



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.5.2

APRIL 28, 2023

EFFECTIVE DATE

(04-28-2023)

PURPOSE

- (1) This transmits revised IRM 5.5.2, Decedent Estates and Estate Tax, Probate Proceedings.

BACKGROUND

- (1) This IRM is being revised to include the addition of internal controls, program scope and objectives and other editorial changes to meet current IRM standards.

MATERIAL CHANGES

- (1) Created subsection 5.5.2.1, Program Scope and Objectives.
- (2) Created subsection 5.5.2.1.1, Background.
- (3) Created subsection 5.5.2.1.2, Authority.
- (4) Created subsection 5.5.2.1.3, Roles and Responsibilities.
- (5) Created subsection 5.5.2.1.4, Program Management and Review.
- (6) Created subsection 5.5.2.1.5, Program Controls.
- (7) Created subsection 5.5.2.1.6, Terms and Acronyms
- (8) Created subsection 5.5.2.1.7, Related Resources
- (9) Updated subsection 5.5.2.7, to correct web links and formatting of text.
- (10) Minor editorial changes have been made throughout this IRM. Website addresses, legal references, and IRM references were reviewed and updated as necessary.

EFFECT ON OTHER DOCUMENTS

This supersedes IRM 5.5.2, Probate Proceedings, dated April 5, 2012.

AUDIENCE

Small Business/Self-Employed Collection Employees

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5.5.2
Probate Proceedings

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5.5.2.1
(04-28-2023)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides information on probate proceedings and identifies the need for administrative or judicial action on decedent cases. Use the information in this section to guide you through probate proceedings and to evaluate and protect the government’s interest during these proceedings.
- (2) **Audience:** The guidance in this IRM is specifically intended for revenue officers, advisors and managers, although other employees in SB/SE and in other functions may find them useful.
- (3) **Policy Owner:** Director, Collection Policy, SB/SE.
- (4) **Program Owner:** Collection Policy, SB/SE, Global Strategic Compliance.
- (5) **Primary Stakeholders:** SB/SE Collection and Chief Counsel.
- (6) **Program Goals:** When a taxpayer dies owing federal taxes, IRS employees must understand the progression of probate proceedings and the time-sensitive deadlines that must be met to protect the Government’s interests. They must also be aware of how to determine which expenses are allowable, the priority of the federal tax lien, and the differences between solvent and insolvent estates, as these factors influence the actions that must be taken. By following the procedures in this IRM, employees will understand these matters and how to correctly handle them.

5.5.2.1.1
(04-28-2023)
Background

- (1) This IRM section contains procedures, guidance, and information primarily for revenue officers and revenue officer advisors. The content includes procedures related to the collection of decedent accounts, understanding the workings of probate proceedings and emphasizing the time sensitive deadlines that come with these proceedings.

5.5.2.1.2
(04-28-2023)
Authority

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

5.5.2.1.3
(04-28-2023)
Roles and Responsibilities

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

5.5.2.1.4
(04-28-2023)
Program Management and Review

- (1) Per IRM 1.4.50, Resource Guide for Managers, Collection Group Manager, Territory Manager and Area Director Operational Aid, and IRM 1.4.53, Advisory and Property Appraisal and Liquidation Specialist Group Manager Operational Aid, group managers are required to review ICS and Entity reports on a monthly basis to ensure cases are being effectively worked and ensure compliance with this IRM.

5.5.2.1.5
(04-28-2023)
Program Controls

- (1) The Integrated Collection System (ICS) is used to control decedent accounts and document case work.

- (2) The ENTITY Case Management System can also generate certain, unique reports to assist in managing assigned inventory.

5.5.2.1.6
(04-28-2023)

Terms and Acronyms

- (1) The following table includes common acronyms used in decedent tax cases:

Acronym	Definition
CEASO	Civil Enforcement Advice and Support Operations
DOJ	Department of Justice
FTD	Federal Tax Deposit
ICS	Integrated Collection System
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
NFTL	Notice of Federal Tax Lien
USC	United States Code

5.5.2.1.7
(04-28-2023)

Related Resources

- (1) IRM resources include:
- IRM 5.5.1, Decedent and Estate Tax Accounts
 - IRM 5.5.3, Working Decedent Cases
 - IRM 5.5.4, Proof of Claim Procedures in Decedent Cases
 - IRM 5.17.13, Legal Reference Guide for Revenue Officers, Insolvency and Decedent Estates
- (2) Publication 559, Survivors, Executors, and Administrators

5.5.2.2
(02-01-2011)

Progression of Probate Proceedings

- (1) This section provides the general steps taken in probate proceedings. These steps will vary based on state law and the type of administration (dependent or independent). Since laws vary from state to state you should conduct internet research on probate law for the state you work and check your local law guide.
1. The first step is usually to apply for administration or probate of the will if there is one. An executor or administrator is then appointed by the will or by the court. Typically probate bond requirements are determined during this step. Sometimes, the court will approve administration without court intervention indicating an independent (or unsupervised) administration. Requirements may be outlined in the will or in the letters testamentary.
 2. The estate administrator is responsible for gathering the decedent's assets and placing them under the administrator's control. They are given possession and control of the decedent's assets and are charged with the payment of the decedent's debts. Typically the estate administrator will open accounts in the name of the estate and contract a bond if required.
 3. The estate administrator must file an inventory of the estate assets with the probate court. State statutes will dictate the time period in which the inventory needs to be filed, generally it is within 90 days of appointment

of the estate administrator. All property and debts of the decedent are listed in the inventory with a value at the time of death.

4. A newspaper notice is published notifying the creditors of the decedent's death and creditor's obligation to present claims for payment. Claims include all debts incurred by the decedent prior to their death. State statutes define a time period, usually 30 to 90 days, in which claims must be filed for consideration. A Notice of Creditors may be sent to known lienholders requesting a claim to be filed within a specific time period. The notice may indicate that untimely claims will be barred forever.
 5. At the end of the specified period to file claims the estate administrator determines the claims to be paid, in whole or in part, in accordance with statutory provisions. They must also resolve payment of expenses related to estate administration, such as funeral expenses, legal fees, cost of notices and any expenses related to maintenance of the decedent's property after death. A Notice or Petition of Proposed Distribution that outlines the claims to be paid and the amount to be paid, is usually filed with the court for the judge's approval.
 6. The estate administrator is responsible for filing tax returns, including applicable tax returns in accordance with federal or state laws.
 7. When all debts, expenses and taxes have been paid the estate administrator files a final accounting. This accounting informs the court and beneficiaries of all property and income received, expenses paid and amount remaining for distribution.
 8. When the final accounting is approved, the court will order the estate administrator to distribute the assets of the estate.
 9. After distribution the estate administrator files an affidavit of closing with the court. If a probate bond was required the court (or court order) notifies the surety company that the estate administrator has complied with all the orders and the bond is terminated.
- (2) Actions taken in probate proceedings are noted on a docket sheet. The docket sheet should be copied (or printed if available electronically) and added to your case file. The docket sheet will outline what has happened in the proceeding, such as orders, hearings, filings or motions.
 - (3) Collection actions may continue during probate proceedings unless the assets are under the control of the court in a dependent, supervised or formal proceeding. The following IRM sections provide guidance concerning collection actions: IRM 5.5.1.5, Probate and Non-Probate Property, IRM 5.5.1.6, General Information on Probate Proceedings, and IRM 5.5.3, Working Decedent Cases, which has numerous pertinent sections.

5.5.2.3
(04-05-2012)
**Providing Notification of
Federal Taxes Due**

- (1) Three forms are used to notify the estate administrator or the probate court of taxes due, they are:
 - Form 10492, Notice of Federal Taxes Due
 - Form 4490, Proof of Claim for Internal Revenue Taxes
 - Form 2373, Statement of Internal Revenue Taxes Due as an Expense of Administration of an Estate
- (2) Form 10492 is prepared by revenue officers and advisors to show the taxes accrued by the taxpayer prior to the taxpayer's death. This form also cautions administrators of potential personal liability if taxes are not paid. Generally state probate courts will not accept this form as a substitute for a creditor claim

presented for payment. This form should be sent to the estate administrator or a successor administrator as soon as the Service learns who has authority over estate assets.

- (3) Form 4490 is a proof of claim. It is a written statement that sets forth a claim against the probate estate of a deceased debtor for tax liabilities accrued prior to death. This form is prepared and monitored by advisors. State statutes will specify if the claim should be filed with the court or mailed/presented to the estate administrator. Generally a proof of claim should be sent to the estate administrator and should also be filed with the court in all probate proceedings unless the local law guide specifies otherwise. IRM 5.5.4, Proof of Claim Procedures in Decedent Cases, provides further guidance on filing proofs of claim.
- (4) Form 2373 is used to show taxes that have accrued after the probate proceeding has commenced. Typically taxes reflected on this form result from estate income tax (Form 1041), payroll taxes for a business operated after death of the taxpayer or excise taxes. This form is filed with the court. IRM 5.5.2.6.1.1.1, Claiming Taxes as an Administrative Expense, provides guidance on use of this form.
- (5) The ICS history must be documented to reflect the date on which a form is sent to an estate administrator to establish when they were put on notice of taxes due. Consideration should be given to sending these forms by certified mail and a copy should be maintained with the case file.
- (6) If a successor administrator is appointed, notice of taxes due must be sent to make the new administrator aware of the outstanding tax liability or unfiled returns. If notice was sent to the prior administrator send a copy of that notice to the successor administrator.

5.5.2.4 (04-05-2012)

Priority of the Federal Tax Lien

- (1) If a Notice of Federal Tax Lien (NFTL) has been recorded against a taxpayer during their lifetime, its priority is preserved after death and valid against other creditors (except as provided in IRC section 6323), including future beneficiaries whose claims come into existence subsequent to the Federal tax lien (they are debts of the **estate**).
- (2) The death of the debtor does not extinguish the federal tax lien, nor affect the priority among multiple security interests in the debtor's property.
- (3) Federal law controls in situations in which a federal tax lien competes with any interest under state law or by contract. However, the Service **may in its discretion** not assert priority of its federal tax lien over reasonable administrative expenses of the estate, to the extent that such expenses are not covered by an insurance policy, trust or other similar benefit that covers the cost of administrative expenses of the estate. State statutes may limit the amount of reasonable administrative expenses permitted to be paid during probate.
- (4) A state statute may not subordinate a federal tax lien to interests that Congress has not specifically permitted to prime the lien. State law is nullified to the extent that it conflicts with federal law.
- (5) IRC 6323(a) provides that specific valid liens on the decedent's property that were fully perfected prior to the NFTL will have priority.
- (6) When an issue arises concerning priority of the federal tax lien, particularly in a court proceeding, consult with Area Counsel. For further guidance on referrals

see IRM 5.5.2.10, Referral to Area Counsel for Judicial Action.

- (7) For additional guidance on federal tax lien preparation, filing and attachment see IRM 5.5.3.6, Notice of Federal Tax Lien.

5.5.2.5
(02-01-2011)
Solvent or Insolvent Estate

- (1) A solvent estate is one in which the value of estate assets exceeds the estate's debts.
- (2) An insolvent estate is one that has insufficient assets or equity in assets to cover its debt. A **no asset** estate is a type of insolvent estate from which there is nothing to collect. Although there may be assets in this type of insolvent estate, the assets have little or no equity. If there actually are no assets then it is unlikely there is a need for a probate proceeding.
- (3) **Insolvent estate** is a broadly used term. Some documents use the term **insolvent estate** to refer to estates that cannot pay **all** claims presented. After priority claims are paid the estate is then insolvent to pay the full amount of all other (lower priority) claims. For this reason it is very important that notices of proposed distribution are carefully reviewed to make sure a federal tax claim is in the proper payment category. If the federal tax claim is not in the proper payment category Counsel should be consulted on judicial action necessary to ensure payment. Review federal law concerning priority of federal and state taxes.
- (4) Creditors within a given class or category are paid on a pro rata basis when there is not enough money to pay all of the creditors in that class or category.
- (5) Before any money can be distributed to beneficiaries all the debts of the deceased must be paid, including the funeral bill, any medical bills, taxes and credit cards. This might require the sale of assets if the deceased did not set aside enough to cover all debts.
- (6) A declining real estate and securities market may impact the administration of probate estates. An estate administrator may discover that an estate that was solvent at inception has suddenly become insolvent. In such case, the administrator may need to act swiftly to properly administer and settle the estate to avoid potential personal liability.

5.5.2.6
(04-05-2012)
Administrative Expenses

- (1) Expenses related to the decedent's estate are known as **administrative expenses**. They include any expenses related to maintenance of the decedent's property incurred after the decedent's death. Expenses are paid from the estate before assets are distributed to the beneficiaries or heirs.
- (2) The Service **in its discretion** may permit reasonable, necessary expenses to be paid before a federal tax lien. Such expenses must be examined to determine if an expense is reasonable and necessary to the administration of the estate. Reasonable and necessary expenses should not be permitted ahead of a tax lien if such expenses are already covered by an insurance policy, trust or other similar benefit that covers such costs. State statutes may limit the amount permitted to be paid for administrative expenses in probate. Inform the administrator that such planned expense payments may not be made prior to tax payments. Contact Area Counsel if an administrator refuses to pay a tax lien. For more information see IRM 5.5.2.4, Priority of the Federal Tax Lien, and IRM 5.5.2.10, Referral to Area Counsel for Judicial Action.

- (3) The major expenses of probate include:
- a. **the court filing fee** - some states set filing fees based on the value of the estate's assets, other states may have a set fee schedule
 - b. **personal representative (executor or administrator) fee** - an estate administrator may charge a fee for services. In some states the amount is regulated by statute and in others it is what is reasonable for the work performed. If the estate administrator is derelict in carrying out their duties, the court may even reduce or deny compensation.
 - c. **posting a bond** - if the estate administrator is asked to post bond, this is to protect heirs and creditors from being harmed by the negligence or malfeasance of the administrator. In such cases, the bond will make the estate whole again. It is like an insurance policy. Obtaining a probate bond can be costly and depends on the value of the property subject to the bond.
 - d. **publication and legal notices** - a publication fee is charged by the local newspaper, which announces the person's death and how interested parties/creditors can contact the attorney or file a claim.
 - e. **tax preparer fees** - expenses may be incurred for preparation of pre death income tax returns, estate tax returns, estate income tax returns or business tax returns if a sole proprietorship or partnership is in the estate.
 - f. **property appraisals** - an appraisal is sometimes necessary for real or personal property such as jewelry or artwork. The fee may be statutory or based on a percentage of the appraisal of the appraised value of the asset.
 - g. **attorney fees** - this is usually the largest expense of probate. In some states the attorney's fees are set as a flat amount. In others, they are based on the size and complexity of the estate.
 - h. **funeral expenses** - may be paid from the estate, a trust or by a burial or life insurance policy. Typically a burial insurance policy has a specified coverage limit, see IRM 5.5.2.7, for further discussion on insurance policies.
 - i. **family allowance** - the family allowance is an award made to the surviving spouse and the minor children to live on during the administration of the estate. The dollar amount of these allowances are usually addressed in the state probate provisions. The family may also receive proceeds from a life insurance policy that may be payable to the spouse or the estate at death.
- (4) The estate administrator must carefully examine the accuracy and validity of claims/expenses submitted and, if appropriate compromise and settle such administrative expense claims.
- (5) In accordance with state law, claims and expenses are categorized for priority in which they will be paid. For federal tax claims, federal law controls the priority of payments of federal tax liens. To the extent there is a conflict between state and federal law, federal law controls. Contact Area Counsel for guidance.

5.5.2.6.1
(04-05-2012)

**Reasonable
Administrative Expenses**

- (1) If a Notice of Federal Tax Lien (NFTL) has been recorded against a taxpayer during their lifetime, its priority is preserved after death and valid against other creditors (except as provided in IRC section 6323), including future beneficiaries whose claims come into existence subsequent to the Federal tax lien (they are debts of the **estate**). See IRM 5.5.2.4, concerning lien priority.

- (2) Reasonable administrative expenses are limited to expenses for preserving and marshalling estate assets. Consider how the allowance of this expense benefits the Government giving up its lien position.
- (3) Generally there are state law provisions that dictate **reasonable expenses**. Some state law guidelines are based on the size of the estate, other provisions allow a set percentage to be paid as an allowable expense. Some expenses can be negotiated to a certain extent by the estate administrator, others such as court filing fees are not negotiable. State standards should be considered, **but are not controlling**, when making a determination if fees charged are unreasonable.
- (4) Research local probate codes to determine if your state has set guidelines for reasonable expense allowances. Local law guides on the *Local Law Guides* intranet web site may also provide this information.
- (5) Even where there is a statutory amount set out by state law, this may be a maximum, not a mandatory amount. The estate administrator has the authority to compromise expenses submitted for payment if it is reasonable to do so and beneficial to the estate.

5.5.2.6.1.1
(04-05-2012)

**Necessary
Administrative Expenses**

- (1) When determining allowance for necessary administrative expenses, consider the following factors:
 - a. **What is necessary to maintain the asset until it is transferred to a beneficiary? Those expenses that are necessary to administer the estate assets in accordance with the will or state law distribution due to the taxpayer dying intestate.** For example, a beneficiary is living in the decedent's home and incurs normal living expenses such as water bills, heating bills and pool cleaning, these normal living expenses for the beneficiary are not allowed. A necessary expense would be a payment such as insurance and property tax payments, to protect the property from damage or foreclosure.
 - b. **Expenses incurred to transfer or clear title to beneficiary or third parties** - limited to expenses that are the result of settling the decedent's interest in the property or vesting good title to the property in the name of the beneficiaries or third parties. An example would be for a vehicle that is devised to a beneficiary, a necessary expense would be to title the car to the beneficiary but not to make any repairs. By will or state law the beneficiary may inherit the property but the estate administrator is not required to repair property before transferring it to the beneficiary. If a piece of real property is being sold, only attorney fees for title work and expenses to vest good title will be considered an expense.
 - c. **When are attorney fees excessive?** Check local probate code to determine if thresholds have been established. The attorney's billing statements will provide information on what actions the attorney has taken on behalf of the estate to generate the fees. These commissions or fees should be limited to expenses for preserving or marshalling estate assets. Fees that have not been incurred or are estimated are not allowable.
 - d. **Attorney fees incidental to litigation incurred by the beneficiaries are expenses charged against the beneficiaries personally and are not administration expenses.** The Service needs to carefully consider attorney fees that are charged for litigation concerning assets when it is unlikely that after payment of taxes and other creditors these assets

would be transferred to beneficiaries. For example, beneficiaries are suing the estate for ownership of a house but the house must be sold to pay claims against the estate. Therefore attorney fees should not be allowed since the asset must be sold to pay claims and it is unlikely the beneficiary would receive the property because liquidation of this asset is necessary to pay claims before a distribution can be made. Fees may be deemed unreasonable if they are incurred in support of unreasonable activity, such as positions that are frivolous or without substantial merit.

Note: Attorney's lien under state law arising from the recovery of money for the estate may be entitled to priority over a tax lien for which a NFTL is filed under IRC 6323(b).

- e. **Family allowance** - this expense is **not** considered an administrative expense of the estate. In limited circumstances, the Service can exercise discretion to allow payment ahead of a tax lien. Consideration needs to be given to circumstances such as whether there are minor children who do not have another parent to support them. For example, if the surviving parent has sufficient income, trust distributions or life insurance proceeds to support minor or incapacitated children this payment would not be allowed ahead of the tax lien. To determine income the Form 1040, Individual Income Tax Return, may provide information, also see IRM 5.5.2.7, Insurance Policies, and IRM 5.5.2.11, Reporting Estate Income. The estate administrator may also be able to provide information.
- (2) Miscellaneous administration expenses necessarily incurred in preserving and distributing the estate are allowable. These expenses include appraiser's and accountant fees, certain court costs, and costs of storing or maintaining assets of the estate.
 - (3) The expenses of selling assets are allowable only if the sale is necessary to pay the decedent's debts, the expenses of administration, or taxes, or to preserve the estate or carry out distribution.
 - (4) Employees are required to request and review documents that substantiate expenses such as itemized statements of service, invoices for payment, etc. If documentation cannot be provided, employees should not permit these expenses to be paid ahead of a decedent's federal taxes (similar to deductions on a Form 1040 - if deductions cannot be substantiated they are not allowed). Statements should include the exact nature of the claim, the name of the creditor, and the time period covered by the claim.
 - (5) Property taxes are only necessary administrative expenses if they accrue after death.
 - (6) Inquire what non-probate assets the heirs received. Non-probate assets such as life insurance, burial policies, certificates of deposit, jointly held bank accounts or investment accounts that are payable on death and do not go through probate. These non-probate assets provide immediate cash at death to pay expenses, debts and final income taxes.
 - (7) If provision for payment of funeral and administrative expenses is made by insurance, a trust or otherwise these expenses should not be permitted to be paid ahead of federal taxes to the extent non-probate assets are available. Only amounts not reimbursed by insurance or otherwise will be allowed ahead

of taxes. In the case of a trust that provides for payment of estate administration expenses the trust document will need to be secured and provisions for payment reviewed.

- (8) Employees must inquire about pre-paid funeral plans, burial and insurance policies payable to the estate that provide for payment of administrative expenses. If these type of provisions have been made by the decedent, payment of such expenses should not be allowed ahead of a claim for unpaid taxes accruing prior to death.
- (9) A general rule when considering allowance of funeral expenses is exclusion of items that benefit the attendees/beneficiaries rather than the deceased.
- (10) Expenses of a decedent's last illness are a debt of the decedent and not entitled to priority under 31 USC 3713.

5.5.2.6.1.1.1
(02-01-2011)

Claiming Taxes as an Administrative Expense

- (1) It is the responsibility of the estate administrator to control, maintain, and distribute entrusted property in a manner defined by law. Monitor taxes that accrue during a proceeding to ensure that timely claims are filed. The following types of liabilities may accrue during the administration of a proceeding:
 - payroll or income taxes from the operation of a business.
 - excise taxes.
 - income taxes for the estate (Form 1041).
- (2) When a fiduciary is appointed by the court to operate a decedent/insolvent business or to oversee the administration of an estate, send a letter to the fiduciary advising of the responsibility for filing and paying federal taxes under a new EIN as described in Pub. 1635, Understanding Your EIN and Pub. 559, Survivors, Executors and Administrators.
- (3) Use Form 2373, Statement of Internal Revenue Taxes Due as an Expense of Administration of an Estate, to claim taxes accrued during a court proceeding. This form should be filed with the court and a copy sent to the fiduciary responsible for paying the taxes, for example the fiduciary operating the business or overseeing the administration of the estate.
- (4) Federal Tax Deposit (FTD) Alerts are sent directly from Master File to Integrated Collection System (ICS) for assignment to a revenue officer to make contact within 15 calendar days of receipt of the alert. If an FTD alert is received follow guidelines in IRM 5.7.1, FTD Alerts, to determine if the estate/business is in compliance with tax deposit requirements and resolve the alert appropriately. If the business is not in compliance and there is an open probate proceeding the Form 2373 should be sent to the fiduciary responsible for paying the taxes. If advisory has an open Non-Field Other Investigation (NFOI) to monitor a proof of claim notify advisory to prepare and send the Form 2373.
- (5) If a person operating the business is different from the estate administrator and it is unclear whether the person operating the business is a fiduciary appointed by the court, send a Form 2373 to the estate administrator, in addition to the person operating the business.

5.5.2.7
(04-28-2023)

Insurance Policies

- (1) Life insurance is a contract between the insurer and the policy owner whereby a benefit is paid to the designated beneficiary if an insured event (death) occurs which is covered by the policy.

- (2) The beneficiary is designated in the policy contract and could be any of the following:
 - Spouse and/or children to provide for living expenses
 - Owner's estate to pay administrative expenses
 - A revocable trust, which may be funded by policy proceeds to pay administrative expenses
 - Owner's business to maintain operation of the business or to redeem stock of the owner at death, commonly known as **key man insurance**
- (3) Burial policies cover funeral expenses, such as mortuary expenses, casket, cemetery plot, paying off debt, the cost of administering probate or medical bills. The policy may cover specific products and services, or it may be written to make a lump sum payment to pay associated expenses. Secure a copy of the policy to determine coverage.
- (4) Quite often the IRS gets involved after these expenses are paid. Ensure these expenses or reimbursement of these expenses are not allowed ahead of payment of federal taxes accruing before death. Employees must inquire about insurance policies, trusts, or other similar benefits that cover administrative expenses, as well as state statutes that limit the amount permitted to be paid for administrative expenses in probate.
- (5) Internal research can be performed to see if a Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc., were issued to a beneficiary. Beneficiaries may be identified by a will, obituary, documents that reflect payable on death designations, such as signature cards on bank accounts, term documents of certificates of deposit, or a Form 712, Life Insurance Statement.
- (6) If the decedent was a veteran, expenses may have been paid by the Veteran's Administration as part of burial and memorial benefits. Information concerning burial benefits for veterans can be researched under the VA benefits and healthcare tab at www.VA.gov.

5.5.2.8
(02-01-2011)

Beneficiary Designation

- (1) An asset that has a beneficiary designation (such as a retirement account, a life insurance policy or a payable on death account) is not controlled by a will. Beneficiary designations will take precedence over the will. This type of account or policy won't have to go through probate.
- (2) An account or policy may have multiple beneficiaries designated. The primary beneficiary or beneficiaries inherit first. If they are dead or they die with the owner of the account or policy, the assets go to any secondary beneficiaries that have been designated.
- (3) If all of the transfer on death beneficiaries predecease the deceased owner, the proceeds may pass to the estate and become probate property, to be distributed in accordance with state probate law or the will. Area Counsel should be consulted in this type of circumstance before collection action is taken against the asset.

5.5.2.9
(04-05-2012)
Probate Bonds

- (1) In some proceedings the estate administrator will be required to post bond. A probate bond is a bond issued on the performance of an administrator. Its purpose is to protect heirs and creditors from being harmed by the negligence or malfeasance of the administrator. It is like an insurance policy. Obtaining a probate bond can be costly and the cost depends on the value of the property subject to the bond.
- (2) Requirements for a bond will be reflected in documents such as:
 - a. **the will** - which would designate an executor and typically specifies if this person has the authority to act with or without bond and whether court supervision is required (independent or dependent administration).
 - b. **letters testamentary** - the court will approve appointment of an estate administrator, set forth the type of administration (independent or dependent administration) and set the amount of a required bond.
- (3) If during probate proceedings the estate administrator requests that the bond amount be reduced, advisors should determine if the IRS debt has been acknowledged and whether the proposed reduced amount is of an adequate amount to pay all taxes due if necessary.
- (4) Probate bonds are a potential collection source in the event of administrator negligence or malfeasance. In this case, consult Area Counsel for advice as to how to file a claim in probate court to enforce liability on the probate bond. Be aware that generally a bond will be terminated after the estate proceedings are officially closed. If an estate proceeding has officially closed, consult Area Counsel.
- (5) The Service would have to authorize Department of Justice to make a claim on a bond, just like any other collection suit. See IRM 34.6.2.10.1, Action on Bonds.

5.5.2.10
(02-01-2011)
Referral to Area Counsel for Judicial Action

- (1) There will be circumstances when administrative actions are impractical or ineffective and a referral should be sent to Area Counsel to consider judicial action to maximize collection efforts. A referral or memorandum should outline facts of the case, issues in question, include the docket sheet, a complete history transcript, and all related documentation/correspondence that will assist in decision making on the issue referred.
- (2) See IRM 25.3.2, Litigation and Judgments - Suits by the United States, for information regarding requests for legal action against a taxpayer to collect unpaid taxes.
- (3) Depending on the issue involved, the following factors may need to be addressed when making a referral:
 - a. When was the assessment made; when was the lien recorded; when were estate assets distributed or sold?
 - b. Has the estate administrator been notified of the lien's priority and demand for payment made?
 - c. Is there any indication that the tax lien will not be paid ahead of other claims (such as distributions made to creditors other than those described in IRC 6323(a) through (c))?
 - d. Are unnecessary or unreasonable expenses accrued after death being paid ahead of the tax lien?

- e. Are heirs being reimbursed for expenses (such as funeral expenses) that were paid from insurance proceeds, non-probate assets or sources other than estate funds?
 - f. Are assets available to pay the taxes due?
 - g. Are estate assets involved in litigation with creditors that are not ahead of the tax lien?
 - h. If there is a situation where an estate administrator is not handling the estate affairs, not paying creditors or if expenses or claims are being improperly paid before taxes accrued against the decedent or the estate. It may be necessary to request appointment of a receiver or successor to handle affairs for the estate; another action that may be taken is to file a motion to compel an accounting.
- (4) Should you come across any of the following situations notify Area Counsel and make an expeditious referral as they may have a short time frame to respond to the court:
- a. Rejection of proofs of claim
 - b. Order or motion to appear in court
 - c. Competing lien issues, for example a suit to settle competing claims
 - d. Competing federal agencies for priority payment
 - e. Litigation involving assets in which an assessment has been made prior to death
 - f. Request for assistance from U.S. Attorney on a probate proceeding matter
 - g. Assistance when an estate administrator is not taking action to pay creditors or improperly paying expenses or claims of the decedent or the estate
 - h. Petition to sell property which does not provide for payment to IRS from sale proceeds
 - i. Anything in an application, motion, notice, objection, or petition filed with the Court that seeks to contest, defeat, dispute, disregard or misclassify the IRS claim, or which may have that effect. Time is of the essence in such cases because a notice of removal to the federal district court of any dispute of the merits of a federal tax assessment or lien must generally be filed within thirty days of receipt by the IRS of the initial pleading raising such an issue. It is essential that such issues be litigated in the federal courts whenever possible.

5.5.2.11
(04-05-2012)

Reporting Estate Income

- (1) A decedent's estate or trust is a separate legal entity for federal tax purposes. Every estate or trust that is required to file Form 1041, United States Income Tax Return for Estates and Trusts, must have an EIN.
- (2) The estate administrator or fiduciary of a decedent's estate or trust uses Form 1041 to report:
 - a. The income, deductions, gains, losses, etc., of the estate or trust
 - b. The income that is either accumulated or held for future distribution or distributed currently to the beneficiaries
 - c. Any income tax liability of the estate or trust
- (3) Refer to the instructions for Form 1041 for information regarding filing requirements, filing dates, estimated tax payments and income reported on various schedules.

- (4) Your compliance check should include verification if the estate is required to file Form 1041. If the Form 1041 has been filed it should be reviewed to determine income and assets of the estate or trust. Cross reference EIN's should be input to ICS.
- (5) Income and assets are reported on the first page of the Form 1041 on lines 1 through 9, you will find various types of income paid to the estate (interest, dividends, business income, rents, etc.).
- (6) The Schedule C, Profit or Loss from Business, provides information such as type of business, income and expenses deducted for assets owned.
- (7) The Schedule K-1 is used to report the beneficiary's share of the estate or trust. It gives names and SSN's, which is helpful if they need to be contacted concerning distributions received. The amounts on the K-1's will flow to the beneficiaries individual Forms 1040.
- (8) Be aware that the amount of interest the taxpayer receives depends on the type of investment, interest rate and length of investment. Determine the length of time required to earn the amounts reported. You may discover that an amount initially thought to be nominal is in fact worth pursuing. The amount could have been earned over a short period of time, while the estate was looking for somewhere else to invest money.
- (9) IRM 21.7.4.4, Income/Information Returns Research, contains information and adjustment procedures for income tax returns.

5.5.2.12
(04-05-2012)
**Forgiveness of
Decedent's Tax Liability
for Members of Armed
Forces Who Die in
Active Service**

- (1) Tax liability can be forgiven, or refunded if already paid, if while on active duty, a member of the U.S. Armed Forces dies in a combat zone, or from wounds, disease or injury incurred during active service in a combat zone.
- (2) This forgiveness applies to the year the death occurred, as well as any earlier tax year that ended after the member entered the combat zone.
- (3) Tax liability can be forgiven, or refunded if already paid, if a member of the U.S. Armed Forces dies from wounds or injury incurred in a terroristic or military action.
- (4) This forgiveness applies to the year the death occurred, as well as any earlier tax year beginning with the year before the year in which the wounds or injury occurred.
- (5) See IRC section 692 , Income taxes of members of Armed Forces, astronauts, and victims of certain terrorist attacks on death.

