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From:

Sent: Wednesday, May 15, 2013 12:27:18

To:

Cc:

Subject: FW: Deceased Taxpayers and the authority of their Fiduciaries Question

Please disregard the information I provided by telephone last month about these issues.

For your Case A, we should not rely on a Form 870 or 872 signed by the distributee, and we should not have her sign delinquent returns for the decedent. Rather, as we discussed, because the decedent was a non-filer, the ASEDs remain open and exam should prepare 6020 returns and issue stat notices. The RA may continue to accept information from the distributee and CPA and may use that information in preparing the 6020s and stat notices, allowing itemized deductions if appropriate.

We're going to look into Case B a bit further and get back to you.

Thanks,

Original scenarios:

Case A

In the first case, the deceased taxpayer is a non-filer. The only assets existing at the time of death was a bank account that was held by the taxpayer, her daughter, and her daughter's husband. The signature cards of the bank account show all three names. There was no will. Based upon these facts it appears that the daughter is a "distributee". Per Treas. Reg. § 601.503(d)(iv) a distributee can sign a Form 56.

Please let me know who I can talk to in the National Office to confirm whether the taxpayer's daughter is a fiduciary that can file a Form 56 as a "distributee", as well as sign a Form 2848, statute extensions, and any delinquent returns on behalf of the deceased taxpayer.

Case B

In the second case, the taxpayer created a revocable trust before he died. All his assets were transferred to this trust before his death. He also had a will. A personal representative was named in the will. The personal representative is also one of the trustees of the revocable trust. The will was not probated. Based upon these facts it appears that the trustees are "testamentary trustees". Per Treas. Reg. § 601.503(d)(ii) a testamentary trustee can sign a Form 56.

Please let me know who I can talk to in the National Office to confirm whether the trustees are fiduciaries that can file Forms 56 as "testamentary trustees", as well as sign a Form 2848, statute extensions (including FBAR penalty statute extensions), and any delinquent returns on behalf of the deceased taxpayer.