAR) pursuant to the following:
 - US-France Estate Tax Convention (signed 11/24/1978, amended by Protocol 12/8/2004)
 - US-Canada Income Tax Convention (signed 09/26/1980, amended by Protocol 9/21/2007)
 - US-Japan Income Tax Convention (signed 11/6/2003, amended by Protocol 6/29/2022)
- (3) See *Knowledge Management International Tools and Actions* for additional international locator and enforcement tools.

5.5.7.20.4
(12-16-2022)
Transfer Certificates

- (1) Transfer certificates are issued by Campus Estate and Gift (E&G). They may be provided to an estate of a nonresident decedent if there is no executor or administrator appointed, acting, and qualified within the United States (U.S.).

- (2) The transfer certificate permits the transfer of property of a nonresident decedent without liability of the statutory executor (the individual or entity that has possession of the asset). See 26 CFR 20.6325-1, Release of lien or partial discharge of property; transfer certificates in nonresident estates.
- (3) Campus E&G monitors international estate tax accounts with balances due. They will issue Form 5173, Transfer Certificate, when the tax is paid in full, and the IRS completed the review of the estate tax return, or if the government has received its interest in the property that is being sold.
- (4) Forward transfer certificate applications received during a collection investigation to Campus E&G at fax number (855) 201-8011 or e-mail **SBSE EEF CIN E&G*.
- (5) If an asset falls under the jurisdiction of an executor or administrator that is appointed, acting, and qualified within the U.S., the estate will need an estate tax lien discharge instead of a transfer certificate. See IRM 5.5.8.12, Evaluating Applications for Discharge under IRC 6325(c), for estate tax lien discharge procedures.

5.5.7.20.5
(12-16-2022)
**International Estate Tax
Collection Statute**

- (1) The collection statute is suspended on an estate tax return if the executor is absent from the U.S. for a continuous period of six months or more. The executor will be deemed to be absent from the U.S. if the executor is generally and substantially absent from the U.S., even though the executor makes casual temporary visits during the period. See IRM 5.1.19.3.7, Taxpayer Living Outside the U.S.
- (2) If the statute was suspended because the executor was out of the U.S., and there is less than six months left on the collection statute, upon the executor's return, the statute is further extended so that it does not expire until after six months from the date of the executor's return to the U.S.
- (3) See IRM 5.5.7.6, Estate Tax Collection Expiration Date, for procedures to follow to update the CSED on Integrated Data Retrieval System (IDRS) and Integrated Collection System (ICS) when the statute was suspended on an international estate.

5.5.7.21
(12-16-2022)
**Estates with Trust
Assets**

- (1) A taxpayer may create a trust during life for estate tax planning purposes so that assets can pass to beneficiaries without going through state probate proceedings. Collection of estate tax from a trust depends on whether the trust's assets are includable in the gross estate as reported on the estate tax return or as determined after an examination, and not on the name used by the trust. The following is a non-exclusive list of the common types of trusts a revenue officer may encounter when attempting to collect estate tax:

Type of Trustm	Definition
Revocable Trust	Any trust that the settlor (creator) can revoke and take the assets back for themselves.
Irrevocable Trust	A trust that the settlor cannot revoke and reclaim the assets for themselves.

Type of Trustm	Definition
Living Trust	A trust created during the decedent's lifetime. Typically, it is some form of grantor trust in which the decedent retains the right to the use of income from all the assets. When the decedent dies, the assets go to designated remainder beneficiaries who are commonly the decedent's heirs.
Grantor Trust	Grantor trust is a term used in the Internal Revenue Code to describe any trust in which the grantor retains the power to control or direct the trust's income or assets. A few examples include the power to decide who receives income, the power to vote or to direct the vote of stock held by the trust, the power to control the investment of the trust funds, and the power to revoke the trust. 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. All revocable trusts are grantor trusts. An irrevocable trust can be treated as a grantor trust if any of the grantor trust definitions contained in IRC 671, IRC 673, IRC 674, IRC 675, IRC 676, or IRC 677 are met.
Grantor Retained Annuity Trust (GRAT)	The grantor creates an irrevocable trust and retains the right to receive, for a specified term, an annuity based on a specified sum or fixed percentage of the value of the assets transferred to the trust. A grantor retained annuity trust is specifically authorized by IRC 2702(a)(2)(B) and IRC 2702(b). For federal income tax purposes, this trust is treated as a grantor trust.
Grantor Retained Income Trust (GRIT)	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 type of trust is treated as a grantor trust.

Type of Trustm	Definition
Grantor Retained Unitrust (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. For federal income tax purposes, this trust is treated as a grantor trust.
Personal Residence Trust	This type of trust involves the transfer of a personal residence to a trust with the grantor retaining the right to live at 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)	This type of 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 under IRC 2702.

Type of Trustm	Definition
Intentionally Defective Grantor Trust (IDGT)	This type of trust is a completed 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 transferred assets is removed from the grantor's gross estate on the date the trust is funded. 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 the grantor 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. This type of trust also allows the grantor to remove appreciating assets from the estate but retain certain powers with respect to those assets.
Charitable Remainder Annuity Trust (CRAT)	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 Unitrust (CRUT)	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 Trust (CLAT)	A trust that pays a fixed percentage of the initial value of the trust assets to the charity for the charitable term.
Charitable Lead Unitrust (CLUT)	A trust that pays a percentage of the value of its assets, determined annually, to a charity for the charitable term.

5.5.7.21.1
(12-16-2022)
**Collecting Estate Tax
from Trusts**

- (1) Although there are many different types of trusts, determining whether the value of the trust assets will be includible in the gross estate, and therefore subject to collection, will depend on whether the decedent retained an interest or certain powers over the assets in the trust at the date of death.

- (2) The value of an asset held on the decedent's date of death in a **revocable** trust created by the decedent during life is includable in the decedent's gross estate.
- (3) The value of an asset held in an **irrevocable** trust is includable in the decedent's gross estate if the decedent transferred the asset to the trust and retained an interest in or power over the asset as described in IRC 2036, Transfers with retained life estate, IRC 2037, Transfers taking effect at death, or IRC 2038, Revocable transfers. Similarly, the proceeds of a life insurance policy payable upon decedent's death to a trust are includable in the decedent's gross estate under IRC 2042(b), Proceeds of life insurance, if the decedent possessed any incidents of ownership over the insurance policy at date of death.
- (4) When a trust is a potential source of collection for unpaid estate tax, review the estate tax return to determine which trust assets were included in the gross estate. These trust assets are subject to the ten year IRC 6324(a)(1) estate tax lien. Schedules listing the assets and debts of the estate are normally attached to the estate tax return. Trust assets are usually reported on Schedule G or included in the examination report, if additional tax was assessed. The information from these schedules are a valuable starting place to gather information and documentation about the trust and its assets. Information may include the identity of banks, brokerage firms, and account information listed in the name of the trust. Beware that, on occasion, an estate may not correctly report the assets on Schedule G, and trust assets may be incorrectly included on a different schedule.
- (5) If the estate was involved with litigation, Chief Counsel files and Tax Court records may also contain documentation about the trust and its assets.
- (6) The trustee of a trust with assets includable on the decedent's estate tax return is personally liable for any unpaid estate tax under IRC 6324(a)(2), for up to the date of death value of the trust's assets included in the gross estate or the remaining tax liability, whichever is less.
- (7) The IRC 6324(a)(1) estate tax lien that attaches to trust assets includable in an estate provides a strong collection tool for the government when it seeks to collect unpaid estate taxes. However, traditional tools of fraudulent transfers, alter ego, nominee, and state law provisions that allow creditors to reach assets of self-settled grantor trusts may also be used to collect estate tax in some circumstances.

5.5.7.21.2
(12-16-2022)

**Trust Assets Not Subject
to Estate Tax Lien**

- (1) The transfer of certain trust assets may have resulted in a taxable gift that should have been reported on Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return. In this way, the estate tax and the gift tax support each other by preventing untaxed transfers of wealth without consideration. In such a case, there may be an uncollected gift tax account to collect. See IRM 5.5.9, Collecting Gift tax and Generation-Skipping Transfer Tax, for information on collecting on gift tax liabilities.
- (2) The following trust assets are generally not part of the gross estate but may be includable on an estate tax return under IRC 2035, Adjustments for certain gifts made within 3 years of decedent's death:
 - Prior to death, the decedent had transferred the retained interest or relinquished the retained power or incident of ownership of a trust asset

- that would otherwise be includable in the decedent's gross estate under IRC 2036, IRC 2037, IRC 2038, or IRC 2042 during the three-year period ending on the decedent's date of death.
- Assets transferred prior to death of the decedent to an irrevocable trust in which the decedent retained no interest during the three-year period ending on the decedent's date of death.

- (3) When the transfer of assets is reportable as a gift instead of being included in the decedent's gross estate, the IRC 6324(b) gift tax lien attaches to those assets instead of the IRC 6324(a)(1) estate tax lien. If Field Collection employees have a question regarding whether an asset is considered a gift, or if it is includable in the decedent's gross estate, make a referral to Estate and Gift Examination through the *Specialist Referral System (SRS)*. Field Collection employees can also contact their local Counsel to determine if a gift tax lien or estate tax lien attaches to assets that were transferred prior to the decedent's date of death.

5.5.7.21.3
(12-16-2022)
**Government's State
Law Rights Under Trusts**

- (1) Under IRC 6324(a)(2), the trustee is liable for unpaid estate taxes for up to the date-of-death value of the trust assets that were includable in the gross estate. In some cases, however, certain trust provisions may allow no limit to the trustee's liability. This may occur when the grantor trust document includes language that obligates the trustee to pay the decedent's last debts and any estate tax or gift tax that may arise upon the decedent's death. This language may be useful when collecting a decedent's pre-death income tax, employment tax, and gift tax, or when establishing a trustee's fiduciary liability arising from an insolvent trust.
- (2) Certain language in trust documents may also be useful in establishing transferee liability of the trust for unpaid estate tax. However, reliance on such language may not be necessary since IRC 6324(a)(2) already makes the trustee liable for unpaid estate tax for up to the date of death value of the trust assets includable in the gross estate or the remaining tax liability, whichever is less.
- (3) Here is an example of language to look for in a trust document:

Example: "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.**"

This language limits the trustee's obligation to the extent that the trust's assets were includable in the gross estate. 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 IRC 6324(a)(2) which makes the trustee liable to the government to the same extent.

- (4) 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 an IRC 6901 assessment or a suit against the trust for an amount greater than the value of its assets included on Form 706 or Form 706-NA.

- (5) Some states allow creditors to sue the trust directly. There may be an advantage to the IRS if the trust is administered in one of these states, and the trust document does not limit the trust's liability to the value of the trust assets. In these cases, The IRS may be able to file a suit or make an IRC 6901 administrative transferee assessment against the trustee (in the trustee's official capacity) for the **full amount** of estate tax due. On the other hand, when we rely on collection against a trust using the IRC 6324(a)(1) estate tax lien, the IRS is limited to collect on the **current value** of the trust assets. When we rely on the personal liability of the trustee provision in IRC 6324(a)(2), we are limited to collect from the trustee for up to the **date-of-death value** of the trust assets.

5.5.7.21.4
(12-16-2022)
Trust Documents

- (1) 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. A summons may be issued to obtain the actual trust instrument and records regarding trust assets. Check name and address records on Integrated Data Retrieval System (IDRS) for the last known trustee of the trust to serve a summons. Alternatively, the executor of the estate, and any person who prepared the estate tax return, 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.
- (2) Additional information regarding potential collection sources can be found in the following income tax records and returns:
 - The decedent's prior Form 1040, U.S. Individual Income Tax Return, may reveal assets and income from a revocable trust that were not included on the estate tax return.
 - Information regarding a trust's current assets and distributions to its beneficiaries may be on IRS internal records such as IDRS command code IRPTR which may include information from Form 1099 to reveal income received by the estate, trusts, and beneficiaries.
 - Form 1041, U.S. Income Tax Return for Estates and Trusts, and related Schedule K-1, issued to the beneficiaries, may provide additional information on trust assets.
- (3) State court records can also be a valuable source of information regarding trust assets. In some states, the administration of trusts is handled in the state probate courts. In other states, the administration of trusts is handled in court proceedings that do not involve the probate court.
- (4) IRC 645, Certain Revocable Trusts Treated as Part of Estate, allows a trust to report their income under the same employer identification number (EIN) and on the same Form 1041 that is filed by the estate to report their income. The trust and estate also have the option of filing a separate Form 1041 to report their income separately.

5.5.7.22
(12-16-2022)
**Options to Collect
Estate Tax**

- (1) If the estate tax is not paid after demand for payment to the executor, some available collection options include the following:

Collection Option	IRM Section
Provide Form 10492, Notice of Federal Taxes Due, to all persons holding assets that were included in the gross estate and to the fiduciary to notify them of their potential for personal liability.	IRM 5.5.7.15, Notice of Tax Due
File a Notice of Federal Tax Lien.	IRM 5.5.7.11.3, Estate Tax IRC 6321 Assessment Lien
<p>Levy and seizure using the IRC 6324(a)(1) estate tax lien or Notice of Federal Tax Lien on certain probate assets in one of the following circumstances. Assets may still be owned by the estate or transferred to a beneficiary or third party.</p> <p>a. The asset falls under an unsupervised, an informal, or another probate provision that allows for the transfer of assets without falling under probate court jurisdiction.</p> <p>b. The asset is no longer under the jurisdiction of the probate court.</p> <p>c. Department of Justice took certain action on behalf of the IRS to remove the asset from the jurisdiction of the probate court so that enforcement action can be taken.</p>	<p>IRM 5.5.7.10.1, Probate Assets</p> <p>IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien</p> <p>IRM 5.5.7.11.3, Estate Tax IRC 6321 Assessment Lien</p> <p>IRM 5.5.7.22.1.2, Seizure and Levy Based on IRC 6324(a)(1) Estate Tax Lien</p> <p>IRM 5.5.7.22.1.3, Seizure and Levy Based on IRC 6321 Assessment Lien</p>

Collection Option	IRM Section
Levy and seizure of non-probate assets using the IRC 6324(a)(1) estate tax lien, such as assets held by trusts, joint tenants, or initial distributees/transferees.	<p>IRM 5.5.7.10.2, Non-Probate Assets</p> <p>IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien</p> <p>IRM 5.5.7.21, Estates with Trust Assets</p> <p>IRM 5.5.7.21.1, Collecting Estate Tax from Trusts</p> <p>IRM 5.5.7.21.3, Government's State Law Rights Under Trusts</p> <p>IRM 5.5.7.21.4, Trust Documents</p> <p>IRM 5.5.7.22.1.2, Seizure and Levy Based on the IRC 6324(a)(1) Estate Tax Lien</p>
Levy and seizure using the IRC 6324(a)(2) "like lien" on personal assets owned by recipients of non-probate property.	<p>IRM 5.5.7.11.2, IRC 6324(a)(2) Like Lien</p> <p>IRM 5.5.7.22.1.4, Seizure and Levy Based on the IRC 6324(a)(2) Like Lien</p>

Collection Option	IRM Section
<p>Make a suit referral to reduce estate tax assessment to judgment, foreclose the IRC 6324(a)(1) estate tax lien, IRC 6324(a)(2) “like lien”, or IRC 6321 assessment lien, or suit to collect estate tax under general law.</p>	<p>IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien</p> <p>IRM 5.5.7.11.2, IRC 6324(a)(2) Like Lien</p> <p>IRM 5.5.7.11.3, Estate Tax IRC 6321 Assessment Lien</p> <p>IRM 5.5.7.22.4, Preparing Suit Referrals on Estate Tax</p> <p>IRM 5.5.7.22.4.1, Suit to Reduce Estate Tax Assessment to Judgment</p> <p>IRM 5.5.7.22.4.2, Suit to Foreclose Federal Tax Lien on Estate Tax</p> <p>IRM 5.5.7.22.4.4, Suit to Collect Estate Tax Under General Law</p> <p>IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral</p>
<p>Make an administrative IRC 6901 transferee assessment or make a referral for a suit to establish a transferee liability against recipients of estate assets (transferees) including individuals that are personally liable for the estate tax for up to the date-of-death value of non-probate assets they received per IRC 6324(a)(2).</p>	<p>IRM 5.5.7.22.3, Estate Tax Transferee and Fiduciary Liability</p> <p>IRM 5.5.7.22.3.1, Estate Tax Liability of Transferee</p> <p>IRM 5.5.7.22.3.3, Estate Tax Transferee and Fiduciary Administrative and Judicial Actions</p> <p>IRM 5.5.7.22.4, Preparing Suit Referrals</p> <p>IRM 5.5.7.22.4.4, Suit to Collect Estate Tax Under General Law</p> <p>IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral</p>

Collection Option	IRM Section
<p>Make an administrative IRC 6901 transferee assessment or make a referral for a suit to establish a fiduciary liability against the fiduciary under <i>31 USC 3713</i>, Priority of Government Claims.</p>	<p>IRM 5.5.7.22.3, Estate Tax Transferee and Fiduciary Liability</p> <p>IRM 5.5.7.22.3.2, Estate Tax Liability of Fiduciary</p> <p>IRM 5.5.7.22.3.2.1, Fiduciary Knowledge of Debt Owed to the Government</p> <p>IRM 5.5.7.22.3.2.2, Fiduciary Distributions and Payments to Inferior Creditors</p> <p>IRM 5.5.7.22.3.3, Estate Tax Transferee and Fiduciary Administrative and Judicial Actions</p> <p>IRM 5.5.7.22.4, Preparing Suit Referrals</p> <p>IRM 5.5.7.22.4.4, Suit to Collect Estate Tax Under General Law</p> <p>IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral</p>
<p>Collect on a fiduciary bond or on a bond secured due to an IRC 6161 extension of time for paying tax election or IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election.</p>	<p>IRM 5.5.7.22.2, Estate Tax Collection on Bonds</p> <p>IRM 5.5.7.22.4.4, Suit to Collect Estate Tax Under General Law</p> <p>IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral</p>

Collection Option	IRM Section
Recommend a suit to Appoint Receiver.	IRM 5.5.7.20.3, Collection on International Estate Assets IRM 5.5.7.22.4.3, Suit to Appoint a Receiver on Estate Tax IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral
Recommend a suit for a Repatriation Order.	IRM 5.5.7.20.3, Collection on International Estate Assets IRM 5.21.3.6, Suit to Repatriate Property - Repatriation Orders IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral
Levy, seizure, or suit recommendation based on Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324A, or Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, if the estate had a special estate tax election.	IRM 5.5.6 Collection on Accounts with Special Estate Tax Elections. IRM 5.5.7.22.4.2, Suit to Foreclose Federal Tax Lien on Estate Tax IRM 5.5.7.22.4.5, Writing a Narrative for an Estate Tax Suit Referral

5.5.7.22.1
(12-16-2022)
**Seizure and Levy Action
on Estate Tax**

- (1) Seizure and levy action may be used to collect on assets held by the executor of an estate, except for assets that are under control of a probate court. See IRM 5.5.7.10.1, Probate Assets, for information on assets under control of a probate court.

Caution: Beware that there may be other situations in which seizure and levy action should not be taken such as when an offer in compromise is pending.

- (2) If there is an IRC 6321 assessment lien or an IRC 6324(a)(1) estate tax lien that still attaches to property that was transferred to heirs or other third parties, the IRS can seize or levy on that property for payment of estate tax. This does not require a separate IRC 6901 transferee assessment against those heirs or third parties. Like any other collection case, consider encumbrances on the

property by priority creditors and by superpriority creditors as listed in IRC 6323, Validity and Priority Against Certain Persons.

(3) Collection by seizure or levy can be made using any of the following liens:

- Regular IRC 6321 assessment lien that is in effect on balance due accounts to be collected on just like in other collection cases. The lien attaches to probate assets in the estate at the time of assessment. A Notice of Federal Tax Lien (NFTL) establishes the date of the IRC 6321 assessment lien's attachment to the probate estate assets that remain in the estate at the time the NFTL was filed.
- Special liens filed when an estate has either an IRC 2032A special use valuation election or IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election. See IRM 5.5.6 for more information on collecting on these liens.
- IRC 6324(a)(1) estate tax lien that automatically attaches to all assets includable in the decedent's gross estate when there is an estate tax return filing requirement. This unrecorded lien arises at date of death and lasts for ten years.

Example: Decedent's estate filed a Form 706 listing real property on Schedule A, Real Estate. The property was in the decedent's name at date of death. Since the real property was includable in the gross estate, the ten-year IRC 6324(a)(1) estate tax lien has attached to the real property.

If the executor distributes the property to the decedent's children, the IRC 6324(a)(1) estate tax lien continues to attach to the property. If the property is no longer under the jurisdiction of the probate court, the IRS can take administrative seizure on the real property that is now in the names of the children without the need to make a separate IRC 6901 transferee assessment against them.

If the children transfer the property to a purchaser for fair market value without getting the estate tax lien discharged from the property, the IRC 6324(a)(1) estate tax lien will follow the property into the hands of the new owner. The property can then be administratively seized from the new owner since the estate tax lien follows the property.

- IRC 6324(a)(2) "like lien" that automatically attaches to the personal assets of a recipient of non-probate property for up to the date-of-death value of the asset that individual received (or the remaining liability, whichever is less) when that recipient transfers the non-probate property to a purchaser (i.e., by selling the property for fair market value) or to a security interest holder (i.e., by encumbering the property and removing the recipient's equity). After the transfer, the "like lien" attaches to all the personal assets of the recipient of the non-probate property. The IRS can seize or levy on an asset based on the "like lien". See IRM 5.5.7.11.2, IRC 6324(a)(2) Like Lien.

Example: Decedent had an interest in real property with a date of death value of \$4M and in a bank account with a date of death value of \$2M that was in the name of a trust at date of death and was includable on Form 706, Schedule G, Transfers During Decedent's Life. The assets passed to the

beneficiary of the trust (decendent's sister) outside of probate. The ten-year IRC 6324(a)(1) estate tax lien attaches to these assets and can be enforced by administrative seizure and levy without the need to make a separate IRC 6901 administrative transferee assessment against the sister.

If the sister later re-transfers the real property to a purchaser for fair market value, the IRC 6324(a)(1) estate tax lien no longer follows this non-probate real property. Similarly, if the sister spent the funds in the bank account, the IRC 6324(a)(1) estate tax lien no longer attaches to those funds. A "like lien" then attaches to the sister's other property.

This "like lien" can be enforced against the sister's other property through administrative seizure and sale without the need to make an IRC 6901 transferee assessment against the sister. The "like lien" is for the amount up to the date-of-death value of the real property (\$4M) and the date-of-death value of the cash in the bank account (\$2M) for a total of \$6M or in the amount of the remaining tax liability, whichever is less.

Note: There are two aspects to IRC 6324(a)(2). First, there is the "like lien" that is discussed in this IRM section. In addition, the individuals that received non-probate property have an automatic personal liability for the estate tax for up to the date-of-death value (or the remaining tax liability, whichever is less) of the asset they received. The IRS can collect against these individuals under IRC 6324(a)(2) by making an IRC 6901 administrative transferee assessment or through a transferee suit. This aspect of IRC 6324(a)(2) is discussed in IRM 5.5.7.22.3.1, Estate Tax Liability of Transferee.

- (4) The local Civil Enforcement Advice and Support Operations (CEASO) Advisory group reviews seizures of assets includable in an estate just like in any other collection case.

5.5.7.22.1.1
(12-16-2022)
**Seizure and Levy
Notices**

- (1) Because the executor is responsible for paying the estate tax in their representative capacity for the estate, do not issue a levy to the executor to collect the estate tax. Instead, a levy should be issued to any third parties who are holding assets of the estate for the executor such as banks, brokerage firms, or insurance companies.
- (2) When assets are still in the name of the decedent or decedent's estate, the Notice of Levy and Notice of Seizure may include the taxpayer identification number (TIN) of the decedent, estate, or any trust that contains assets includable in the gross estate. Providing all possible TINs is helpful for the following reasons:
- An account may still be in the name and TIN of the decedent.
 - An account may have been transferred out of the name and TIN of the decedent and into the name and TIN of the estate or trust.

Note: Some estates and trusts may not have a separate TIN if they do not have a Form 1041, U.S. Income Tax Return for Estates and Trusts, filing requirement because they do not receive income of over \$600 per year.

5.5.7.22.1.2
(12-16-2022)

**Seizure and Levy Based
on IRC 6324(a)(1) Estate
Tax Lien**

- (1) A seizure and levy may be made against assets received by heirs and third parties based on the IRC 6324(a)(1) estate tax lien when the asset is not under the jurisdiction of the probate court. See IRM 5.5.7.11.1, IRC 6324(a)(1) Estate Tax Lien, and IRM 5.5.7.10.1, Probate Assets.
- (2) Here are some examples of levies and seizures based on the IRC 6324(a)(1) estate tax lien:

Type of Asset:	Example:
Third party holding probate property that is no longer under probate court jurisdiction	For example, levy on a bank or brokerage account when the account is still in the decedent's name or in the decedent estate's name and controlled by the executor.
Probate property that is no longer under probate court jurisdiction that is in the name of a beneficiary	For example, property that was transferred from the executor to the beneficiary.
Probate property that is no longer under probate court jurisdiction that was transferred to a third party	For example, executor sold a house that was in the decedent's name at date of death to a third party without obtaining a discharge of the IRC 6324(a)(1) estate tax lien. Therefore, the estate tax lien still attaches to the property.
Non-probate property in the hands of a recipient due to automatic transfers that occurred at date of death	Examples: <ol style="list-style-type: none"> a. The named beneficiary of a bank account received the decedent's interest in the account upon the death of the decedent (payable on death account). b. The decedent's interest in joint property with right of survivorship that transferred to the surviving tenant at the date of the decedent's death.
Non-probate trust property that was includable on the estate tax return	For example, assets that had been transferred into a revocable trust prior to the decedent's death that the decedent had retained an interest in while alive.
Non-probate property transferred by the recipient of the asset to another party	Examples: <ol style="list-style-type: none"> a. Real property transferred from the trustee of a trust to the beneficiary of the trust. b. Real property received by the beneficiary of a trust that was then transferred to the beneficiary's daughter for no consideration.

- (3) Additional language can be added to the levy or seizure documents that explains the continued attachment of the estate tax lien and identifies the property.

Example: “You are hereby notified that the property and rights to property described below are subject to the estate tax lien provided by IRC 6324 for unpaid estate taxes owed by the Estate of (Name of Decedent) (Name of Executor), under (Estate’s TIN, if applicable) and/or (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 estate tax liability specified above.”

- (4) When the levied party does not need the taxpayer identification number (TIN) to identify the taxpayer’s assets, the TIN should be redacted from the notice of levy. See IRM 5.11.2.2.2(3), Preparing the Notice of Levy.
- (5) If specific information is known about the asset, that information can also be added to the levy.

Example: “Known accounts include Steve Bass account number 0123456 and Helen Trout account number 0654321.”

5.5.7.22.1.3
(12-16-2022)

**Seizure and Levy Based
on IRC 6321
Assessment Lien**

- (1) The IRS can also levy and seize on probate property that is not under the jurisdiction of the probate court when the IRC 6321 assessment lien attaches to an asset. See IRM 5.5.7.11.3, Estate Tax IRC 6321 Assessment Lien.
- (2) When a Notice of Federal Tax Lien (NFTL) is filed, it establishes the priority of the lien on probate property that is still in the name of the decedent or decedent’s estate at the time that the NFTL is recorded. Non-probate property or probate property that had already been properly distributed or disposed of will not be affected by the NFTL filing.
- (3) Here are some examples of levies and seizures based on the IRC 6321 assessment lien:

Type of Asset:	Example:
Assets that were in the decedent’s name at date of death, are still in the decedent’s name, and are no longer under the jurisdiction of the probate court.	For example, a NFTL was filed, and there is real property that is still in the name of the decedent’s estate.
Assets in the decedent’s name at date of death that were transferred to a third party after a NFTL was filed, and the assets are no longer under the jurisdiction of the probate court.	For example, a NFTL was filed, and there was real property in the decedent’s name prior to the sale of the property. The estate and buyer did not obtain a discharge of the property from the lien. The NFTL still attaches to the property.

- (4) No additional verbiage needs to be added to the levy or seizure documents to explain the NFTL since the language related to a NFTL is already covered on levy and seizure documents.
- (5) When the levied party does not need the taxpayer identification number (TIN) to identify the taxpayer's assets, the TIN should be redacted from the notice of levy. See IRM 5.11.2.2.2(3), Preparing the Notice of Levy.
- (6) If specific information is known about the asset, that information can also be added to the levy.

Example: "Known accounts include Steve Bass account number 0123456 and Helen Trout account number 0654321."

5.5.7.22.1.4 (12-16-2022)

Seizure and Levy Based on IRC 6324(a)(2) Like Lien

- (1) If a recipient of a non-probate asset that was includable in an estate has transferred the asset to a purchaser (i.e., by selling the property for fair market value) or to a security interest holder (i.e., by encumbering the property and removing the recipient's equity), then the IRC 6324(a)(1) estate tax lien is divested from the property. An IRC 6324(a)(2) "like lien" then arises and attaches to all the transferee's other property.
- (2) A Notice of Seizure and Notice of Levy may be issued on assets owned by individuals whose property is subject to the IRC 6324(a)(2) "like lien." See IRM 5.5.7.11.2, IRC 6324(a)(2) Like Lien.
- (3) This "like lien" is subject to the same IRC 6323 superpriorities as the estate tax lien. Levy or seizure action may be taken to enforce collection on any asset of the transferee based on the "like lien" for up to the date-of-death value of the asset received or for the remaining tax due, whichever is less.
- (4) The "like lien" is divested from a personal asset owned by the recipient of the non-probate property if that recipient later transfers the asset to a purchaser (i.e., by selling the property for fair market value) or to a security interest holder (i.e., by encumbering the property and removing the recipient's equity).

Example: At date of death, the decedent had a 50% interest in real property which was titled with her brother as joint tenant with right of survivor. The decedent's interest in the property was \$2M. The IRC 6324(a)(1) estate tax lien attaches to the decedent's interest in the real property (\$2M) that automatically transferred to the brother at the decedent's death.

The brother later sells the property to a third party for fair market value. The IRC 6324(a)(1) estate tax lien is divested from the property that was sold, and the IRS then has an IRC 6324(a)(2) "like lien" that attaches to the assets that are personally owned by the brother. The "like lien" amount is the value of the decedent's interest in the non-probate property received by the brother at date of death (\$2M) or the remaining tax liability, whichever is less.

The brother owns a recreational vehicle valued at \$1M and a bank account valued at \$4M. The IRC 6324(a)(2) "like lien" attaches to these assets. If the brother later sells the recreational vehicle, the IRC 6324(a)(2) "like lien" is then divested from the recreational vehicle. However, the IRC 6324(a)(2) "like lien" will remain attached to the bank account, and the IRS can issue a levy on the bank account for up to

\$2M (value of the decedent's interest in the non-probate real property received by the brother) or the remaining tax liability, whichever is less.

- (5) When collecting using the "like lien," it may be useful to add additional language to the notice of levy that explains the attachment of the "like lien" and to identify the property. If the property is held by a third party for a trust or transferee, it may be useful to include the taxpayer identification number (TIN) for the trust or the transferee. The following is an example of possible language to use on the notice of levy.

Example: "You are hereby notified that the property and rights to property of [Initial Transferee with TIN] described below are subject to the like lien provided by IRC 6324(a)(2) for unpaid estate taxes owed by the Estate of [Name of Decedent], using Tax Identification Number [Estate's TIN] or using the decedent's Tax Identification Number [Decedent's TIN]. This lien attached to said property because non-probate property that was included in the gross estate on the estate tax return was transferred to [Initial Transferee], and then re-transferred to a purchaser or security interest holder. Under IRC 6324(a)(2) a replacement or like lien has arisen and attached to all other property of [Initial Transferee]. 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 estate tax liability specified above."

- (6) When the levied party does not need the TIN to identify the taxpayer's assets, the TIN should be redacted from the notice of levy. See IRM 5.11.2.2.2(3), Preparing the Notice of Levy.
- (7) Include any specific information about known recipients of estate assets and any known account numbers.

Example: "Known accounts include Steve Bass account number 0123456 and Helen Trout account number 0654321."

5.5.7.22.2 (12-16-2022) Estate Tax Collection on Bonds

- (1) In some probate proceedings, the estate administrator will be required to post a bond. For more information on this type of bond see IRM 5.5.2.9, Probate Bonds.
- (2) Bonds may also be furnished when an estate has been granted an IRC 6161 extension of time to pay estate tax, or if the estate has been granted an IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election. See IRM 5.6.1.3.3, Estate Tax Bonds and Other Collateral, and see IRC 6165, Bonds where time to pay tax or deficiency has been extended.

Note: If a bond was provided on an IRC 6166 election, the election must be terminated before pursuing collection.

- (3) It may be necessary to demand payment from the surety that has underwritten the bond to collect on the tax liability. When considering enforcement, secure a copy of the bond and related documentation. The bond will identify the surety company, the amount of coverage, and potential parties who would be served

with a demand or suit letter. Bonds are generally renewed on an annual basis. If the bond was renewed, previous bonds may reflect changes in the amount of coverage, which may be based on a reduction in estate assets or creditor claims for debts owed. Typically, a financial statement for the applicant representing the estate is submitted with the bond application. A summons may be issued to the surety company for a copy of the application and financial statement.

- (4) Once you determine enforcement will be necessary on the bond, issue a demand for payment letter to the surety company. Pattern letter P-300 has been modified in IRM Exhibit 5.5.7-1, Pattern Letter P-300 Revised for Estates, for use in estate tax cases. This letter must be sent by certified mail to the surety company.
- (5) If the surety company does not respond by the deadline date in the demand letter, attempt contact with the surety company representative and document the Integrated Collection System (ICS) case history with the following:
 - Indicate if the surety company acknowledged receipt of the demand letter.
 - Identify the name, title, contact phone number, and address of the individual in the surety company that is responsible for ensuring payment of the tax.
 - If the surety company representative states they will pay, indicate the date to expect the payment.
 - If the surety company representative states they will not pay, document the reason for nonpayment and ask them to send the IRS a written response stating the reason for nonpayment.
- (6) If there is no response from the surety company or if the surety company representative indicates they will not pay the tax based on the bond amount, prepare a referral to bring suit against both the fiduciary, alleging the fiduciary is personally liable under *31 USC 3713*, and the surety company, alleging liability under the surety bond. See IRM 25.3.2, Suits by the United States, for procedures to follow when making this type of suit recommendation. Enforcement of a bond for an IRC 6166 liability may not require proof of fiduciary liability, since the bond is for security, and it is not a bond for misconduct.
- (7) State law and/or terms of the bond may dictate the time-period to file a suit against the surety company that provided the bond. Beware that the time-period may be as short as 30 days. Timely referrals must be made to IRS Counsel. Therefore, begin the referral process early. IRS Counsel needs time to review the case, and Department of Justice needs time to file a suit.

5.5.7.22.3
(12-16-2022)

**Estate Tax Transferee
and Fiduciary Liability**

- (1) It may be possible to pursue collection against parties who received estate assets, as transferees, or against the fiduciary for personal liability. Complete a timeline of the transfer of estate assets to determine who may be transferees or who may have fiduciary liability.
- (2) Transferee liability against recipients of estate assets or against the fiduciary may be made administratively or through judicial means. It is independent of the estate tax lien and may be pursued by the government without first pursuing the estate's assets, tax liens, or the liability of other transferees.

5.5.7.22.3.1
(12-16-2022)
**Estate Tax Liability of
Transferee**

- (1) A transferee that is liable for payment of estate tax may be a trustee, beneficiary, or other distributee who held estate assets on the date of death or who subsequently received estate assets.
- (2) Recipients of non-probate property are personally liable for the estate tax under IRC 6324(a)(2) for up to the value of the asset they received as reported on the estate tax return or as adjusted by Estate and Gift Examination, IRS Independent Office of Appeals, or in Tax Court. If the remaining tax liability is less than the value of the asset received, the recipient of the non-probate property is only liable for up to that remaining amount.
- (3) Transferee liability includes the estate tax, penalties, and interest for up to the value of the assets received. If a separate administrative transferee assessment is made, additional interest may accrue on that separate assessment.
- (4) See IRM 5.5.7.22.3.3, Estate Tax Transferee and Fiduciary Administrative and Judicial Actions, for information on collecting against a transferee.

5.5.7.22.3.2
(12-16-2022)
**Estate Tax Liability of
Fiduciary**

- (1) *31 USC 3713* provides for the personal liability of the fiduciary to the extent that payments or distributions were made to inferior creditors or to beneficiaries ahead of the IRS. The statute applies if the estate is insolvent. The liability of a fiduciary is not dependent upon any benefit the fiduciary may have received from the payment or distribution.
- (2) IRS priority ordinarily will not be asserted over a fully perfected security interest (such as a mortgage or deed of trust) or a judgment lien against the decedent's property that was perfected against the property under state law prior to date of death.
- (3) The extent of the fiduciary's personal liability is limited to the amount of debts that were paid in preference to the United States, or the remaining tax liability, whichever is less.
- (4) A fiduciary that is responsible for the payment of estate tax and other taxes owed by the decedent includes the following:
 - The executor, representing the estate in their official capacity.
 - A trustee of a trust may be liable in their official capacity to pay estate taxes and other taxes owed by the decedent. See IRM 5.5.7.21.1, Collecting Estate Tax from Trusts.
- (5) Consider which assets were under the control of the fiduciary when determining personal liability. For example, assets in a trust may not have been under the control of the executor of the estate.
- (6) If a fiduciary applies for an IRC 2204 discharge of fiduciary from personal liability, the discharge is automatically granted if the IRS doesn't respond within six months of a request by a trustee and within nine months of a request by an executor. This discharge of fiduciary from personal liability only pertains to any additional tax assessments. A fiduciary would still be liable for the tax due on the return as originally filed.
- (7) Review the paper or scanned estate tax return file to determine if the IRS granted a discharge from personal liability under IRC 2204 for any tax deficiency, or if the request was made, but the IRS did not respond. This documentation should be associated with the original Form 706 or Form 706-

NA. See IRM 5.5.7.8, Ordering Estate Tax Returns, for instructions on how to secure a paper or scanned estate tax return.

- (8) If the tax due is from a defaulted IRC 6166 election, determine if a surety bond was provided to the IRS or if a special IRC 6324A estate tax lien was filed. If so, acceptance of the bond or recording of the lien acted as a discharge of the fiduciary from personal liability under IRC 2204. This discharge from personal liability would only pertain to the tax that is deferred under IRC 6166.
- (9) Elements of *31 USC 3713* liability on estate tax include the following:
 - A fiduciary had knowledge, or notice, of a debt (or claim) due or that might be due to the United States, and
 - After such knowledge, the fiduciary made a distribution to heirs, beneficiaries or paid the debts of other inferior creditors, and
 - The distribution occurred when the estate or trust was insolvent or rendered the estate or trust unable to fully pay the debt or claim of the United States.

5.5.7.22.3.2.1
(12-16-2022)

**Fiduciary Knowledge of
Debt Owed to the
Government**

- (1) A fiduciary may be a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in a fiduciary capacity for another person. See IRC 7701(a)(6).
- (2) Consistent with the broad interpretation of *31 USC 3713*, the courts have looked beyond titles and modes of appointment to make anyone in control or possession of the debtor's assets liable for the non-payment of the government's claim under Section 3713.
- (3) A fiduciary must have had actual or constructive knowledge of the debt owed to the United States. Constructive knowledge of a potential claim merely requires knowledge of facts that would cause a prudent person to make a further inquiry into the existence of the claim.
- (4) Taxes, including penalties and interest, qualify as a debt or claim owed to the government for purposes of the priority statute.
- (5) There is no requirement that the tax be assessed before it constitutes a claim of the government. Tax that may be due on an unfiled return, returns under examination, or being contested in litigation qualify as a government claim. Even if an executor or trustee disputes the government's claim, they are still required to preserve sufficient assets to pay that claim until it is resolved.
- (6) The government is not required to file a claim in probate court on a Form 706 or Form 706-NA estate tax liability. Therefore, the non-filing of a proof of claim is not a defense for non-payment of the tax.
- (7) Knowledge of a potential claim of the IRS imposes a duty on the fiduciary to make an inquiry to the proper IRS office regarding the potential claim. Merely conducting investigation into the legitimacy of the claim of the IRS does not insulate a fiduciary if they could have resolved the question by contacting the IRS office.
- (8) Prepare a timeline to determine who had knowledge and determine when and what happened to estate assets once knowledge was established. Below are some points to help you complete a timeline of events:

- Determine who filed the estate tax return and when the fiduciary had knowledge of the tax due on the return.
 - If an examination of the estate tax return was conducted, determine who worked with the IRS to resolve the discrepancy and determine if there was a deficiency assessment.
 - Determine if there was a challenge to the tax in Tax Court.
 - Determine who the IRS sent past due tax notices or audit correspondence to and when those documents were sent.
 - If a Notice of Federal Tax Lien was recorded, determine who received notice of the lien.
 - Determine if assets were sold or distributed after the fiduciary was aware of the tax due or when an IRS examination of the return was pending.
 - Determine who received estate assets and when.
 - Determine if any proceeds from the sale of estate assets were paid to IRS. Also, determine if the sold/distributed assets were reported on the estate tax return and under the control of the fiduciary.
- (9) When the executor signs Form 706 or Form 706-NA when the return is filed, there is no question that the executor is aware of the estate tax reported as being owed on the originally filed return.

5.5.7.22.3.2.2
(12-16-2022)

**Fiduciary Distributions
and Payments to Inferior
Creditors**

- (1) An estate is insolvent if its liabilities exceed its assets. A fiduciary will be liable for distributions that were made after the estate became insolvent, or if the distributions caused the estate to become insolvent.
- (2) In some cases, the information in the timeline you have prepared will quickly reveal that the estate was insolvent (or made insolvent) because of the distributions of estate assets.

Example: After the executor is aware of the tax claim by the IRS, the executor distributes all the estate's assets to the heirs without paying the taxes owed, and the estate was rendered insolvent by those distributions.

- (3) In other cases, it may be less obvious, and you may need to construct a balance sheet with dates and values of distributed assets. Although it may not be necessary to establish the value of every remaining asset or debt against the estate on the date of the distribution, the use of reasonable value ranges may still be sufficient to draw a conclusion regarding the estate's solvency. Support this determination with documentation.

Example: After an executor is aware of the government's claim for taxes, the executor distributes one asset to one heir, but has other assets remaining in the probate estate. If the value of the remaining assets is insufficient to cover the government's claim, the estate is insolvent.

- (4) Information on the value of remaining assets, as of the date of the distributed asset, can sometimes be estimated from the following:
- Reports or statements filed in probate court
 - Annual income tax returns filed by the estate or trust
 - Form 1099 and Schedule K-1 tax return data reported to the IRS by third parties
 - Summoning records from the fiduciary or from third parties such as banks where the assets are located

5.5.7.22.3.3
(12-16-2022)

**Estate Tax Transferee
and Fiduciary
Administrative and
Judicial Actions**

- (5) An interview or summoned testimony of the fiduciary may provide information regarding the value of the assets and debts at the time the distributions were made, and they may provide information on the fiduciary's knowledge or constructive knowledge of the government's claim or potential claim.
- (1) Transferee liability may be asserted administratively against a transferee or fiduciary by making an assessment under IRC 6901.
 - (2) The following is the assessment statute for an IRC 6901 administrative transferee assessment against a **transferee** of an estate asset:
 - Initial transferee statute is the regular three-year assessment statute plus an additional year due to the transfer of the asset to the transferee (for a total of four years).
 - If the asset was transferred a second time, the assessment statute is extended for an additional year (for a total of five years).
 - If the asset was transferred a third time, the assessment statute is extended for an additional year (for a total of six years).
 - The assessment statute does not get extended any further due to additional transfers, so that the administrative transferee assessment against the recipient of a transferred asset cannot exceed six years.
 - (3) The assessment statute for an IRC 6901 administrative transferee assessment against a **fiduciary** is through the collection statute expiration date or one year after the transferee liability arises, whichever is later.
 - (4) When it has been determined to administratively assert transferee liability, make a referral to Examination to issue a Notice of Deficiency. See the following resources for steps to follow to make a referral for a transferee assessment:
 - IRM 5.1.14.2.1, Report of Investigation of Transferee Liability, provides procedures to refer cases to Examination to make an assessment.
 - IRM 4.11.52, Transferee Liability Cases, provides additional information about transferee assessments.
 - (5) After the issuance of the Notice of Deficiency, if the period to petition the Tax Court expires without being contested, the case will be sent to Examination Technical Services to make an assessment. If a Tax Court petition is filed, the assessment of the transferee liability cannot be made until the Tax Court decision and any judicial appeals of that decision are final. If the IRS is successful in the litigation, and the liability is assessed, the IRS can proceed with enforcement action to collect on the assessed tax.
 - (6) If a Collection employee cannot administratively assert transferee liability due to the expiration of the assessment statute of limitations, or if it is in the government's interest to pursue a suit, the Collection employee can submit a suit referral through Advisory and IRS Counsel to request Department of Justice (DOJ) to file suit to establish a transferee or fiduciary liability. Action can be taken in district court against a transferee or against a fiduciary within the collection period for the tax.
 - (7) The suit can include several other causes of action and defendants in the same case such as foreclosing the assessment lien or estate tax lien and es-

establishing fiduciary liability. If DOJ obtains a judgment, they will normally handle collection of the liability, and you might not see the account again in Collection.

- (8) All referrals for an IRC 6901 assessment or a suit recommendation for a suit to establish a transferee liability should include information on all transferees, even on individuals that have fully paid the value of the property they received. This is so that Examination and Counsel can evaluate whether the transferee has additional liability for interest.
- (9) If needed, consult with Area Counsel on your specific case circumstances to determine the most effective collection avenue. IRM 5.17.13, Insolvencies and Decedents' Estates, and IRM 5.17.14, Fraudulent Transfers and Transferee and Other Third-Party Liability, are additional resources for information on fiduciary and transferee liability.

5.5.7.22.4
(12-16-2022)
**Preparing Suit Referrals
on Estate Tax**

- (1) If you are unable to take administrative actions, and you are considering a suit recommendation, begin the referral process early. Civil Enforcement Advice and Support Operations (CEASO) Advisory and IRS Counsel need time to review the case, and Department of Justice (DOJ) will need time to make the initial pleading. Once DOJ receives the suit, they typically send a pre-suit letter giving the taxpayer 30 days to respond with payment or a settlement offer before a suit is filed. If there is an imminent Collection Statute Expiration Date (CSED), see IRM 25.3.2.4.5.5, Cases with Imminent CSEDs.
- (2) Suit recommendations on estate tax cases are routed to IRS Counsel and reviewed through e-Approval. See IRM 25.3.2.4.3.1, Recommendations Processed Through e-Approval.
- (3) In many cases, the estate or heirs may pay all or a substantial portion of the tax just because DOJ may file a suit.
- (4) Make suit recommendations to address all possible judicial actions to collect the tax so that DOJ can proceed with any actions they deem necessary after their analysis of your case. For example, a referral for a suit to foreclose a tax lien on one property might also include a referral to foreclose a lien on all other properties, as well as reducing the assessment to judgment. Additionally, a referral for a suit to obtain judgments of personal liability on all transferees and fiduciaries might be included.
- (5) Key benefits to suit referrals to DOJ are the following:
 - Additional discovery, subpoenas, depositions.
 - May include multiple causes of action against multiple defendants.
 - Once judgment is obtained, DOJ will take initial efforts to collect.
- (6) Once a case is with DOJ, depending on the case and the court, it can take between one to two years to reach a trial. If an appeal is filed, it may take another year.
- (7) See IRM 5.17.4, Suits by the United States, IRM 5.17.12, Investigations and Reports, IRM 25.3.1, General Guidelines, IRM 25.3.2, Suits by the United States, and *Knowledge Management Litigation*, for additional information on suits.

5.5.7.22.4.1
(12-16-2022)

**Suit to Reduce Estate
Tax Assessment to
Judgment**

- (1) A suit can be filed to reduce a tax assessment to judgment to prevent the collection statute from expiring when collection cannot be completed by administrative methods within the normal statutory period. This judgment fixes and extends the liability, but it does not collect assets held by the estate. Additional steps such as foreclosing on a tax lien must be used to convert estate assets to cash.
- (2) Even when the estate has no assets, a suit to reduce an assessment to a judgment may be useful to extend the time to seek collection from the personal assets of the executor or heirs.
- (3) Once a judgment is obtained, it is critical to update the collection statute expiration date (CSED) on the taxpayer's account on IDRS. Judgments can last 20 years and be refiled for another 20 years. See IRM 5.5.7.6, Estate Tax Collection Statute Expiration Date (CSED), for information on updating CSEDs on Integrated Data Retrieval System (IDRS) and on Integrated Collection System (ICS).
- (4) Care should be taken to get referrals completed in time to avoid expiration of the CSED. If the CSED is not updated on IDRS, the liability will be automatically abated (TC 608) which may cause any Notices of Federal Tax Liens to be released. The IRS would then need to revoke the release to reinstate the IRC 6321 assessment lien and file a new NFTL. The abatement of tax and release of liens creates additional litigation risks.
- (5) For additional information on this type of suit, see IRM 5.17.4.7, Suit to Reduce Assessments to Judgment and IRM 25.3.5, Judgment Follow-Up.

5.5.7.22.4.2
(12-16-2022)

**Suit to Foreclose
Federal Tax Lien on
Estate Tax**

- (1) A suit under IRC 7403 is used to enforce any of the tax liens related to estate tax through foreclosure and sale. The court will have discretion on whether to order foreclosure and sale, the timing of the sale, and the terms of the sale.
- (2) For these types of suits, it will be necessary to join all parties claiming any interest in the property. This information may be available from probate records. This suit can be brought even if the tax liens are subordinate to the claims of others if there is sufficient equity in the property to make it worthwhile. Once the property is sold, the court will order distribution of the net proceeds based on the order of priority of the claims.
- (3) When recommending a suit to foreclose the ten-year unrecorded IRC 6324(a)(1) estate tax lien, make a suit referral at least three years before the lien expires. Since filing the suit does not suspend the ten-year statute of this unrecorded lien, Department of Justice (DOJ) needs to complete the suit and sell the property before the lien expires. It may take that long to litigate the case, resolve any appeals, and sell the property before the expiration of the lien.
- (4) For additional information on this type of suit, see IRM 5.17.4.8 for information on suits to foreclose a federal tax lien.

5.5.7.22.4.3
(12-16-2022)

**Suit to Appoint a
Receiver on Estate Tax**

- (1) A suit to appoint a receiver to take over and manage the entire estate of a decedent can be recommended when appointing a receiver is in the public's interest.

- (2) A suit can also be filed to appoint a receiver to sell specific property to satisfy a federal tax lien. This type of suit is often combined with a suit to foreclose a tax lien. In some cases, a receiver may be able to market and privately sell (subject to court approval) unusual or difficult to sell assets, thereby avoiding the potential that a foreclosure sale will greatly depress the sales price below its fair market value. A taxpayer may be more willing to cooperate with appointment of a receiver to sell property because it maximizes the recovery on the property and reduces the potential for personal liability of fiduciaries and heirs.
- (3) A receiver steps into the shoes of the taxpayer and can take any actions that the taxpayer could have taken. For example, they can exercise withdrawal and liquidation rights for an interest in a partnership or repatriate foreign assets.
- (4) For additional information on this type of suit, see IRC 7402(a), IRC 7403(d), and IRM 5.17.4.10, Court Appointed Receiver.

5.5.7.22.4.4
(12-16-2022)

Suit to Collect Estate Tax under General Law

- (1) When estate tax is owed, IRC 7404 allows the government to file suit for the purpose of collecting the tax under any provision of federal or state law.
- (2) Actions under state law may include the following:
 - **Suit to establish personal liability of transferees of probate property:** Many state laws provide that a creditor of an estate may bring a direct cause of action under state law against the recipients of probate property if the creditor was not paid by the estate before the assets were distributed.
 - **Suit or motion to intervene in a probate court proceeding to demand payment on a government debt, for an annual accounting from the fiduciary, or to appoint a new fiduciary:** Such actions might be considered in cases when the probate estate has sufficient assets to pay the government's claim, but the assets are under the probate court's control, and there has been a delay in payment to the government.
 - **Suit to enforce a surety bond:** This includes a fiduciary's surety bond, a surety bond provided to the IRS for an IRC 6161 extension of time to pay estate tax, or a surety bond provided to the IRS for an IRC 6166 election for an extension of time to pay estate tax that is attributable to an interest in a closely held business.
 - **Suit to establish a fiduciary's liability to the government under state law:** For example, the fiduciary fails to take required actions such as failure to gather the assets of the estate to pay the tax, or the fiduciary pays lower priority claims instead of making payments to the government.
- (3) When other federal remedies are not available or will not be productive, consult with Counsel, if needed, regarding these types of state law actions and the facts needed for a referral to bring such an action.

5.5.7.22.4.5
(12-16-2022)

Writing a Narrative for an Estate Tax Suit Referral

- (1) When writing your narrative report on an estate tax suit referral, focus on the points below.
- (2) Introduction:
 - Name of the estate
 - Type of tax and balance outstanding

- Date of death
- Collection statute expiration date (CSED)
- IRC 6324(a)(1) estate tax lien expiration date
- Notification of a need for urgent action on the suit

(3) Basis for assessment:

- Date the tax return was filed
- Tax assessed and date of assessment
- Additional tax assessments and date of assessments
- Location of Tax Court proceedings
- Information on any supplemental or amended returns filed by the estate
- Collection statute expiration date based on the assessment of the tax
- Details regarding any IRC 6161 extensions of time to pay estate tax or IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election

(4) Summary of Administrative Actions:

- Chronological statement of facts supported by exhibits.
- Prepare a timeline and consider preparing a spreadsheet to track and summarize information about the different properties.
- From this spreadsheet, create a list of properties that the estate tax lien and the IRC 6321 assessment lien had attached to and any property that was distributed subject to the IRC 6324(a)(1) estate tax lien or IRC 6321 assessment lien.

(5) Address tax liens:

- Address whether the ten-year estate tax lien is currently in effect or notate when it expired.
- Provide information on any filed Notices of Federal Tax Liens and on collection due process notices.

(6) Provide details of the property subject to collection or foreclosure action. For real estate:

- Street address
- Legal description
- Information on who has title or current ownership of the asset
- Information on the current owner's relationship to the estate

(7) For personal property:

- Description of the asset
- Information on who has title or current ownership of the asset
- Information on the current owner's relationship to the estate

(8) For stock in a corporation:

- Corporation's articles of organization and by-laws.
- Provide information to confirm if the corporation is still active and authorized to do business under state law.
- Provide information about the assets held inside of the entity such as whether the entity operates a business, holds real estate, or has cash or marketable securities that could be easily liquidated. Include information about the value of those assets.

- (9) Indicate the value of the property and encumbrances on the property to establish the equity:
- Indicate the fair market value.
 - Secure copies of liens, creditor claims, deeds of trust, Uniform Commercial Code (UCC) financing statements, judgments, or other encumbrances that have been filed against or attached to the property. Copies of documents with the date and recording number references are preferred to evaluate lien priority.
 - Information on unpaid local property taxes on real estate or personal property.
- (10) Documents to include:
- Account transcripts and Integrated Collection System (ICS) history
 - Copies of notice and demand and any other required statutory notices
 - Administrative files such as the estate tax return with Estate and Gift (E&G) examination files, IRS Independent Office of Appeals, Collection, or Campus E&G files
 - Any correspondence concerning the taxpayer's position
- (11) Partnership agreements and LLC documents
- (12) Property in a Trust:
- Trust agreements, or document establishing the trust
 - Trusts established by the terms of a will
- (13) Probate Records:
- Indicate if the probate is open or closed.
 - Indicate if the assets are subject to the court's supervision, or if they are being administered independently.
 - List assets in the probate to include an inventory and valuations.
 - Annual accountings.
 - Any settlement documents with beneficiaries.
 - Docket sheet.
- (14) Name of all personal representatives or trustees:
- Addresses for service of process.
 - Authorized representative contact information for the personal representative or trustee.
 - If the personal representative posted a bond, address the terms of the bond.
- (15) Summation and statement of type of suit being recommended, for example:
- If seeking personal liability, provide information on that individual.
 - Summarize the type of suit, such as suit to foreclose a tax lien or to intervene in a court action.
- (16) Provide your contact information and contact information for other IRS employees who worked the case. DOJ may need to contact you with questions or need assistance.

- (17) For further guidance on preparation of suit referrals, see IRM 5.17.4, Suits by the United States, IRM 5.17.12, Investigations and Reports, IRM 25.3.1, General Guidelines, IRM 25.3.2, Suits by the United States, and *Knowledge Management Litigation*.

5.5.7.23
(12-16-2022)
**Unfiled Estate Tax
Returns**

- (1) You may receive a delinquent return investigation to secure an unfiled estate tax return. This may result from an expired extension of time to file. If your investigation reveals that an estate is required to file an estate tax return, secure the return as quickly as possible because, even though the return has not been filed, the ten-year estate tax lien continues to run.
- (2) If the executor is unable to prepare a complete return due to lack of information regarding some of the estate assets, they are still required to file a return to include all the information the executor does have available. The executor should include a full description of the property that the executor lacks sufficient information on and the name of every person who holds a legal or beneficial interest in that property. See IRC 6018, Estate tax returns.
- (3) 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.
 - If an extension of time to file request was made by the estate, summons for the work papers of the executor or of the attorney or accounting firm that prepared the request.
 - Conduct a county records check on the decedent for assets owned at date of death or any assets transferred prior or after death.
 - Check probate records to see if there is any inventory and appraisals of estate assets. Determine if there is any litigation related to the estate assets.
 - Determine if property was transferred to trusts and obtain any trust documents.
 - Check Integrated Data Retrieval System (IDRS) Command Code (CC) IRPTR for information on the decedent's interest in stocks, savings accounts, or other accounts. IRPTR may reflect changes in income, sales, or mortgage interest reported.
 - Check the decedent's Form 1040, U.S. Individual Income Tax Return, for the year of death and for prior years for assets the decedent owned.
 - Review *Accurint* for any information on the decedent's assets.
 - Check IDRS CC BMFOL to see if gift tax returns were filed for gifts made by the decedent prior to death.
- (4) If Collection encounters a potential estate tax non-filer, submit a request for assistance from E&G Examination through the *Specialist Referral System*. The referral will be assigned to an E&G Examination employee to determine if the estate tax return should be filed and to determine the amount of tax due. E&G Examination may request that you complete a *Referral to Estate and Gift Tax Program Form* with relevant documentation such as copies of returns and information regarding omitted assets.
- (5) For suggested summons language for estate tax returns see IRM 5.5.7.19, Summons for Estate Tax Information.

Exhibit 5.5.7-1 (12-16-2022)**Pattern Letter P-300 Revised for Estates****Area Director Letterhead**

[AREA DIRECTOR LETTERHEAD]

Date:

Name and address of Executor and Estate:

Name of IRS Contact:

Contact Telephone Number:

{Salutation}

Our records show the principal named above has not paid the tax liability for which a surety bond in the amount of \$[amount] was executed by, [name of surety], as surety. Consequently, we demand that [name of surety] pay the full amount of the bond within 30 days of the date of this letter. Please mail a payment to the United States Treasury in this amount of \$ ____ to the IRS representative at the address above.

If the amount of the bond is not paid within 30 days, the Internal Revenue Service may request that Department of Justice file a suit against [name of surety] to enforce the bond.

If you have any questions, please contact the Internal Revenue Service representative whose name and telephone number listed above.

Sincerely yours,

Area Director

cc: (copy to estate executor)

