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**From:**

**Sent:** Thursday, January 09, 2020 12:48:01 PM

**To:**

**Cc:**

**Bcc:**

**Subject:** RE: Decedent case

—It is my understanding that the basic issue raised by TAS in this case is whether the CSED was properly tolled pursuant to IRC 6503(b) due to the informal probate proceeding. In other words, TAS is asking whether the deceased TP's assets were deemed to be "in the control or custody of the court" during the informal probate proceeding such that the CSED was suspended pursuant to 6503(b). I have reviewed various sources and have been unable to find much guidance or authority specifically addressing the extent to which suspension under 6503(b) is applicable to informal/unsupervised probate proceedings in (or elsewhere).

As you are aware, IRM 5.5.1.6(7) provides as follows: "If the proceeding is independent, unsupervised or informal, then assets of the deceased are not under control of the probate court. Collection action may be pursued." There appear to be several other IRM provisions with similar language including: IRM 5.5.1.9, IRM 5.5.1.3, and IRM 5.5.7.8. In addition, Legal Reference Guide/IRM 5.17.13.9.1(3) explains that "Property will not be in the custody of the court if: (a) There is no judicial probate proceeding (e.g., there is an informal non-judicial proceeding, or no proceeding at all)."

Although I was unable to find any case law or other authority directly on point, I did find a recent 6<sup>th</sup> Circuit decision that discussed similar circumstances and whether the CSED had expired. See *United States v. Estate of Chicorel*, 907 F.3d 896 (6<sup>th</sup> Cir. 2018). In *Chicorel*, the government was seeking to collect taxes owed by the decedent TP and filed a claim in connection with the decedent's unsupervised probate proceeding. The claim was filed several years prior to the expiration of the CSED. Because no action was taken by the personal representative to pay the claim, the Service ultimately, after waiting 7 years, filed a suit to reduce the unpaid tax(es) to judgment. By the time the government filed the collection suit, the CSED had expired (barring any CSED suspension).

As explained in the opinion, the government argued that it had satisfied the IRC 6502 collection statute "by filing its proof of claim in [decedent's] probate proceeding" in part because the filing of the claim constitutes "a proceeding in court for purposes of [IRC] 6502(a)." Id. at 898. In this regard, the court explained that "[w]hether a proof of claim is a 'proceeding in court' is a question of federal law that necessarily turns on the

nature, function, and effect of the proof of claim under state law.” Id. After discussing the effect of filing such a claim under Michigan law, the court ultimately agreed with the Service that the filing of the claim in the probate proceeding satisfied the 6502(a) CSED requirement.

It is interesting to note that the government indicated in its answering brief that to the extent the court disagrees that the filing of the claim itself satisfies the 6502 CSED requirement, the government’s motion for summary judgment in the lower court reserved the right to argue that the CSED is otherwise suspended pursuant to 6503(b) because the decedent’s assets were in the control or custody of the court during the unsupervised probate proceeding. The decedent’s estate, on the other hand, argued in its brief that the “assets of a decedent in unsupervised probate proceedings . . . are not under the custody and control of the probate court.” This issue was not addressed by the 6<sup>th</sup> Circuit.

Bottom line, I have thus far not been able to find any clear on point case or other authority definitively addressing or answering the specific issue raised by TAS in connection with this informal probate case. [REDACTED]

[REDACTED] The ultimate question here is whether the Service should be permitted to keep the payment from the personal representative (PR) under these circumstances. [REDACTED]

[REDACTED]

Please let me know if you have any additional questions or would like to discuss this matter further.