



MANUAL TRANSMITTAL

Department of the Treasury
Internal Revenue Service

5.5.8

DECEMBER 16, 2022

EFFECTIVE DATE

(12-16-2022)

PURPOSE

- (1) This transmits a revision to IRM 5.5.8, Collecting Process, Decedent, Estate and Gift Taxes, Advisory Responsibilities for Processing Estate Tax Liens.

MATERIAL CHANGES

- (1) IRM 5.5.8.1, Updated information regarding the purpose, audience, and goals of Advisory responsibilities in the estate and gift tax program.
- (2) IRM 5.5.8.1.2, Updated links and added titles to IRC sections.
- (3) IRM 5.5.8.1.6, Added a subsection to address acronyms.
- (4) IRM 5.5.8.1.7, Added a subsection to address related resources.
- (5) IRM 5.5.8.4, Updated material to clarify that the special use valuation election provides a tax savings, and it is not a deduction. Added additional information regarding the special use valuation election. Clarified the title of the section. Made editorial changes to clarify material and updated links.
- (6) IRM 5.5.8.4.1, Updated material to address referrals from IRS Independent Office of Appeals. Removed references to personal property. Changed the order of information within this subsection to make it chronological. Added additional items that Advisory receives in a referral to file a lien. Added additional information needed for an IRC 2032A election and how to prepare the IRC 6324B lien. Made editorial changes to clarify material and updated links.
- (7) IRM 5.5.8.4.2, Addressed monitoring and releases of IRC 6324B liens in this subsection since information is interrelated. Updated material to clarify that the tax that is triggered on estates with special use valuation elections is an additional estate tax. Corrected the title in the subsection to reflect the material covered. Clarified information on periodic reviews of cases with the special use valuation election. Provided additional information on events that trigger the additional estate tax. Made editorial changes to clarify material and updated links.
- (8) IRM 5.5.8.4.3, Changed content and title to only address discharges of the IRC 6324B Notice of Federal Estate Tax Lien. Moved information on estate tax lien releases to IRM 5.5.8.4.2 since monitoring these accounts normally leads to a release at the end of the ten-year period following decedent's death. Added information on the forms used in a discharge of the IRC 6324B lien. Added procedures to follow on IRC 6324B lien discharges.
- (9) IRM 5.5.8.5, Updated material to provide further clarification of estate qualifications for IRC 6166 elections and the time frames for these elections. Added information on Campus Estate and Gift's role in monitoring these cases. Updated material to address referrals from IRS Independent Office of Appeals. Added additional information to review to file an IRC 6324A Notice of Federal Estate Tax Lien. Made editorial changes to clarify material and updated links. Moved information on securing collateral from IRM 5.5.8.5.1 so that all collateral information is consolidated into one IRM subsection. Updated title of this subsection to reflect collateral received on estates with IRC 6166 elections. Included information on the sources for referrals to Advisory.
- (10) IRM 5.5.8.5.1, Removed the reference to estates of decedents that died before 1997 since the installment period for those cases has expired. Made editorial changes to clarify material and

updated links. Moved information on securing collateral to IRM 5.5.8.5 so that all information on obtaining collateral is in one subsection. Updated title to reflect discussion on risk reviews. Added additional information on making risk determinations and clarified Advisory procedures.

- (11) IRM 5.5.8.18, Updated to provide more detailed information on IRC 6163 reversionary/remainder interest cases and to provide clear procedures for Advisory to follow on these cases. Clarified Campus role in monitoring these cases. Updated title to properly reflect the type of case discussed in this subsection. Provided information on IRC 6163(b) additional extensions to pay the tax. Made editorial changes to clarify material and updated links.
- (12) IRM 5.5.8.21, Added a new section to address general information on qualified domestic trust cases.
- (13) IRM 5.5.8.21.1, Added a new subsection to address qualified domestic trust requirements.
- (14) IRM 5.5.8.21.1.1, Added a new subsection to address qualified domestic trust bond and letter of credit requirements.
- (15) IRM 5.5.8.21.2, Added a new subsection to address Advisory Form 706-QDT procedures.
- (16) IRM 5.5.8.21.3, Added a new subsection to address Advisory qualified domestic trust collateral release procedures.
- (17) All sections - Removed the § symbol for all IRC references, fixed missing links, removed underlining, fixed items in quotation marks, and removed italics for form names and IRM sections to comply with new IRM format requirements.

EFFECT ON OTHER DOCUMENTS

This material supersedes IRM 5.5.8, dated May 31, 2019.

AUDIENCE

Small Business/Self Employed Collection Employees

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5.5.8

Advisory Responsibilities for Processing Estate Tax Liens

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5.5.8.1
(12-16-2022)
Program Scope and Objectives

- (1) **Purpose:** This IRM section provides guidance to Civil Enforcement Advice and Support Operations (CEASO) Advisory employees on actions to take to protect the government's interest on estate and gift tax collection cases.
- (2) **Audience:**
 - CEASO Advisory (Advisory) group managers
 - Advisory revenue officer advisors
 - Advisory tax examining technicians
- (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, these procedures include Chief Counsel, IRS Independent Office of Appeals, Estate and Gift Examination, Campus Estate and Gift, and the Taxpayer Advocate Service.
- (6) **Program Goals:** The estate tax and gift tax collection programs include guidance to Advisory employees:
 - To properly process and file Notices of Federal Estate Tax Liens.
 - To make proper determinations on estate tax lien releases, discharge requests, and subordination requests.
 - To secure and process collateral on remainder/reversionary interest and qualified domestic trust cases.

5.5.8.1.1
(07-24-2018)
Background

- (1) The Internal Revenue Code (IRC) provides the IRS a powerful tool allowing the government to protect the taxpaying public's interest in collecting the proper amount of tax revenues. This tool is the federal estate tax lien.
- (2) The federal estate tax lien provided under IRC 6324(a), which is sometimes called the "silent lien," is the basis for the Government's claim against the property of a taxpayer's estate and enables collection of the tax from a taxpayer's estate.
- (3) Throughout the life of the federal estate tax lien, situations may arise involving the lien. The resolution to these situations can vary and is guided by the IRC, Treasury Regulations (Regs), IRS policy, and IRM procedures.

5.5.8.1.2
(12-16-2022)
Authority

- (1) The authority for estate tax liens, related lien certificates, and collateral on special elections is found in the following IRC sections:
 - IRC 2032A, Valuation of certain farm, etc. real property
 - IRC 2056A, Qualified domestic trust
 - IRC 6161, Extension of time for paying tax
 - IRC 6163, Extension of time for payment of estate tax on value of reversionary or remainder interest in property
 - IRC 6165, Bonds where time to pay tax or deficiency has been extended
 - IRC 6166, Extension of time for payment of estate tax where estate consists largely of interest in closely held business
 - IRC 6321, Lien for taxes

- IRC 6324, Special liens for estate and gift taxes
- IRC 6324A, Special lien for estate tax deferred under section 6166
- IRC 6324B, Special lien for additional estate tax attributable to farm, etc., valuation
- IRC 6325, Release of lien or discharge of property

5.5.8.1.3
(07-24-2018)

**Roles and
Responsibilities**

- (1) The Director Collection Policy is responsible for overseeing policy and procedures regarding securing, processing and filing of notice of estate tax liens and related documents.
- (2) Employees that process estate tax liens are responsible for providing accurate information and accuracy of lien documents.
- (3) Employees authorized to make determinations regarding specific lien actions are responsible for ensuring procedures are properly followed.
- (4) Managers are responsible for ensuring that lien actions taken by employees are in accordance with policy and procedures.
- (5) Any employee who manually prepares or approves estate tax liens and lien related documents is responsible for ensuring the request or document is accurate and complete. The requestor/preparer is ultimately responsible to see that the estate tax lien document is filed appropriately.
- (6) The Centralized Lien Operation (CLO) has primary responsibility for filing estate tax lien documents.

5.5.8.1.4
(07-24-2018)

**Program Management
and Review**

- (1) The Integrated Collection System (ICS) is used to control lien-related processes worked by Advisory and document case work.
- (2) The ENTITY Case Management System can also generate certain, unique reports related to lien processes to assist in managing assigned inventory.

5.5.8.1.5
(07-24-2018)

Program Controls

- (1) Notice of estate tax liens are not maintained on ALS because these liens do not self release in ten years and may be in effect longer than 10 years. Advisory is primarily responsible for creating, monitoring and maintaining lien case files in accordance with retention guidance in IRM 5.5.8.19. Centralized Lien Operation is primarily responsible for sending notices of estate tax lien to recording offices with payment for associated lien fees.
- (2) Controls to monitor estate tax liens are established on ICS.
- (3) Authority to issue federal estate tax lien certificates is restricted to the following delegation orders:
 - IRM 1.2.2.6.4, Delegation Order 5-4, Federal Tax Lien Certificates
 - IRM 1.2.2.5.3, Delegation Order 4-3, Extension of Time to Pay Estate and Gift Taxes
 - IRM 1.2.2.14.4, Delegation Order 25-4, Authority to Grant Extensions of Time to File Income and Estate Tax Returns
 - IRM 1.2.65.3.11, Delegation Order 1-23-26, Authority to Sign Form 792
 - IRM 1.2.65.3.12, Delegation Order 1-23-27, Authority to Approve, Sign and Accept Bonds and Collateral Agreements
 - IRM 1.2.2.5.14, Delegation Order 4-16, Issuance of Transfer Certificates in Certain Estate Tax Cases

5.5.8.1.6
(12-16-2022)
Acronyms

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

| Acronym | Definition |
|---------|---|
| AC | Action Code |
| AIMS | Audit Information Management System |
| ANMF | Automated Non-Master File |
| ASED | Assessment Statute Expiration Date |
| BMF | Business Master File |
| CAP | Collection Appeals Program |
| CC | Command Code |
| CDP | Collection Due Process |
| CEASO | Civil Enforcement Advice and Support Operations |
| CFR | Code of Federal Regulations |
| CSED | Collection Statute Expiration Date |
| DLN | Document Locator Number |
| E&G | Estate & Gift |
| ICS | Integrated Collection System |
| IDRS | Integrated Data Retrieval System |
| IRC | Internal Revenue Code |
| IRM | Internal Revenue Manual |
| IRS | Internal Revenue Service |
| MFT | Master File Tax |
| NFOI | Non-Field Other Investigation |
| NFTL | Notice of Federal Tax Lien |
| SBSE | Small Business Self Employed |
| SRS | Specialist Referral System |
| SSN | Social Security Number |
| TIN | Taxpayer Identification Number |
| U.S. | United States |
| USC | United States Code |

5.5.8.1.7
(12-16-2022)

Related Resources

- (1) Related resources include the following:
- IRM 4.25.2, Campus Estate and Gift
 - IRM 4.25.11, Special Examination Procedures
 - IRM 5.1.12, Cases Requiring Special Handling
 - IRM 5.5.5, Processing Estate and Gift Tax Extensions
 - IRM 5.5.6, Collecting on Accounts with Special Estate Tax Elections
 - IRM 5.5.7, Collecting Estate Tax
 - IRM 5.6.1, Collateral Agreements and Security Type Collateral
 - IRM 5.6.2, Maintenance
 - IRM 5.12, Federal Tax Liens
 - IRM 5.17.2, Federal Tax Liens

5.5.8.2
(07-24-2018)

**Characteristics of Estate
Tax Liens**

- (1) In many cases, the general IRC 6324(a) lien is the best tool to protect the Government's interest. It is automatically created when any resident of the United States dies. No recorded notice is required for it to become effective. It attaches to all of the assets that are part of the decedent's gross estate and are required to be reported on Form 706, U.S. Estate Tax Return, and is security for any estate taxes that may be determined to be due. If a probate asset (assets in the name of the decedent at time of death) is transferred or liquidated without payment of the tax, but for the exceptions detailed at IRM 5.5.8.3 the lien continues to attach to the asset. If a non-probate asset (property described under IRC 2034 to 2042) is transferred or liquidated without payment of the tax, a liability equal to the value of the asset at the time of the decedent's death becomes due from the transferee. A separate assessment against the transferee is not needed. Assets of the gross estate can be sold or encumbered free of the IRC 6324(a) lien if the proceeds from the sale or loan are used for the payment of charges against the estate or expenses of its administration that are allowed by any court having jurisdiction.
- (2) The estate tax lien and personal liability transferee provisions of Section 6324(a)(1) and (2) apply to estate taxes owed by non-resident aliens who file Form 706-NA.
- (3) Estate tax attributable to an estate's interest in a closely held business may be paid over a 14-year period if an extension of time to pay under IRC 6166 is in effect. This could potentially leave the Service without lien protection for four years (or more if there are any section 6161 extensions) if a notice of lien is not recorded before the 10 years have elapsed.
- (4) The filing of Form 668-J (the special IRC 6324A lien for taxes deferred under IRC 6166) will secure the deferred taxes for the duration of the extension. The collection statute of limitations under IRC 6502 is suspended during the period of the extension.
- a. The lien attaches only the property specified on the IRC 6324A lien agreement. A lien on property with equivalent value can be substituted for the actual IRC 6166 property upon agreement between the Service and all parties with an interest in the property.
 - b. When estate property is listed on the recorded Form 668-J, it is automatically released from the effects of the general IRC 6324(a) estate tax lien.
 - c. The IRC 6324A lien is a negotiated lien that is created only when both the Service and all persons and/or entities with an ownership interest in the property listed on the notice of lien agree to its filing.

- (5) The filing of Form 668-H - the special IRC 6324B lien for special use valuations under IRC 2032A or qualified family owned business interest property under IRC 2057, will secure the potential recapture tax during the required 10 year holding period.
- (6) All references to IRC 2057 have been removed from this IRM revision. This code section does not apply to estates of decedents who died after December 31, 2003. Earlier versions of IRM 5.5.8 and/or the code section or regulations may be reviewed for information concerning this special election.

5.5.8.3
(06-23-2005)
**General Estate Tax Lien
under IRC 6324(a)**

- (1) The estate tax lien provided for by IRC 6324(a) is similar in character to the lien imposed by IRC 6321. The general lien imposed by IRC 6321 and the special lien for estate tax are not necessarily exclusive of each other, but can be cumulative. Whereas the IRC 6324(a) lien arises upon death and attaches to all probate and non-probate assets comprising the gross estate, after the tax liability has been assessed, notice and demand is given, and there is a neglect or refusal to pay, the IRC 6321 lien arises and also attaches to all as yet undistributed probate assets. Neglect and refusal to pay is generally inferred from notice and demand and an unpaid balance.
- (2) Even though no notice is recorded, the lien has priority over all subsequent interests in the property.

| Except | Unless |
|---|---|
| purchaser of or holder of a security interest in probate property at the direction of a court having jurisdiction and proceeds are used to pay charges against the estate | no exception |
| purchaser or holder of a security interest in probate property after executor has been released from personal liability under IRC 2204 if seller is an heir, legatee, devisee, or distributee | no exception |
| purchaser of or holder of a security interest in non-probate property | no exception |
| purchaser of or holder of a security interest in securities | knowledge of lien exists |
| purchaser of a motor vehicle | knowledge of lien exists |
| retail purchaser of tangible personal property | purchaser buying with the intent to hinder, evade, or defeat collection |
| purchaser of personal property (defined at IRC 6334(a)) valued at less than \$1,000 at a casual sale | knowledge of lien exists or is one in a series intended to liquidate most of the assets |
| local law lien securing the price of repairs or improvements | lienor gives up possession of property after lien arises |
| local real estate tax & special assessment | local law does not give them priority over other liens that are filed first |
| residential property subject to a lien for repairs & improvements | the contract price is more than \$5,000 |
| attorney's liens | fees are unreasonable, the lien is not valid under local law, or is subject to offset |
| certain insurance contracts | knowledge of lien exists |
| deposit-secured loans | knowledge of lien |

- (3) The IRC 6324(a) estate tax lien attaches at the date of death to every part of the gross estate, even when the property has not yet been placed under the control of the fiduciary. It attaches to the extent of the estate tax shown due on the return, and of any deficiency in estate tax found due upon review and audit. The estate tax lien continues for a maximum period of ten years after the decedent's death or until the tax is paid.

- (4) IRC 6324(a)(2) provides that when the estate tax is not paid when due, any spouse, transferee, trustee, surviving tenant, person in possession of the property by reason of the exercise, non-exercise, or release of a power of appointment, or beneficiary, is liable for the payment of the estate tax to the extent of the value of any non-probate estate assets held by, or passing to such person.
- (5) There is no need to assess the liability against the person liable under IRC 6324(a)(2). The collection statute under IRC 6502 applies. IRC 6324(a)(2) also makes all of the property of such person subject to a lien just like the estate tax lien if their transfer of estate assets divests the assets of the estate tax lien. This "like-lien" continues until the IRC 6324(a) estate tax lien expires or the estate tax is paid.

Note: Example: A beneficiary of a decedent's trust receives real property valued at \$100,000 on the Form 706. The beneficiary sells the property for \$125,000 and invests the proceeds. Because the property was non-probate property, the purchaser takes title free of the IRC 6324(a) estate tax lien. However, a like-lien in the amount of \$100,000 now attaches to all of the property of the beneficiary as long as the IRC 6324(a) lien has not expired. A separate assessment against the beneficiary is not necessary.

- (6) For more information on the different types of estate tax liens and lien attachment see IRM 5.5.9, Administrative and Judicial Actions for Estate Taxes and IRM 5.5.6, Collection on Accounts with Special Estate Tax Elections.

5.5.8.4 (12-16-2022) **IRC 2032A special use Valuation Elections**

- (1) The IRC 2032A special use valuation election allows an estate to specially value real property used in a family business. This is typically farm property, but it can also include other types of specially valued real property. To take this election, the estate must complete Schedule A-1, Section 2032A Valuation, when filing Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return. The special use valuation election is also identified on Page 2 of Form 706, Part 3, Elections by the Executor, Line 2.
- (2) By taking the special use valuation election, the estate can include the property on Form 706 at a lower special use value. Since the estate tax is based on the value of the estate assets, valuing the property for an amount that is less than fair market value creates a tax savings for the estate.
- (3) If the heirs that receive the specially valued property do not continue to use the property for the special use purpose or they dispose of the property during the ten-year period following the decedents death, additional estate tax is owed. This additional estate tax is sometimes referred to as recapture tax, and it is reported on Form 706-A, United States Additional Estate Tax Return.
- (4) The heir that disposed of the property or stopped using the property for the qualifying purpose is responsible for filing Form 706-A. The additional estate tax is a separate assessment made under the heir's name and social security number since the heir is personally liable for the additional estate tax.
- (5) The following forms are related to the IRC 2032A special use valuation election:

- Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, is filed on the asset that qualified the estate for the IRC 2032A election.
- Form 706-A, United States Additional Estate Tax Return, is used to report a disposition of the property or a cessation of the qualified use of the property.
- Form 668-I, Certificate of Release of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, is used for releasing the Notice of Federal Estate Tax Lien.

- (6) Additional guidance on these elections can be found in IRC 2032A, IRC 6324B, and IRM 5.5.6, Collection on Accounts with Special Estate Tax Elections.

5.5.8.4.1

(12-16-2022)

Processing IRC 6324B Lien - Form 668-H

- (1) Referrals are made to Advisory when the executor elects the special use valuation election under IRC 2032A. By signing Schedule A-1 to take the election, the heirs that received the special use property and other individuals with an interest in the property agree to the filing of an IRC 6324B estate tax lien on the property that qualified the estate for the special use valuation. Advisory is responsible for filing the IRC 6324B lien. The heirs that received the property also agree to be held personally liable for any additional estate tax that is triggered during the ten-year period following the decedent's death when they take the special use valuation election.
- (2) The referring office will provide Form 6111, IRC 2032A Referral to Advisory, to include the amount of the additional estate tax (also known as recapture tax). The amount of the additional estate tax is the tax savings the estate received by taking the special use valuation election. The tax is only owed if an event occurs to trigger the tax. The origin of the referral depends on which operating unit approved the election:
- If the return was accepted as filed or surveyed before assignment to Estate and Gift (E&G) Examination, the referral will come from Campus E&G. They will hold the original estate tax return for 90 days after the referral in case Advisory needs any additional information from the return.
 - If the return was examined or surveyed by E&G Examination, the referral will come from E&G Examination.
 - If the final tax was determined by IRS Independent Office of Appeals or in Tax Court, the referral will come from Appeals Account and Processing Support (APS).
- (3) When a case is referred to Advisory, the referring office will provide the following documents which are also shown on the checklist included on Form 6111:

| Item for Referral Package to Advisory | Instructions |
|--|---|
| Completed and signed Form 706, Schedule A-1, Section 2032A Valuation | <p>The following items should be included on Schedule A-1:</p> <ul style="list-style-type: none"> Identify the special use valuation qualifying real property: Schedule and item number where the special use valuation qualifying real property is listed on Form 706. Qualified heir's Information: Names of all qualified heirs, their addresses, social security numbers, relationship to decedent, and value of the special use valuation qualifying assets each qualified heir received. Designated agent information: Name, signature, and address of the designated agent. Signatures of the qualified heirs: Signatures of all heirs that received the special use valuation qualifying property. Signatures of other interested parties: Signatures of all other parties with an interest in the qualifying property. If the interest is held by a corporation, partnership, LLC, or trust, the agreement must be signed by individuals with authority to encumber the property on behalf of the entity. |
| Form 6111, IRC 2032A Referral to Advisory | Items #1 through #9 to include Identification of the estate, date of death, and amount of additional estate tax (recapture tax). |
| Form 706 | Copy of the first three pages of Form 706, schedules where the special use qualifying property is reported, and Schedule K for any date of death encumbrances on the qualifying property. |
| Legal Descriptions | Complete legal descriptions of property to be shown on the lien. |

| Item for Referral Package to Advisory | Instructions |
|--|---|
| Latest Deed(s) to Property | Latest deed(s) on the property to determine how the property is titled to ensure all interested parties signed Schedule A-1. |
| Corporation, Partnership, LLC, and Trust Documents | If the property is held by a corporation, partnership, LLC, or trust, etc. provide a copy of the document to confirm signature authority on behalf of the entity (e.g., Articles of incorporation, partnership, LLC agreement, or trust document, etc.) |
| Examination Report | Copy of Form 1273, Report of Examination Changes, and signed Form 890, Waiver of Restriction on Assessments & Collection of Deficiency & Acceptance of Overassessments - Estate, Gift, and Generation-Skipping Transfer Tax, with the recapture tax calculation and any adjustments to the tax. |
| Power of Attorney | Copy of Form 2848, Power of Attorney and Declaration of Representative, if applicable. |
| Form 3210 | Form 3210, Document Transmittal, addressed to Advisory. |

- (4) See IRM 4.25.11.2, IRC 2032A Special Use Valuation, for E&G Examination procedures to refer cases to Advisory. See IRM 4.25.2.8.7, Lien Packages to Advisory, for Campus E&G procedures to refer cases to Advisory.
- (5) Advisory will open a Non-Field Other Investigation (NFOI) 194, 668-H Lien (IRC 2032A), on Integrated Collection System (ICS), and they will verify that all information on Form 6111 is provided with the attachments. Advisory can either contact the estate or return the case back to the referring IRS office to obtain any missing information or to resolve any inconsistencies. The referring IRS office is ultimately responsible to ensure that Schedule A-1 information is complete and that all required documents have been provided by the estate for a valid election. The IRS office that refers the case to Advisory must confirm that the estate is eligible for the special use valuation election before they grant the election.
- (6) A lien arises under IRC 6324B, Special Lien for Additional Estate Tax Attributable to Farm, etc. Valuation, on the specific property specially valued under IRC 2032A. Advisory will file Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, to provide an asset for collection if an event occurs to trigger the additional estate tax.
- (7) The lien on the property that qualifies the estate for the special use valuation is consensual because the heirs, executor and interest holders agree to the filing

of the lien when they take the special use valuation election. Therefore, Advisory will review the documents in the referral to confirm that the estate has a valid election to ensure that the filing of Form 668-H is appropriate. Since the lien is consensual, there are no Collection Due Process (CDP) or Collection Appeals Program (CAP) rights related to this lien.

- (8) The IRC 6324B estate tax lien is property specific. The lien attaches to the property that qualified the estate for the special use valuation election as shown on Schedule A-1 of Form 706. Schedule K of Form 706 should also be reviewed to determine if there were any encumbrances on the property at the date of the decedent's death. Advisory will ensure that there is a complete legal description with the referral, and they will include the complete legal description on Form 668-H or as an attachment to Form 668-H.
- (9) Advisory must confirm that all the signatures of the heirs are included on Schedule A-1 since the heirs are personally liable for the additional estate tax if it is triggered. The heirs must consent to the filing of the lien and agree to their personal liability for the additional estate tax by signing Schedule A-1.
- (10) Advisory employees must review deeds or available on-line public records to determine how the property pledged is titled to ensure all interested parties (whether or not in possession) signed the Schedule A-1 lien agreement and to correctly style the notice of lien. If the property is in the name of a business entity, Advisory will review documents to confirm that the individual that signed the lien consent on behalf of that entity had authority to do so. For example, if the property is in the name of a corporation, Advisory will review corporate documents to confirm the name of the individual that can pledge property for the corporation. If the property is in the name of a trust, Advisory will review trust documents to confirm the name of the trustee. In a partnership or LLC scenario, Advisory should determine who has authority to act on behalf of the entity. General guidance on ownership of LLCs, operating agreements, documents that outline ownership, or authorities of LLC members is in IRM 5.1.21, Collecting from Limited Liability Companies.
- (11) As an additional requirement for a special use valuation election, there must be a designated agent listed on Schedule A-1. This individual is responsible for notifying the IRS if there is a disposition of the special use valuation property or if the property has been converted to a different use. Advisory employees will confirm that this information is provided on Schedule A-1.
- (12) Once Advisory confirms that all required items are provided for a valid special use valuation election, Advisory will prepare Form 668-H, Notice of Federal Estate Lien Under Internal Revenue Code Section 6324B, listing the name of the estate and the names of all qualified heirs as shown on Form 706, Schedule A-1. The names of the qualified heirs are included on Form 668-H because they are personally liable for any additional estate tax that is triggered. If the real property is in the name of an entity, Advisory will include the entity's name on Form 668-H to ensure that the lien is properly indexed in the public records under the owner's name. Filing a copy of the Schedule A-1 lien agreement with the recorded estate tax lien is not necessary.
- (13) When preparing Form 668-H, the social security number (SSN) of the decedent and qualified heirs whose names are shown on the notice of lien will be redacted using the format XXX-XX-1234. If the property is in the name of a business entity, do not include the taxpayer identification number for the entity that owns the property.

- (14) The amount of additional estate tax shown on Form 668-H is based on the tax difference of the estate tax calculation using the fair market value of the property and the estate tax calculation using the special use value. The tax is calculated by the referring office and is shown on Form 6111 on Line 9, Item C. The referring office will also provide copies of any examination documents that show valuation information and the additional estate tax calculation.
- (15) Since Form 668-H is property specific, it must be prepared manually using the PDF version of the form that is available on the intranet at <http://publish.no.irs.gov/catlg.html>. The form can be digitally signed.
- (16) See IRM Exhibit 5.12.7-2, State and Territory Filing Locations, for guidance on filing locations.
- (17) Advisory will e-mail the completed Form 668-H to the Centralized Lien Operation (CLO) Field Office Resource Team (FORT) at e-mail address **SBSE CLO FORT* so that they can forward the lien for recording. Advisory will also provide Form 3210, Document Transmittal, indicating the estate's name, decedent's complete social security number, lien type, and a notation if a TC 582 lien indicator and TC 360 lien fee should be input on Integrated Data Retrieval System (IDRS).
- (18) Advisory will send a copy of Form 668-H to the executor of the estate, designated agent listed on Schedule A-1, and to any other individuals that have authority to receive a copy due to the filing of Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization.
- (19) CLO FORT will return Form 3210 to confirm receipt of Form 668-H for recording, and they will log in receipt of the case. Within seven business days of receipt, CLO FORT will mail Form 668-H to the recording office for filing with payment of recording fees. See IRM 5.19.12.8.2, Filing Estate Tax Lien Documents, for CLO FORT processing procedures. CLO FORT will input the lien indicator and lien fee (if applicable), and they will monitor the case to ensure that the lien is properly recorded.
- (20) Advisory will input a 120-day follow-up on ICS to ensure receipt of the recorded estate tax lien from CLO FORT and to confirm that the lien indicator and lien fee have been input, if applicable.
- (21) In exigent circumstances, advisors may issue an Other Investigation (OI) on ICS to request for a Field Collection revenue officer to deliver Form 668-H to a recording agency for filing and for paying the recording fee.
- (22) Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, does not include an expiration date or "last day for refiling" because this lien can only be released if one of the conditions listed in IRM 5.5.8.4.2, Monitoring and Release of Lien - Form 668-H, have been met. In some situations, such as when the additional estate tax is triggered, the collection statute may remain open for several years past the ten-year period following the decedent's date of death. Therefore, when Form 668-H is recorded in the public records, the public records index should not reflect an expiration date.
- (23) Once CLO FORT receives the recording information back from the recording department, they will forward the recorded Notice of Federal Estate Tax Lien to Advisory who will maintain a case on ICS until the lien is released. Advisory

will input a follow-up on ICS for six years and for ten years from date of death to ensure timely follow-up actions are taken to conduct research to determine if a cessation of qualified use or disposition of the property has occurred. Advisory will also maintain a file of retained lien copies with Form 6111 and associated documentation while the lien is in effect.

5.5.8.4.2 (12-16-2022) Monitoring and Release of IRC 6324B Lien - Form 668-H

- (1) The additional estate tax (also known as recapture tax) is triggered when one of the following events occurs:

| Triggering Event | Example |
|--|--|
| The property is used for a different use than that which qualified the estate for the special use valuation. | For example, the qualifying property was a farm. The heirs of the estate changed the use of the property when they built an apartment complex on the property. |
| An heir disposes of the special use valuation property. | For example, the heirs that received the special use valuation property sold the property to an unrelated third party. |

Note: There may be exceptions to the triggering of the additional estate tax when property is disposed of due to a like-kind exchange of property or if property is transferred to a qualified family member. Collection employees should make a referral to E&G Examination through the *Specialist Referral System (SRS)* if there is a question regarding whether tax has been triggered on IRC 2032A special use valuation property due to a cessation of use or disposition of the property.

- (2) Advisory may become aware that the additional estate tax was triggered due to contact from a designated agent or from internal research. In addition, Advisory may be contacted by an estate representative or heir with a request to release the estate tax lien because the 10-year special use period has elapsed. The following research may be conducted to determine if the additional estate tax has been triggered:
- Check Integrated Data Retrieval System (IDRS) to determine if the qualified heir is deceased. After the heir dies, there is no longer additional estate tax owed on that portion of the specially valued property that was owned by the deceased heir. If a disposition or cessation of use occurred prior to the heir's death, the recapture tax is still due.
 - Check IDRS command code (CC) RTVUE. If the qualified heir is reporting farm income/expenses on Form 1040, Individual Income Tax Return, Schedule F, this suggests that the special use has continued.
 - Check IDRS CC RTVUE for rental property reported on Form 1040, Schedule E, or on Form 4835, Farm Rental and Income and Expenses. This would suggest a cessation of use if the heir has leased out the special use valuation property. A cessation of use during the ten-year period following the decedent's death may have triggered the additional estate tax liability.
 - Determine if the qualified heir disposed of any interest in the special use valuation property. Review records on *Accurint* or online county records to determine if the special use valuation property has been sold. If own-

ership has changed from the estate or qualified heirs to a third party, the additional estate tax may have been triggered. However, the transfer of ownership to certain family members might not trigger the tax (See (3) in this IRM subsection). The transfer of property due to a like kind exchange also might not trigger the tax (See (4) in this IRM subsection).

- Some county property appraiser records may also show a special designation associated with the property, such as an agricultural designation, which may assist Advisory in determining if certain property is still being used for agricultural purposes.
- Research IDRS under the farming or business entity's employer identification number (EIN) to determine if the business is still filing returns which indicates that the business is active.

- (3) When property is transferred to a qualifying family member, the tax might not be triggered. The heir that is transferring the property must file Form 706-A, United States Additional Estate Tax Return, to report the transfer. The family member that receives the property must agree to the filing of the estate tax lien and agree to be held personally liable for the additional estate tax if the tax is triggered. The family member can agree to the lien and personal liability by completing Schedule A-1 of Form 706 or by providing a signed document with similar verbiage. A family member for special use valuation purposes includes the following:
 - An ancestor (parent, grandparent, etc.) of the individual or spouse of the individual.
 - Lineal descendant (child, stepchild, grandchild, etc.) of the individual.
 - Spouse, widow, or widower of any lineal descendent described above.
 - A legally adopted child of an individual is treated as a child of that individual by blood.
- (4) The transfer of property due to a like-kind exchange might not trigger the tax liability. Advisory can obtain assistance from Estate and Gift Examination through the *Specialist Referral System (SRS)* to make this determination. If the estate qualifies for a like-kind exchange, the heirs and others with an interest in the property must provide a new lien agreement by completing Schedule A-1 of Form 706 or by providing a written document with similar verbiage. A new Form 668-H should be filed on the like-kind replacement property, and a Form 792, U.S. Certificate Discharging Property Subject to Estate Tax Lien, can then be provided on the property that has been replaced.
- (5) If additional information is needed to determine if an event has occurred to trigger the additional estate tax, Advisory will contact the designated agent listed on Schedule A-1 of Form 706 for the additional information. The designated agent is the individual designated by the heirs and others with an interest in the property to notify the IRS of changes to the special use valuation property and to receive confidential information. If the designated agent had provided the IRS with a Form 2848, Power of Attorney and Declaration of Representative, contact should be made through the individual named on the Form 2848.
- (6) If the investigation reveals, or the IRS is notified, that the heir did not continue to use the property for the special use purpose or disposed of the property during the ten-year period following the decedent's death, additional estate tax may be due. If the heir had leased the property to a third-party, this may be

considered a discontinuance of use of the property for the qualifying special use valuation purpose. If tax is due, the heir must file Form 706-A, United States Additional Estate Tax Return:

- Form 706-A is due, with payment of the tax, six months after the date of cessation of use or disposition of the property.
 - Penalties and interest begin to accrue at the regular underpayment rate if the return is not paid by the due date.
 - Each qualified heir must file Form 706-A reporting and paying the tax and interest due that is attributable to their share of the inherited property.
 - The tax is assessed under the name and social security number (SSN) of the heir.
 - Accounts for Form 706-A are maintained on the Automated Non-Master File (ANMF) system under master file transaction (MFT) code 53.
 - If the tax is paid with the filing of the return, the payment can be attached to the return. Preparation of a separate posting voucher is not necessary unless penalties and interest are applicable and being paid.
 - Enter the tax period in YYYYMM format at the top of the return. The period ended is the earliest date shown on Schedule A, Column C. For example, if the property disposition date is 3/10/2021, the tax period would be 202103.
- (7) Advisory employees must verify that the return and any payments have properly posted to the Non-Master File account. This information can be confirmed on the ANMF system. Procedures for using the ANMF system are provided in IRM 3.17.46.14.1, Entering and Exiting the System, and IRM 3.17.46.14.2, Non-Master Account Transcript Requests. Advisory employees can also request an account transcript from the Non-Master File team by sending an e-mail to **W&I KCSPS Non-Master File Team*.
- (8) The statute of limitations for assessment of the additional estate tax is three years from the date the IRS was notified of the disposition or cessation of use. See IRC 2032A(f), Statute of limitations.
- (9) Form 668-H should not be released until any liability due on Form 706-A is full paid or becomes unenforceable due to expiration of the collection statute, or if the IRS is satisfied that no event has occurred to trigger the additional estate tax.
- (10) The 10-year period provides a measure of time during which the additional estate tax triggering event must occur. The liability for the tax may continue beyond that period. Accordingly, if an event has occurred to trigger the tax during the 10-year period following the decedent's death, and the additional estate tax liability has not been fully satisfied, Form 668-H should not be released while the tax liability is still enforceable.
- (11) The assessment of the additional estate tax has its own collection statute expiration date, which is ten years from the date of the assessment.

Example: The decedent died on January 12, 2016. Six years after the decedent's death, the heir that received the special use valuation property sold the property to a third party. This triggered the additional estate tax. Form 706-A was then filed under the heir's SSN, and the additional estate tax was assessed on June 1, 2022. Since the collection statute expiration date (CSED) on the additional estate tax assessment is ten years from

the date of assessment, the CSED, in this example, is June 1, 2032.

This example shows that the IRS can continue to collect the additional estate tax liability beyond the 10-year period following the decedent's date of death. In this example, the Notice of Federal Estate Tax Lien should not be released until the additional estate tax assessment is paid in full, or it is no longer enforceable due to the expiration of the collection statute.

- (12) Advisory can make a referral to Estate and Gift Examination through the *Specialist Referral System (SRS)* for assistance with the following:
 - To determine whether Form 706-A should be filed
 - To check the tax computation of Form 706-A
 - To prepare a substitute for return when an heir does not file a required Form 706-A
- (13) Once ten years from the decedent's date of death has passed, if the investigation reveals that the heir continued to use the property for the qualifying purpose that the election is based upon, and they continued to own the property for the ten-year period following the decedent's death, the additional estate tax is not owed.
- (14) The special use valuation lien is in effect until one of the following occurs. Advisory can then release the recorded Notice of Federal Estate Tax Lien:
 - The IRS has confirmed that no further liability for any additional estate tax may arise because no event occurred during the ten-year period following the decedent's death to trigger the additional estate tax.
 - Form 706-A has been filed to report additional estate tax that was triggered, and the liability is paid in full.
 - Form 706-A has been filed to report additional estate tax, and the tax is unenforceable due to lapse of time. This would occur when Form 706-A is filed, not paid in full, and the regular ten-year collection statute has expired from the date of the Form 706-A assessment, plus any extensions to the collection statute.
 - If an heir that received special use valuation property dies during the ten-year period following the original decedent's death, the additional estate tax will not be owed on the portion of the property that had been received by the deceased heir. The heir's estate will still be responsible for any additional estate tax that was triggered before the heir died. If any additional heirs had received the special use valuation property, the additional estate tax may still be triggered on the property received by those additional heirs.
- (15) To release the recorded estate tax lien, Advisory will prepare Form 668-I, Certificate of Release of Estate Tax Lien Under Internal Revenue Code Section 6324B. Advisory will e-mail the completed form to the Centralized Lien Operation (CLO) Field Office Resource Team (FORT) at e-mail address **SBSE CLO FORT* so that CLO FORT can forward the lien release for recording. Advisory will also provide Form 3210, Document Transmittal, indicating the estate's name, complete social security number, lien release type, and a notation if a TC 583, Reverse Lien Indicator, should be input on Integrated Data Retrieval System (IDRS). The TC 583 would only need to be input if a TC 582 was previously input on the module.

- (16) CLO FORT will acknowledge receipt of Form 3210, and they will log in receipt of the case. Within seven business days of receipt, CLO FORT will mail the estate tax lien release to the recording office for filing with payment of recording fees. See IRM 5.19.12.8.2, Filing Estate Tax Lien Documents, for CLO FORT processing procedures. CLO FORT will input the reverse lien indicator, if applicable, and they will monitor the case to ensure that the lien release is properly recorded.
- (17) Advisory will input a 120-day follow-up on ICS to ensure receipt of the recorded lien release from CLO FORT. Once CLO FORT receives the recording information back from the recording department, they will forward the recorded release information to Advisory.
- (18) Advisory will send a copy of Form 668-I to the executor of the estate, designated agent listed on Schedule A-1, and to any other individuals that have authority to receive a copy due to the filing of Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization.
- (19) Whenever contact is made with an estate representative who is requesting a release of an estate tax lien, Advisory should give the representative the option of filing the release themselves, making the representative aware that if they choose to do so, it is their responsibility to pay the recording fees. Advisory will request for the estate representative to provide Advisory with the lien release recording information so that Advisory can document the case history with the release information.
- (20) After Advisory confirms that the Form 668-I estate tax lien release has been recorded, they will close the 194 Non-Field Other Investigation (NFOI) on the ICS system.

5.5.8.4.3
(12-16-2022)
**Processing Requests for
Discharge of Property
from IRC 6324B Lien**

- (1) A discharge of the IRC 6324B lien from property may be necessary if part of the property described on the recorded Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, is being sold or removed from special use.
- (2) An estate should request a discharge of the IRC 6324B lien from property by submitting Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien, to Advisory.
- (3) If issuance of a conditional commitment to discharge property from the Notice of Federal Estate Tax Lien is necessary, Advisory should request a draft of Form 706-A, United States Additional Estate Tax Return, from each heir who owns a share of the property being sold or removed from special use. Advisory may request for Estate and Gift Examination to review Form 706-A to confirm the tax liability by submitting a request through the *Specialist Referral System (SRS)*. If there is a disposition of all the special use valuation property, and the tax on the Form 706-A matches the additional estate tax (recapture tax) on the lien, a referral to E&G Examination may not be necessary.
- (4) Once Advisory determines the correct amount of tax on Form 706-A, they will issue Letter 5751, Estate Tax Lien Conditional Commitment for Discharge, to conditionally commit to the discharge of the lien from the property. The conditional commitment letter may require the final signed Form 706-A, full payment

of the tax liability, closing statements, documents to show title to the property was conveyed to the new owner, and any other necessary items as determined by Advisory.

- (5) Advisory may issue Form 792, U.S. Certificate Discharging Property Subject to Estate Tax Lien, when Form 706-A has been filed, all tax and additions to tax have been full paid, any other required documents were provided, and conditions were met. See IRM 5.12.3.3.1.1, Liability Satisfied by Payment, for time frames to provide a lien discharge based on the type of payment received.

Example: Form 668-H, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324B, was recorded in the names of an estate and four heirs. The property listed on the recorded estate tax lien consists of six parcels of real property for which special use valuation was elected under IRC 2032A. The heirs want to sell one of the parcels to a third party. The heirs should submit Form 4422 to apply for a lien discharge, and they should provide draft copies of Form 706-A to report the recapture tax that will be due. A SRS referral may be sent to E&G Examination to determine if the returns reflect the correct amount of recapture tax. Once the correct amount of tax is determined, Advisory may then issue Letter 5751 to commit to a discharge of the estate tax lien from the property conditioned upon the receipt of original Form 706-A, payment of the tax (and penalties and interest, if applicable), copy of the final closing statement, and copy of the deed conveying title of the property to the new owner. Once the required items are provided, Advisory may provide the estate with Form 792 to discharge the estate tax lien from the property.

5.5.8.4.4 (05-31-2019)

Processing Requests for Subordination of IRC 6324B Lien

- (1) Requests for subordination of property described on Form 668-H will be processed by Advisory. An NFOI will be established under time code 142.
- (2) Although it is possible that the qualified heir(s) may apply for a certificate of subordination under IRC 6325(d)(2), almost all requests for subordination will be made under IRC 6325(d)(3) which directly addresses IRC 6324B, and provides for the issuance of a certificate of subordination if it is determined that the lien interest of the United States will continue to be adequately secured.
- (3) Instructions for applying for a subordination under IRC 6325(d)(3), are contained in Publication 1153, How to Apply for a Certificate of Subordination of Federal Estate Tax Lien Under Section 6325(d) of the Internal Revenue Code.
- (4) Review the status of all qualified property and consider factors such as:
 - Has a special election lien been secured?
 - Have events occurred that would disqualify the estate for the special election?
 - Should a recapture tax return be secured?
 - Is all of the special use property impacted or only a portion?
- (5) If it is determined that the lien interest of the United States will continue to be adequately secured, issue Form 669-F, Certificate of Subordination of Federal Estate Tax Lien .

Example: A Form 668-H has been recorded in the names of an estate and 2 heirs securing potential recapture tax of \$200,000. The property shown on the notice of lien is an apartment building for which special valuation was elected under IRC 2032A. The fair market value of the property is \$1.5 million, and it is unencumbered but for the Form 668-H. The heirs want to borrow \$250,000 in order to make renovations to the building and use the property as security for the loan. They apply for a subordination under IRC 6325(d)(3). Since the United States will be adequately secured after the subordination, Advisory may issue Form 669-F.

5.5.8.5
(12-16-2022)
**Collateral from Estates
with IRC 6166 Elections**

- (1) The IRC 6166 election allows an extension of time to pay estate tax that is attributable to an interest in a closely held business. To qualify, at least 35% of the assets in the gross estate must consist of an interest in a closely held business or businesses. Estate and Gift (E&G) examiners make determinations if estates qualify for this special election. With this election, most estates will make four annual payments of interest only then they will make ten annual payments of principle and interest. In these cases, the first annual payment is due a year after the due date of the return. Subsequent payments are due each year thereafter until the account is paid in full. Estates can also elect to pay the deferred tax in a shorter period. An estate with an IRC 6166 election may qualify for a reduced interest rate under IRC 6601(j).
- (2) Some estates, such as estates in which the IRC 6166 qualifying asset is an interest in a holding company, may only qualify to pay their tax for a shorter period. For these estates, they must begin paying their annual installments on the principle, plus interest, immediately. They do not get the additional four years to make only interest payments.
- (3) For the tax that is reported on Form 706, the IRC 6166 election must be made with a timely filed estate tax return. Late filing of the return invalidates the election. If the tax that qualifies for the IRC 6166 election is the result of an examination deficiency, the estate must make the IRC 6166 election within 60 days after issuance of notice and demand for the additional tax.
- (4) The portion of the tax that is owed due to the examination deficiency will be prorated (subject to the limitations of section 6166(a)(2)) as if the election had been made with a timely filed return. The estate must pay the past due installments, and they must pay future annual installments in order to keep the IRC 6166 election.
- (5) When an estate has an IRC 6166 election, Campus E&G puts the account into status 14 on Integrated Data Retrieval System (IDRS) which keeps the account out of collection status.
- (6) Campus E&G monitors estates with IRC 6166 elections. They send annual bills to the estate along with a Certificate of Unchanged Status. The estate must sign the Certificate of Unchanged Status to annually certify if there has been a disposition of 50% or more of the IRC 6166 qualifying assets. Such a disposition would cause the IRC 6166 election to go into default. Campus E&G confirms that the annual IRC 6166 payments are made. If the estate doesn't make their payments, Campus E&G will send a series of bills which allow the estate at least six months to make the installment before the election goes into default. If the estate still does not pay, Campus E&G will terminate the IRC 6166 election, and the full tax liability will be immediately due.

- (7) Under IRC 6503(d) the collection statute is suspended for the period during which payment of the tax is deferred under IRC 6166. However, running of the unrecorded IRC 6324(a) estate tax lien is not suspended. See IRM 5.5.8.3, General Estate Tax Lien under IRC 6324(a).
- (8) When the examining office determines that an estate is eligible for the IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business, a case is referred to Advisory to contact the estate to request a surety bond or a consent to the creation and filing of a Notice of Federal Estate Tax Lien. The origin of the referral depends on which unit approved the IRC 6166 election or accepted the return as filed with the election:
- If the return was accepted as filed or surveyed before assignment to E&G Examination, the referral will come from Campus E&G. They will hold the original estate tax return for 90 days after their referral in case Advisory needs additional information from the return.
 - If the return was examined or surveyed by E&G Examination, the referral will come from E&G Examination.
 - If the final tax was determined by IRS Independent Office of Appeals or in Tax Court, the referral will come from Appeals Account and Processing Support (APS).
- (9) The following items will be included with the referral:
- a. Pages 1, 2, and 3 of Form 706 and schedules A, B, F, & G with any attachments, including other pertinent schedules listing assets or encumbrances.
 - b. Form 4349, Computation of Estate Tax Due With Return and Annual Installment.
 - c. Form 1273, Report of Estate Tax Examination Changes, and Form 6180, Line Adjustments - Estate Tax, if the estate tax return was examined.
 - d. The examiner's narrative report of examination changes (Form 886-A, Explanation of Items, or similar documentation) if the estate tax return was examined.
 - e. Form 2848, Power of Attorney and Declaration of Representative, if applicable.
 - f. IRC 6166 election and attachments to the election.
 - g. List of all the businesses that qualified the estate for the IRC 6166 election as shown on the estate tax return including the business name and employer identification number (EIN). This information may be provided separately or on the related estate tax return schedule where the business is listed.
- (10) Advisory will open a Non-Field Other Investigation (NFOI) 195, 668J Lien (IRC 6166), on Integrated Collection System (ICS) when they receive a referral due to an IRC 6166 election.
- (11) Advisory will contact the estate's executor or power of attorney within 60 days of receipt of the referral package to request the estate to voluntarily provide collateral during the IRC 6166 payment period. Collateral is requested to protect the government with an asset to collect on if the IRC 6166 election goes into default. The estate can provide a surety bond, or they can provide a consent to the creation and filing of an IRC 6324A lien by providing a signed Form 13925, Notice of Election and Agreement to Internal Revenue Code (IRC) 6324A Lien.

- (12) In some cases, the estate may respond that no collateral should be required because the government is not at risk during the IRC 6166 payment period. If that occurs, or if the estate does not respond to Advisory's request for collateral, see IRM 5.5.8.5.1, Risk Reviews on Estates with IRC 6166 Elections, for procedures to follow.
- (13) Key elements of the consent to the creation and filing of the IRC 6324A Notice of Federal Estate Tax Lien, include the following:
 - To agree to the Notice of Federal Estate Tax Lien, the estate must provide Form 13925, Notice of Election and Agreement to Internal Revenue (IRC) 6324A Lien. The agreement must list the specific property that will be subject to the Notice of Federal Estate Tax Lien, and it must be signed by all individuals with an interest in the designated property.
 - Any property may be listed on Form 13925 to consent to the filing of a Notice of Federal Estate Tax Lien. The property may, or may not, be part of the estate assets.
 - Although real property is preferred, any property, either real or personal, with equity equal to the deferred taxes plus interest, that can be expected to survive the deferral period, may be designated in the agreement.

Note: Even though the property offered by the estate as security for the Notice of Federal Estate Tax Lien may be, if necessary, difficult to enforce against (such as stock in a closely held corporation), distrainability is not a factor in determining the adequacy of the value of the property offered. If the requirements under IRC 6166(a)(1) as to the value of the property have been met, and the asset is expected to survive through the deferral period, whatever property the estate offers as security for the lien is acceptable.

 - By signing Form 13925, the owners of the property agree to the filing of a lien on the property included in the lien agreement. Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324A, is then recorded listing the property from the lien agreement.
 - Any property that is part of the decedent's gross estate that is part of the lien agreement and described on the recorded Notice of Federal Estate Tax Lien is no longer subject to the unrecorded IRC 6324(a)(1) estate tax lien.
 - The lien agreement must include the contact information for a designated agent. That individual is responsible for notifying the IRS if there is any change to the property that qualified the estate for the IRC 6166 election or to the asset that is being used as collateral for the Form 668-J Notice of Federal Estate Tax Lien.
 - Filing of the Notice of Federal Estate Tax Lien acts as a discharge of personal liability of the executor or fiduciary under IRC 2204 on the IRC 6166 qualifying tax. See 26 CFR 20.2204-3.
- (14) If the estate provides a lien consent form other than Form 13925, Advisory will consult with Area Counsel for the state of the decedent's last domicile for approval of the alternate lien consent form. Area Counsel can also be consulted when unusual assets are pledged on Form 13925, such as art or collectibles.

- (15) The IRS may file a Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324A on shares of stock. If possible, the IRS should take possession of the certificates to protect the government's lien interest. See IRM 5.6.1, Collateral Agreement and Security Type Collateral, for guidance on collateral.
- (16) The IRC 6324A Notice of Federal Estate Tax Lien is property specific. The property to which the Notice of Federal Estate Tax Lien attaches should be listed in detail on Form 668-J or as an attachment to Form 668-J.
- (17) If the real or personal property subject to the Notice of Federal Estate Tax Lien is held by an entity other than the estate, then the entity name should be identified on the Notice of Federal Estate Tax Lien under the owner's name so that the lien is properly indexed in the public records. The owner/entity's taxpayer identification number should not be included on the Notice of Federal Estate Tax Lien.
- (18) Form 13925 must be signed by all individuals with an interest in the designated property (whether or not in possession) which will be described on the Notice of Federal Estate Tax Lien.
- (19) If the asset is owned by a partnership, LLC, corporation, trust, etc., Advisory must request and review documents that confirm the names of the individuals that can pledge property and have authority to act on behalf of the entity to confirm all these individuals signed Form 13925. If the estate does not provide these documents, or the individuals with authority to pledge property do not sign Form 13925 agreeing to the filing of the Notice of Federal Estate Tax Lien, the IRS will not accept that asset as collateral.
- (20) The IRS may file a Notice of Federal Estate Tax Lien that attaches to an interest in a corporation, partnership, limited liability company (LLC), or trust. However, caution should be exercised. The Notice of Federal Estate Tax Lien attaches to whatever rights the interest entails. If those rights do not include the right to sell the interest, the IRS will be unable to sell the interest. The IRS may be left with whatever rights to payment, distributions, or liquidation that the interest includes. On the other hand, if the interest includes the right to sell the interest, the IRS can also sell the interest (upon termination of the IRC 6166 election), if the interest is marketable. Oftentimes there are restrictions on the transfer of such interests. For example, a partnership agreement, LLC agreement, or state law may contain provisions as to the manner in which a decedent's interest is handled upon death, or there may be a restriction to encumber property owned by the partnership or LLC. General guidance on ownership of LLCs, operating agreements, documents that outline ownership, and authorities of LLC members is in IRM 5.1.21, Collecting from Limited Liability Companies.
- (21) If the property to which the Notice of Federal Estate Tax Lien attaches is an interest in a corporation, partnership, LLC, or trust, etc., the recorded Notice of Federal Estate Tax Lien should include a description of the covered property as the interest in the entity, the nature of the interest, and the address of the entity.
- (22) For state and territory filing locations, see IRM Exhibit 5.12.7-2, State and Territory Filing Location. Multiple Notices of Federal Estate tax Liens may need to be filed in different filing locations if there is more than one asset provided as collateral and those assets are in different locations. The location to file the

Notice of Federal Estate Tax Lien is the one office within the state, as designated by the laws of such state, in which the property subject to the lien is situated. See IRC 6323(f):

- For personal property owned by a corporation, partnership, trust, etc., the property will be deemed to be the place at which the principal executive office of the entity that owns the assets is located. It is the place where the major management decisions are made. Do not confuse the principal executive office with the principal place of business. See IRM 5.12.7.10, Filing the Notice of Federal Tax Lien.
- For personal property that is an interest in a corporation, partnership, LLC, trust, etc., the filing location is deemed to be situated at the residence of each of the individuals that own the interest. If the estate has not yet distributed the property, then the location for filing the Notice of Federal Estate Tax Lien is the decedent's last address and the executor's residence.

- (23) If the estate provides signed Form 13925 agreeing to the filing of a Notice of Federal Estate Tax Lien, Advisory must verify the value of the asset pledged as collateral and determine if there are any encumbrances on the property to confirm there is sufficient equity to cover the deferred tax and interest. Advisory may utilize sources such as appraisals, Accurint, UCC filings, public records, etc. to verify the asset value and encumbrances. Advisory may also request for the estate to provide verification of the value of an asset or verify encumbrance information (including title reports, owner and encumbrances reports, etc.). Advisory will document the ICS history with their analysis of equity in the collateral. See IRC 6324A(b)(2), Maximum value of required property.
- (24) Once Advisory has determined that all required information has been provided to file Form 668-J, Notice of Federal Estate Tax Lien Under Internal Revenue Code Section 6324A, they will follow the procedures in IRM 5.5.8.5.4, Processing of Lien Form 668-J and Form 668-K, to file the lien.
- (25) If the estate provides a completed Form 13925, Advisory will send a copy of the lien agreement to Campus E&G for association with their IRC 6166 file.
- (26) If, at any time, the value of the property covered by the agreement becomes less than the IRC 6166 qualifying tax, plus interest, the IRS can require the addition of property to the agreement. Advisory will send Letter 4346, Additional Collateral. If the estate does not provide the additional collateral within 90 days, Advisory will notify Campus E&G to terminate the IRC 6166 election. See IRC 6324A(d)(5), Additional lien property required in certain cases.
- (27) If the executor chooses to provide a bond as collateral, see IRM 5.6.1.3.1, Bonds, for information regarding bond requirements. If needed, Advisory may consult with Counsel to draft and review the bond agreement. Advisory will follow the procedures in IRM 5.6.1, Collateral Agreement and Security Type Collateral, to process the bond which will be held in the Advisory safe for safekeeping.

5.5.8.5.1
(12-16-2022)

**Risk Reviews on Estates
with IRC 6166 Elections**

- (1) If the estate declines to provide a bond or consent to a Notice of Federal Estate Tax Lien, or the estate does not respond to Advisory's request for collateral, Advisory will conduct a risk analysis to determine if the IRS should require collateral. Advisory will document the Integrated Collection System (ICS) history regarding the estate's refusal. If possible, Advisory will secure a written statement from the estate as to their reasons for refusing to provide collateral.
- (2) When an IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business election is granted, the IRS can require an estate to provide a bond if the government is at risk during the deferral period. However, the estate can choose to provide a consent to the filing of an estate tax lien, in lieu of the bond, by completing Form 13925 and providing the required information as described in IRM 5.5.8.5, Collateral from Estates with IRC 6166 Elections. Advisory will determine whether a bond should be required by an estate based on a review and analysis of applicable factors listed below and any other relevant facts and circumstances. This is not an exclusive list:

| Factor | Information to consider | Examples of Information to Review |
|---|---|---|
| Duration and stability of the closely held business | <p>Determine the likelihood of the success and survival of the closely held business through the deferral period. Consider the following:</p> <ul style="list-style-type: none"> • Nature of the closely held business. • Assets in the closely held business. • Age of the business. • Relevant market factors that will impact the future success of the business. • Recent financial history. • Continuity and stability of the management of the business. • Determine whether the decedent owned a majority or minority interest in the business. If the decedent owned a minority interest, the financial information pertaining to the business may not be as relevant because the estate may not force distributions to pay the estate tax. In this case, consider if there are other assets in the estate and other income available to pay the estate tax. | <ul style="list-style-type: none"> • Appraisals, financial statements, and Securities and Exchange Commission (SEC) filings. • Information regarding any outstanding liens, judgments, and pending or anticipated lawsuits. • Other claims against the business. • The estate may use an affidavit or other document to provide this information. |

| Factor | Information to consider | Examples of Information to Review |
|---|--|---|
| Ability to timely pay the annual installments | <p>This factor considers how the estate expects to be able to make the annual payments of tax and interest as due, and the objective likelihood of realizing that expectation. Facts relevant to this factor may include the following:</p> <ul style="list-style-type: none"> • Nature of the significant assets and liabilities of the business. • Type of debts (subordinated, related party, guaranteed, payment terms). • The cash flow of the business (both historical and anticipated) to determine if funds will likely be available to pay future deferred tax installments. • Consider prior IRC 6161 extension of time to pay requests. If a request was made on an IRC 6166 installment, or if multiple requests were made on tax that was not deferred under IRC 6166, this may indicate an inability to pay. See IRM 5.5.5. Processing Estate and Gift Tax Extensions. • Advanced payments on the principle installments may indicate an ability to pay. • If the decedent had less than 100% interest in a business entity, only consider the decedent's percent interest when reviewing financial statements of the closely held business to determine the estate's ability to pay. For example, if the decedent had a 50% interest in a corporation, only consider 50% of the net income of the corporation. | <ul style="list-style-type: none"> • Assets that may be liquidated to pay the installments. • Income as shown on the business income tax return. Secure a copy of the return or review information from Integrated Data Retrieval System (IDRS). • Income and expense statements of the closely held business and/or estate. • If the estate is holding a cash reserve to have funds available for future installments, review bank records, brokerage accounts, etc., to confirm this information. |

| Factor | Information to consider | Examples of Information to Review |
|--------------------|--|--|
| Compliance history | Addresses the compliance history of the business and the estate with all federal tax payment and tax filing requirements to determine whether the business, its management, and the executor respect and comply with all tax requirements on a regular basis. The relevance of the closely held business's filing and payment compliance is proportional to the estate's ownership interest and control of the business. | Conduct a compliance check on Integrated Data Retrieval System (IDRS) for tax filing and payment compliance of the estate, related trusts, and closely held business entities. |

- (3) The following internal sources may provide sufficient information for Advisory to make a risk determination. If additional information is needed, Advisory can request the estate to provide further information. The Advisor will document the ICS case history to address all items that were reviewed and the findings from the review:

| Item to Review: | Include: |
|--|--|
| Documents from the lien referral package that was provided to Advisory | <ul style="list-style-type: none"> • Employer identification numbers of the closely held businesses to conduct a compliance check • Type of IRC 6166 qualifying closely held business and valuations to determine duration and stability of the closely held business • Any other sources of payment available to the estate that can be used to pay the annual installments • Any other documents in the case file that provide information on the duration/ stability of the closely held business, ability to make annual installment payments, or compliance history |

| Item to Review: | Include: |
|---------------------|--|
| Prior case activity | <ul style="list-style-type: none"> • Prior Form 4768 requests for extension of time to pay estate tax to determine if additional time has previously been requested to pay the tax. More than one request may indicate the estate has had difficulty paying the tax in the past. Look for IDRS transaction codes 468 and review the prior Integrated Collection System (ICS) case history. • Prior lien discharge and subordination applications to determine remaining estate assets and to confirm there has not been a disposition of 50% or more of the IRC 6166 qualifying assets since that would cause the election to default. • Any other documentation in the history related to the duration and stability of the closely held business, the compliance history, and the estate's ability to timely pay the deferred tax payments. |

| Item to Review: | Include: |
|---|--|
| IDRS to check estate's compliance history | <p>Check the following for compliance with filing and/or payment requirements:</p> <ul style="list-style-type: none">• Annual IRC 6166 installment payments.• Estate tax that did not qualify for the IRC 6166 election.• Form 709 gift tax.• Any pre-death liabilities such as Form 1040, trust fund recovery penalty assessments, and sole-proprietorship business returns.• Form 1041 for income reported on an estate or trust, if applicable. If there are assets on Form 706, Schedule G, the estate may have assets held in a trust which may indicate a Form 1041 filing and paying requirement.• Any returns associated with the closely held business such as Form 1120, Form 1120S, Form 1065, Form 940, Form 941, or other returns. |

| Item to Review: | Include: |
|--------------------------|---|
| Available public records | <ul style="list-style-type: none"> • Internet search of the closely held business for indications of stability or insolvency of the business • Secretary of State and UCC filings, if available online, to ensure the business is still active and for possible creditor information • Accurint which may have information on corporate filings, business search, asset information, court bankruptcy, civil court, official records, and sometimes credit information • County public real estate or official records, if they are available online, for liens, judgements, litigation, assets, and/or claims against the estate or business |

- (4) If additional information is necessary, Advisory will send a request to the estate for any additional items needed to determine whether the government is at risk during the deferral period to make a risk determination. Information requested from the estate may include copies of tax returns, financial statements, list of assets and encumbrances, status of litigation, and any other information Advisory determines is needed to conduct a risk review. The estate may also submit any additional documentation they believe will support their position that collateral should not be required.
- (5) Advisory will document the case file history with their findings to include the following:
 - a. A brief history outlining the taxpayer's response to the request for a bond or lien consent.
 - b. List factors and information considered in the risk analysis to determine if collateral should be required during the deferral period.
 - c. If collateral is required, Advisory will provide a detailed explanation regarding why a bond was required to protect the government's interest and the amount of the required bond. The explanation should address the factor or factors that Advisory relied upon when they determined that the government is at risk during the deferral period.
 - d. If collateral is not required, Advisory will provide a detailed explanation why the government is not at risk during the deferral period based on the risk factors of compliance, ability to pay the annual installments, and duration/stability of the closely held business with a summary of why no collateral should be required based on each of these factors.
- (6) After Advisory has made their risk determination, Advisory will send Letter 4283, Notification Regarding Internal Revenue Code Section 6166 Security

Requirement. The Advisory manager must sign Letter 4283. When preparing the letter, Advisory will select one of the optional paragraphs:

- Optional paragraph (1) will be selected to notify the estate that no bond is required. This paragraph also notifies the estate that the IRS may conduct a future review of financial information, and that a bond may still be required in the future, or
 - Optional paragraph (2) to notify the estate that a bond is required after reviewing the information provided by the estate, or
 - Optional paragraph (3) to notify the estate that a bond is required because the estate did not provide the information requested by Advisory to make a risk determination.
- (7) If optional paragraph (1) is selected, Advisory will close the non-field other investigation (NFOI) 195, 668J Lien (IRC 6166), on ICS, and they will open a NFOI 196 Special No Lien case. Advisory will input an initial follow-up date for six years from the return due date to make an updated risk analysis. See IRM 5.5.8.5.3, Monitoring Accounts During the Deferral Period, for actions required to conduct periodic review of these cases.
- (8) If optional paragraph (2) or (3) is selected, Advisory will include Form 13925, Notice of Election and Agreement to Internal Revenue Code (IRC) 6324A Lien, with Letter 4283. The estate has 30 days to respond when the IRS requires a bond. The estate can also provide a consent to an IRC 6324A lien in lieu of providing a bond. Advisory will input a follow-up date on ICS to monitor the case for a response to Letter 4283 and will maintain a copy of the letter in the case file.
- (9) After the 30-day period on Letter 4283 expires, if the estate still refuses to provide a bond or lien consent, Advisory will prepare Letter 950-I, Preliminary Internal Revenue Code Section 6166 Determination Letter, which must be signed by the group manager. Letter 950-I notifies the estate of its right to appeal the determination that a bond is required. The letter will be sent by certified mail and a copy will be maintained in the case file along with a notation in the case history of the date the letter is sent. Advisory will schedule a follow-up date on ICS to monitor the case for a response to Letter 950-I. An appeal of the determination must be postmarked by the deadline on Letter 950-I for the appeal to be timely. If the deadline is on a Saturday, Sunday, or federal holiday, the deadline is the next following business day.
- (10) If the estate does not appeal the preliminary determination within the 30-day appeal period, or if the estate sends an untimely post-marked protest, Advisory will provide a memorandum to Campus Estate and Gift (E&G), with a copy of Letter 950-I, requesting termination of the IRC 6166 election. Advisory will request that Campus E&G also send Letter 6335-F, Notice of IRC 6166 Denial or Termination, to the estate via certified mail, with return receipt requested, as a demand letter for payment. Letter 6335-F will include the current balance due as calculated by Campus E&G. Advisory will monitor the account for the termination of the IRC 6166 election. Once Advisory confirms the election has been terminated, they can close their NFOI 195, 668J Lien (IRC 6166), on ICS. The Advisory manager may notify a Field Collection revenue officer manager of the tax due to request revenue officer case assignment. While there is a balance due, Advisory will maintain a case file since the file may contain documents to assist the revenue officer with collection of the tax.

- (11) If the estate submits an Appeal, Advisory will date stamp the protest and document in the case file history that the protest was received. If the protest contains new issues to consider in the risk analysis, Advisory will determine the validity of the new issues. If Advisory disagrees with the estate on the new issues, they will prepare a response to the protest to include the determination reached on the new issues. Advisory will send the response to the protest to the estate and will include it in the package to be transmitted to IRS Independent Office of Appeals (Appeals). Advisory will forward the following items to Appeals within 30 days from the postmark date of the protest letter:
 - a. Letter 4283, Notification Regarding Internal Revenue Code Section 6166 Security Requirement
 - b. Documentation considered in analyzing whether the bond or lien was required
 - c. Letter 950-I, Preliminary Internal Revenue Code Section 6166 Determination Letter
 - d. Protest letter with any attachments
 - e. Advisory response to the protest letter if new issues were addressed
 - f. Case file history
 - g. Any pertinent correspondence with the taxpayer
 - h. Any documents considered in the risk analysis
- (12) Advisory will send the appeal package with Form 3210, Document Transmittal, to Appeals. The location to route the package is located on the *IRS Independent Office of Appeals Website*. Advisory will notify E&G Campus by secure e-mail that a protest has been forwarded to Appeals so that Letter 6335-F is not sent prematurely.
- (13) Advisory will input a 90-day follow-up. If no response is received, Advisory will check the status of the appeal on the Appeals Centralized Database System (ACDS). If there is no record on the system, Advisory may contact **AP Inquiries* for information.
- (14) IRS Independent Office of Appeals will send the case file with the Appeals Case Memorandum (ACM) to Advisory once a decision is final. If they allow the election to continue because they have determined the government is not at risk during the deferral period, Advisory will notify Campus E&G that Appeals has determined the estate is entitled to the election. Advisory will then close the NFOI 195, 668J Lien (IRC 6166), on ICS, and they will open a NFOI 196, Special No Lien Case.
- (15) If Appeals determines that the election should be terminated because the government is at risk during the deferral period, and collateral wasn't provided, Advisory will notify Campus E&G to terminate the IRC 6166 election as described in (10) in this IRM section.

5.5.8.5.2
(07-24-2018)
**Miscellaneous
Documentation From
Campus or Appeals**

- (1) Advisory will receive documentation from E&G Campus concerning IRC 6166 payments or installment payments that have not been paid. E&G Campus is sending this information to be associated with the case file. E&G Campus will forward for informational purposes copies of billings and/or protest letters that are sent to Appeals. OIs will be maintained in ICS on accounts where informational documents are sent to Advisory from the E&G Campus.
- (2) This information should be used in considering creditworthiness of estate, necessity for a bond or lien, and/or necessary enforcement action.

- (3) Advisory may receive a courtesy investigation from the E&G Campus to collect non-deferred tax, penalties and interest. The following actions should be taken:
- a. Contact the estate representative and demand payment of the non-deferred tax. Provide a deadline for payment and document the ICS history.
 - b. If payment is not made send final demand letter (Letter 1058) for only the non-deferred portion of tax due plus penalties and interest. E&G Campus will send letters addressing late installment payments on deferred tax.
 - c. After expiration of the 30 day final demand letter the advisor will issue a courtesy investigation to initiate enforced collection (such as levy or suit referral) as necessary against assets or initiate such action themselves, as appropriate. The Advisor will coordinate collection action with the revenue officer involved.
 - d. If full payment is still not made, the IRC 6321 lien should be recorded by the field revenue officer to attach to the remaining undistributed probate property for the non-deferred portion of the estate tax due. Guidance for styling of notices and liens is in IRM 5.5.3.7, Styling and Mailing of Notices. Document the ICS history concerning your action to protect the Government's interest. Revenue Officers must comply with collection due process rights in IRM 5.1.9, Collection Appeal Rights, when utilizing the IRC 6321 lien.
 - e. If estate is unable to pay the non-deferred tax this is an indicator/factor that the estate may be financially unstable. At this time the advisor will conduct an evaluation of the current assets, review time remaining on the IRC 6324(a) lien (or any other lien in effect such as the IRC 6324A lien) and determine if the Government is adequately secured for the remaining tax due during the duration of the deferral period.
 - f. If the advisor determines the Government is not adequately secured for the remaining portion of deferred estate tax, Letter 4283 will be sent to the executor/designated agent. Follow procedures in IRM 5.5.8.5.1
 - g. If estate still does not pay non-deferred portion of tax and refuses to provide a lien or bond on the IRC 6166 portion, issue Letter 950-I and proceed with acceleration of the deferred portion of tax.
 - h. Revenue Officers may continue collection actions on the non-deferred portion of estate tax while the deferred portion is being accelerated.
- (4) Advisory will also receive documentation (copies of Letter 6335 or 6335(T)) from the E&G Campus when estates are delinquent in paying installments timely, Advisory should review the account to determine if a lien or bond has been secured. If a lien or bond has not been secured a re-evaluation of collection risk is appropriate action to ensure the Government is adequately protected. This information and advisor actions must be documented in the ICS history because a pattern of delinquency is a factor in determining credit risk.
- (5) Advisory will receive from the E&G Campus documentation (copies of Letter 6335(F)) indicating installment payments have not been made and the acceleration of the tax due is in process. Advisory must upon receipt review the account and determine if a lien or bond has been secured. Advisory shall review, recommend and document the ICS history regarding the most appropriate collection action based on information in their lien file. This information will be used when the account is assigned to Field Collection for their initial analysis of collection avenues. Considerations to be addressed:

- a. What assets remain that are encumbered by the IRC 6324(a) lien? When does it expire?
 - b. What equity is there in estate assets?
 - c. Are there specific assets pledged on the IRC 6324A lien?
 - d. Does a seizure or levy need to be done on pledged assets?
 - e. Did Advisory request filing of the IRC 6321 lien?
 - f. Is there a bond?
 - g. Should a suit referral be completed?
- (6) Advisory will maintain lien case files according to retention guidance in IRM 5.5.8.19 and shall provide lien case files to Field Collection when requested to facilitate collection of the account. Lien case files should **not** be destroyed on accounts that reflect a balance due.
 - (7) Advisory will receive from the E&G Campus documentation indicating the case is in litigation contesting the termination of the election.
 - (8) If the election is terminated and the taxpayer files a section 7479 declaratory judgment case after the IRS proposes termination of a section 6166 election, the election would not be terminated until the declaratory judgment is final. Therefore, the CSED would be suspended until that time.
 - (9) When E&G Campus closes their IRC 6166 case file documents will be associated with the Form 706.
 - (10) When Appeals makes a determination that an estate may continue to elect an IRC 6166 installment election, the entire case file, including the original return shall be sent to Advisory to copy information necessary for bond or lien determination. This file should be copied within 30 days, and the return should be sent to E&G Campus to complete the installment account set-up.
 - (11) Advisory will be responsible to set follow-ups through ICS to check status of cases that were sent to Appeals for resolution either by utilizing the Appeals Account Specialist or contacting the E&G Campus to determine if they have received the Appeals Case Memorandum (ACM) from Appeals.

5.5.8.5.3
(07-24-2018)
**Monitoring Accounts
During The Deferral
Period**

- (1) Informational documents received from the E&G Campus should be reviewed within 30 days of receipt. The advisor's evaluation of impact or harm to the Government's interest should be documented in the ICS history. This documentation may dictate frequency of monitoring an account.
- (2) Notice of late installment payments, preliminary IRC 6166 election terminations or extensions to pay on IRC 6166 installment payments (see IRM 5.5.5.5) should be considered as a factor in lien determination and monitoring. Accounts should be re-evaluated if any of the above actions occur.
- (3) Encumbrances must be checked to determine adequacy of collateral. The advisor may use sources such as Accurint, Secretary of State, UCC filings, etc. to verify encumbrances.
- (4) All IRC 6166 accounts will be re-evaluated six years into the deferral period. Schedule a follow up through the ICS system. Advisors will consider the factors described in IRM 5.5.8.5.1 and should also look at subsequent actions below to determine if additional action should be taken to protect the Government's interest:

- a. What assets have been distributed?
 - b. Has the estate distributed, sold, exchanged, or otherwise disposed of 50 percent or more of the value of the estate's interest in the closely held business?
 - c. What assets have been discharged or subordinated?
 - d. Has the estate made installment payments timely and in the full amount due?
 - e. Has the estate requested extensions to pay installments?
 - f. Has the estate defaulted on other financing?
 - g. Has the estate made additional payments toward the tax liability?
 - h. Does the closely held business appear to be financially stable and able to make future installment payments?
 - i. Is the estate in compliance with filing and paying requirements?
- (5) Annual monitoring, considering the above factors should be conducted as the Service nears expiration of the IRC 6324(a) lien. Each year that Advisory conducts a review, the Advisor must document their analysis and recommendations to adequately protect the Government's interest. As the Service gets closer to expiration of the IRC 6324(a) lien, the advisor must consider securing a "replacement lien" (IRC 6324A lien or bond) to cover the additional deferral period and the amount of deferred tax due in order to protect the Government's interest.
- (6) Advisory **must be aware** that if a determination is made that the government is at risk of not collecting the remaining tax due, appropriate action (for example, a bond or lien or enforced collection action) **must be taken and completed prior to expiration of the IRC 6324(a) lien**. Consideration must be given to allow time for the executor to exhaust any allowable appeals and potential litigation time if the estate petitions the Tax Court under IRC 7479. If the account is accelerated, this process generally requires a minimum of six months to be completed. Timeframes of acceleration, appeals and litigation must be considered in order to complete collection actions prior to expiration of the IRC 6324(a) lien.
- (7) If the advisor determines that a lien is required the advisor will send the executor Letter 4283. Follow procedures in IRM 5.5.8.5.1
- (8) In consideration of accounts where the estate has been in compliance with timely payment of installments, as the Service gets closer to expiration of the IRC 6324(a) lien, the advisor must consider securing a "replacement lien" (IRC 6324A lien or bond) to cover the additional deferral period and the amount of deferred tax due in order to protect the Government's interest.
- (9) Advisory must ensure annually that the value of the collateral securing the lien is equal to the outstanding IRC 6166 balance on the account. In accordance with the Form 13925, the designated agent is required to send current valuation information annually with respect to the pledged property listed in the agreement. If the executor has provided an IRC 6324A lien, Advisory must review the annual valuation information report from the designated agent to confirm that the value of the collateral securing the lien is equal to the outstanding IRC 6166 balance on the account. If the financial information is not received from the designated agent, the Advisor may contact the designated agent to request that information.
- (10) Advisory will use Letter 4345, Collateral Valuation, to request current valuation information with respect to property pledged on the lien agreement.

- (11) Advisory will use Letter 4346, Additional Collateral, as notice and demand for additional collateral to secure the special lien.

5.5.8.5.4 (07-24-2018)

Processing of Lien Form 668-J and Form 668-K

- (1) Follow the procedures found at IRM 5.5.8.4.1 for filing of estate tax liens.
- (2) When preparing estate tax liens, the SSN of the decedent and any qualified heirs whose names are shown on the lien will be redacted using the format XXX-XX-1234. For EINs redact all but the last four digits XX-XXX1234.
- (3) Actual lien fees will be manually posted by CLO FORT when the lien is received back from the recording office, see IRM 5.19.12.8.2.
- (4) Advisors are responsible for ensuring receipt of the recorded lien from CLO and that lien fees have been input, if applicable.
- (5) Advisory will maintain an ICS case in the name of the estate for which the Form 668-J was recorded until such time as the lien is released. Advisory will also maintain a file of retained lien copies and associated documentation, see IRM 5.5.8.19 for records retention guidance.
- (6) The Campus Estate & Gift Tax Department, will, upon receipt of full payment of the liability secured by Form 668-J, coordinate with the Advisory Estate Tax Group to ensure that the Form 668-J lien is released in a timely manner. Campus will notify the Advisory, Estate Tax Group within 10 working days after receiving notification of payment, through secure e-mail, to release any Form 668-J that may have been recorded.
- (7) Advisory will use Form 668-K, Certificate of Release of Federal Estate Tax Lien Under Internal Revenue Section 6324A, to release the Form 668-J lien.
- (8) Form 668-J and Form 668-K must be prepared manually. However, a PDF version of the form is available on the intranet at <http://publish.no.irs.gov/catlg.html>.
- (9) If the estate representative chooses to post a bond rather than consent to the filing of a lien, follow the procedures for processing bonds found at IRM 5.6.1.3.1, Bonds and IRM 5.6.1.3.3, Estate Tax Bonds and Other Collateral. Additional information on bonds, such as approved sureties, may be found at *Bureau of the Fiscal Service* website.
- (10) The Service cannot accept a Letter of Credit in lieu of a bond when a decedent's estate elects to pay the tax in installments under IRC 6166.
- (11) In the case of any proposed bond, Advisory will consult with Area Counsel for review of the bond.
- (12) If stock certificates are pledged as collateral, the advisor will secure the actual stock certificate. This would prevent the sale of such certificates to third parties.
- (13) Prepare Form 2276, Collateral Deposit Record classifying the stock certificates as "safekeeping" and reflecting a zero value for revenue accounting system (RACS) purposes. The certificates must be stored in an approved safe. Follow procedures in IRM 5.6.1.8, Preparing Form 2276, Collateral Deposit Record.

- (14) Stock, in most instances, will be considered personal property by most state law. With respect to personal property, a lien must be filed in the office designated by state law in which the property subject to the lien is situated.

5.5.8.5.5
(07-24-2018)

**Requesting Payoffs for
Lien Form 668-J**

- (1) Payoff requests for IRC 6166 accounts will still be sent to E&G Campus via SECURE e-mail to:
- For Inbox address: See IRM 4.25.2.9.6.2 , Payoff Requests.
 - Subject Line: 6166 PAYOFF REQUEST
- (2) The penalty and interest computation sheet will be scanned/saved and returned with the response to the advisor. Advisors need to document the ICS case history of the amount, print the calculation sheet and add it to their case file or paste e-mail into ICS history. Should a later payoff be needed or the account is transferred the advisor will be able to forward the calculation sheet so the E&G Campus can **update** the previous calculation provided.
- (3) Requests should be processed within 14 calendar days of receipt to allow adequate time for turnaround. Provide contact information should someone need to call you or reply to inform you of a delay in processing the request.
- (4) If there is a need for a quicker response mark the subject line as EXPEDITE, when the payoff is needed and the date of payoff.
- (5) For payoff requests on extension to pay accounts that were previously in status 14, please send your payoff requests on **IRC 6161 accounts only** to CCP FORT. This guidance is in reference only to accounts that were previously in status 14 for manual monitoring, once an account goes into status 14 you can no longer get a payoff through IDRS. If the account did not go into status 14, INTST can be utilized to provide a payoff.

5.5.8.5.6
(03-01-2006)

**Processing Requests for
Release, Discharge of
Property From, or
Subordination of IRC
6324A Form 668-J**

- (1) Requests for release of Form 668-J, and discharge and subordination applications will be processed by Advisory.
- (2) **Releases-** The criteria under IRC 6325(a) for issuance of a certificate of lien release - liability satisfied or unenforceable or bond accepted - are applicable to Form 668-J. Follow the procedures found at IRM 5.5.8.4.2 for processing estate tax lien releases.
- (3) **Discharge** - Requests for discharge will normally be made under IRC 6325(c). Provided property equal to the amount of the remaining deferred balance of tax and interest will remain subject to the lien, a certificate may be issued discharging a portion of the property listed on Form 668-J from the lien. As an alternative, under IRC 6324A(d)(5), the estate representatives may substitute other property in order to obtain a discharge of all or part of the property listed on the lien. If the disposition of property will result in accelerated payment of all or part of the deferred tax, or if the equity in the remaining property will not equal the remaining deferred balance of tax and interest, the application should be made under IRC 6325(b)(2).
- (4) **Subordination** - Requests for subordination will normally be made under IRC 6325(d)(2). Provided it is determined that the amount realizable by the United States from the property will ultimately be increased, or that the ultimate collection of the tax liability will be facilitated by the subordination, a certificate may be issued.

5.5.8.6 (07-24-2018) Gift Tax Lien Under IRC 6324(b)

- (1) The provisions of the gift tax lien are also delineated in IRC 6324 and parallel those for the general estate tax lien.
- (2) The special gift tax lien imposed by IRC 6324(b) attaches to all gifts made during the calendar year for the amount of the gift tax imposed upon the gifts made during such year. If the gift tax is not paid by the donor when due, the donee of any gift becomes personally liable for the tax to the extent of the value of the gift. The gift tax lien extends for a period of ten years from the time the gifts were made or until or the tax is paid, whichever date is sooner.
- (3) Guidance on gift tax liens is provided in IRM 5.5.9.9, The Gift Tax Lien.
- (4) Advisory is responsible for processing Form 1127, Application for Extension of Time for Payment of Tax Due to Undue Hardship, for Form 709 gift tax returns. Guidance is provided in IRM 5.5.5.10, Extension Requests to Pay Gift Tax.

5.5.8.7 (07-24-2018) Discharge Requests Involving Decedent Cases

- (1) Advisory may receive a discharge request for property owned by a deceased taxpayer. The responsibility to process such requests depends on what taxes are owed and/or what returns are required to be filed.

| If... | Then the request is reviewed by... |
|--|------------------------------------|
| There is Form 706 or Form 709 tax liability or filing requirement | Advisory Estate Tax Lien Group |
| Only Form 1040, TFRP, Form 941 for business taxes, etc. are owed by a decedent | Advisory Group |

- (2) To determine if there is an estate or gift tax filing requirement, research IDRS using the taxpayer's SSN with a "V" or "W" suffix (e.g., 123-45-6789V, 123-45-6789W). IDRS will show if there is a balance due account or if an extension of time to file and/or pay has been submitted (TC 460 or TC 468). Extensions are requested using one of the following forms:
 - a. Estate taxes - Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes
 - b. Gift taxes - Form 8892, Application for Automatic Extension of Time To File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax is provided
- (3) For discharge requests related to a decedent's tax liabilities, determine when the statutory lien arose, when the NFTL was filed, and what the status of the property was when the NFTL was filed.
 - a. If the assessment was made **before** the death of the taxpayer, the federal tax lien attaches to the property owned by the taxpayer and follows that property into the estate or the hands of the transferee. The Government's priority position is determined based on the filing date of the NFTL
 - b. If the assessment was made **after** the death of the taxpayer, the federal tax lien attaches to any probate property in the estate at the time of assessment.

Note: See IRM 5.5.3.6, Notice of Federal Tax Lien, and IRM 5.17.13.9.1, Administrative Collection, for detailed information about liens on decedent property.

- (4) A discharge request related to a decedent's tax liabilities that is subject to the federal tax lien should be processed following standard discharge procedures.
- (5) Expenses related to the decedent's tax liabilities are known as "administrative expenses." When determining allowance for administrative expenses consider the factors outlined in IRM 5.5.2.6.1.1, Necessary Administrative Expenses.

5.5.8.8

(05-31-2019)

Responsibilities for Processing Requests for Release, Discharge of Property From, or Subordination of Estate Tax Liens

- (1) Advisory is responsible for processing all requests for discharge for any of the estate tax liens and all applications for subordination under IRC 6325(d). An NFOI will be established under time code 141.
- (2) Advisory Estate Tax Lien group will be required to:
 - Investigate applications for discharge of any estate tax lien. Applications for discharge under IRC 6325(c) are usually submitted on Form 4422, Application for Certificate Discharging Property Subject to Estate Tax Lien
 - Review and finalize details concerning the acceptance of an escrow agreement Form 15056, Escrow Agreement for Estates
 - Verify funds have been deposited with escrow agent
 - Ensure all payments are applied to the correct account
 - Issue a discharge certificate Form 792, United States Certificate Discharging Property Subject to Estate Tax Lien, is used to discharge property under IRC 6325(c)
 - Ensure collateral controls are established on Interim Revenue Accounting and Control System (IRACS)
 - Monitor the escrow agreement
 - Close IRACS controls when funds have been delivered in accordance with terms of the escrow agreement.
- (3) Guidance for opening of controls, investigation, response times and processing of discharge requests in IRM 5.12.10, Lien Related Certificates, should be followed.
- (4) The guidance provided in this IRM is in addition to IRM 5.12.10, focusing on unique circumstances that arise in processing requests for discharge of property from the estate tax lien.

5.5.8.9

(07-24-2018)

Considerations Regarding Estate Tax Lien Discharge Applications

- (1) The issuance of the certificate of discharge is discretionary and should be issued only if there is an actual need. The Service's authority to issue a certificate of discharge related to the estate tax lien is governed by IRC 6325(c) and the related regulations. Pursuant to the regulations, the primary purpose of the estate tax lien discharge is not to evidence payment or satisfaction of the estate tax, but to permit the transfer of property free from the lien in case it is necessary to clear title. The estate tax will be considered fully satisfied only when an investigation has been completed and payment of the tax, including any deficiency that has been determined, has been made.
- (2) In many instances, in determining whether to grant an estate tax lien discharge, the issue you will need to consider is whether the estate tax liability is adequately provided for, meaning that the Government's interest in collecting the estate tax is secured under IRC 6325(c) and the accompanying Treasury

Regulations. In determining whether an estate tax liability is adequately provided for, you have discretion and should exercise your judgment in making that decision based upon the facts and circumstances of the case and/or in coordinating with E&G Exam. You may also consider the criteria in IRC 6325(b) as a guideline in making your decision as the estate tax liability will generally be adequately provided for when one or more of the IRC 6325(b) criteria set forth below is satisfied. In addition, there may be other circumstances where you and your manager determine that the estate tax liability has been adequately provided for under the particular circumstance involved. For example, while filing compliance is sometimes required when considering a lien discharge under IRC 6325(b), a filed return is not required when considering a discharge application under IRC 6325(c). The issue under IRC 6325(c) is not whether the return has been filed, but whether in your judgment and discretion the estate tax liability is adequately provided for under the circumstances. Depending upon the circumstances, if the Form 706 has not been filed or a closing letter has not been issued, it may be desirable to coordinate with E&G Exam, before making your lien discharge decision under IRC 6325(c). In all cases under IRC 6325(c), the estate must be divested of its entire interest in the property to be discharged.

- (3) Pursuant to Treasury Regulation 301.6325-1(c)(1), the issuance of the certificate of discharge is a matter resting within the discretion of the appropriate IRS official. In many instances, decisions concerning the discharge application can be made from the information provided on the Form 706 (if applicable) and the Form 4422 without the need to coordinate with E&G Exam. For example, if based on the information provided with the Form 4422 and internal account records you are able to determine that the estate tax liability has been paid, or the estate is not subject to a Form 706 filing requirement, or the value of other property disclosed on the Form 4422 that will remain subject to the estate tax lien is more than ample to protect the Government's interest in the payment of the estate tax, coordination with E&G Exam is not ordinarily necessary. In other instances, you and your manager may decide that it is necessary to coordinate with E&G Exam; for example, to estimate the amount of the estate tax liability or to determine the status of an examination. You should also coordinate with the Office of Chief Counsel when a deficiency has been proposed and is or may be the subject of litigation before making a decision on the discharge application. In all cases, decisions concerning lien discharge applications should be made as expeditiously as possible while, in your and your manager's judgment, protecting the Government's interest in collecting the estate tax liability.

- **Property Double the Amount of the Liability, IRC 6325(b)(1)** - A certificate of discharge may be issued if it is determined that the remaining property of the estate subject to the estate tax lien has a fair market value that is at least double the amount of the unsatisfied liability secured by the estate tax lien and the amount of all other liens upon such property which have priority over the estate tax lien. It should frequently be possible to determine the value of the property from Form 4422 and you should refer to the form for that purpose. For example, if the estimate of the estate tax liability on the Form 4422 is \$500,000 and the fair market value (minus encumbrances) of the remaining property is \$6,000,000, then a lien discharge would ordinarily be appropriate. See IRM 5.12.10.3.1 for additional guidance.
- **Part Payment, IRC 6325(b)(2)(A)** - A certificate of discharge may be issued for any part of the property subject to the estate tax lien if it is

determined by the Service that an adequate amount has been paid in partial satisfaction of the estate tax liability secured by the lien. The amount cannot be less than the value of the Service's interest in the property to be discharged. Consider all facts and circumstances of the case when determining the amount to be paid, including all other liens and encumbrances with priority over the estate tax lien. Reasonable and necessary expenses, including fees and taxes that are treated as expenses of sale, are also allowed in calculating the amount necessary for discharge of the property from the lien. See IRM 5.12.10.7.4. Payments are applied directly to the account. See IRM 5.12.10.3.2 for additional guidance.

- **No Value, IRC 6325(b)(2)(B)**- A certificate of discharge may be issued if it is determined that the interest of the Service in the property subject to the estate tax lien has no value. Consider all facts and circumstances of the case when determining the value of the Government's interest in the property, including all other liens and encumbrances with priority over the federal tax lien. See IRM 5.12.10.3.3 for additional guidance.
- **Substitution of Proceeds of Sale (Escrow Agreement), IRC 6325(b)(3)** - A certificate of discharge may be issued if property subject to the estate tax lien is sold and the Service determines that the proceeds of sale should be held in escrow as a fund subject to the estate tax lien in the same manner and with the same priority as the estate tax lien had with respect to the discharged property. Whether to require an escrow and the amount of the escrow is a decision within the discretion of the IRS, and should be based on the facts and circumstances of each case. In this situation, escrow agreements are used to evidence that the proceeds of sale remain subject to the estate tax lien. Reasonable and necessary expenses incurred in connection with the sale of the property or administration of the sale proceeds will be paid from the proceeds of the sale before the satisfaction of any claims. See IRM 5.12.10.7.4. Form 15056, Escrow Agreements for Estates, will be utilized. Funds are held in escrow until the tax liability can be determined. The IRS has discretion to allow distributions from escrow for allowable expenses of administering the estate before the tax liability is determined. See IRM 5.5.2.6, Administrative Expenses, and related sections regarding necessary and reasonable expenses. Any excess proceeds will be released if it is later determined that the estate tax liability is adequately provided for or after verification that all assessments (tax, interest and penalty) have been made and funds have been properly applied to the account. See IRM 5.12.10.3.4 for additional guidance.
- **Right of Substitution of Value, IRC 6325(b)(4)** - An owner has the right under IRC 6325(b)(4) to receive a certificate of discharge on any property subject to an estate tax lien if the owner deposits an amount equal to the value of the Service's interest in the property, as determined by the Service, or furnishes an acceptable bond in a like amount sufficient to cover the Service's determined interest in the property. See IRM 5.12.10.3.5 for additional guidance.

5.5.8.10
(05-31-2019)
**Coordination Required
Between Estate and Gift
Exam and Advisory**

- (1) Advisory can make a referral to E&G Exam through the Specialist Referral System (SRS) when no return has been filed and no closing letter has been issued for assistance in determining if there is a filing requirement or if there are potential audit issues that may result in a proposed deficiency. The SRS automates the referral request process to E&G Exam, the portal can be found

at <https://srs.web.irs.gov/>. The SRS system must be used for referrals, questions, and requests for assistance. See E&G Exam guidance IRM 4.25.14.3.2, Coordination Required Between Estate and Gift Field and Advisory.

- (2) E&G Exam will provide written communication of their recommendations on issues such as filing requirements; potential audit issues or proper calculations of recapture tax returns within 10 business days. The advisor should explain, if necessary, to the taxpayer that Exam has 10 business days to reply to request for assistance in establishing the potential tax liability.
- (3) If Advisory receives a lien discharge request from an estate where the estate tax return has been selected for examination, options for protecting the Government's interest are similar to instructions for scenarios when no return has been filed and/or the final tax liability is unknown.
- (4) Consult with the Estate Tax Attorney working the case to secure the Revenue Agent Report (RAR) when the audit is final and take any necessary actions to close escrow agreements.

5.5.8.11 (07-24-2018) **Documents To Facilitate Processing of the Application**

- (1) In addition to the completed Form 4422, the estate administrator should submit the following:
 - Short form of letters testamentary
 - Copy of will
 - Copy of sale contract with a legal description of the property being sold
 - The proposed itemized closing statement outlining sales expenses and creditors to be paid
 - Copy of the Form 706
 - If return is not filed a draft of Form 706, and/or a copy of the inventory and appraisal reflecting all assets of the estate
 - Form 4768, Application for Extension of Time to File a return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes.
- (2) It may be necessary to review additional documentation such as:
 - An appraisal by a disinterested third party
 - Title report
 - Any recorded deeds/instruments to indicate how the property is titled or when the creditor recorded its lien
 - The company name, phone number, and address for the title or escrow company that will be used at the settlement and Form 15056, Escrow Agreement for Estates
 - Form 8821, Tax Information Authorization, giving the Internal Revenue Service the authority to contact individuals or companies, if necessary, when determining if the discharge is appropriate.
- (3) Evaluate the priority of all liens, judgments and expenses to determine the interests of the government in the property.
- (4) The ICS Advisory case file should reflect all actions taken and deadlines established. Guidance for documenting discharge case files is outlined in IRM 5.12.10.17, Requirements for Lien-Related Certificates.
- (5) If documents requested are not submitted timely refer to IRM 5.12.10.7.2, Requests for Additional Information - Actions if Not Received.

- (6) If documentation and/or payment are received after the ICS NFOI has been closed, create a new ICS NFOI to complete the investigation and make an appropriate recommendation.

5.5.8.12
(07-24-2018)

**Evaluating Applications
for Discharge under IRC
6325(c)**

- (1) When investigating requests for discharge review the Forms 4422, documents submitted by the estate, internal and external records (such as market comparisons) to estimate or substantiate the tax liability in order to determine how much or if any of the sale proceeds must be held or paid over to the Government in exchange for a certificate of discharge. It may be necessary to request assistance from E&G Exam using the Specialist Referral System (SRS) to estimate the estate tax liability, to provide input on the effect of any deductions on the tax computation or when sales occur on properties that are claimed under special elections.
- (2) Consider the factors below to determine how much or if any of the sale proceeds must be held or paid over to the Government in exchange for a certificate of discharge:
 - a. Conduct a compliance check to see if the estate has related outstanding periods, for returns such as Form 1040, Form 1041 or Form 709. Look at BMFOLT to see if there are unfiled or balance due returns. Ensure all payments are applied to the correct account.
 - b. If Advisory or E&G Exam determines that the estate was not required to file an estate tax return, then do not issue a discharge certificate. Instead, issue Letter 1352, Request for Discharge of Estate Tax Lien, selecting the applicable paragraph for no estate tax return filing requirement.
 - c. If the Form 4422 indicates that the estate tax return will be non-taxable, based upon the estimated gross estate and estimated deductions, then a discharge without an escrow may be appropriate. However, if you have a question regarding the effect of any of the deductions on the tax computation, you should submit an SRS referral to E&G Exam before making a decision on the application. Number Cruncher software may be used to estimate the tax liability.
 - d. If the estate reports marital and/or charitable deduction on Form 4422 additional documents should be obtained for review including the will and/or trust that authorize those deductions. Check IDRS to see if there is a surviving spouse and if warranted consult with E&G Exam on whether the estate tax liability will be reduced or no tax will be imposed, as a result if any marital and/or charitable deduction being taken.
 - e. If the Form 4422 shows an estimated estate tax greater than the net proceeds from the property being sold, and no estimated payment has been made, then the net proceeds should be paid or escrowed before granting the discharge. For example, if the net proceeds are \$1 million and the estate tax is \$2 million, the escrow or payment would be \$1 million. An SRS referral to E&G Exam may not be necessary in this situation.
 - f. Research if the estate has submitted Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes, and pre-paid any portion of the estimated tax due for the tax return.
 - g. If the Form 4422 shows an estimated estate tax liability, and the estate has filed an extension to file the tax estate tax return (Form 4768) and paid the full estimated tax liability, then a discharge without an escrow

may be appropriate. For example, if the extension request estimates \$1 million in taxes and the \$1 million was paid with the extension, you may determine that an escrow or additional payment is unnecessary.

However, if you have a question regarding the effect of deductions on the estate tax liability computation, you should submit an SRS referral to E&G Exam before making a decision on the application.

- h. Does IDRS reflect there is a balance due on the account? If yes sales proceeds should be applied directly to the account.
- i. Check Form 706 page 2 to see if there is a special election reported on the return under IRC 6166 or 2032A. Is the property being sold considered the qualifying property for the election? Will sale of this property disqualify the estate for the special election? Under such circumstances disqualification may result in additional tax due, send an SRS referral to Exam for assistance with questions. Has the special election lien been secured? Coordinate with Campus E&G unit, if the election is disqualified or there is impact to billing.
- j. For estates with an IRC 6166 election - provided property equal to the amount of the remaining deferred balance of tax and interest will remain subject to the lien, a certificate may be issued discharging a portion of the property listed on Form 668-J from the lien. As an alternative, under IRC 6324A(d)(5), the estate representatives may substitute other property in order to obtain a discharge of all or part of the property listed on the lien. If the disposition of property will result in accelerated payment of all or part of the deferred tax, or if the equity in the remaining property will not equal the remaining deferred balance of tax and interest, the application should be made under IRC 6325(b)(2).
- k. Consider the other assets reported on the Form 4422 or Form 706 that the estate tax lien attaches that have liquidity and are sufficient in value in the event there is additional tax liability.
- l. How many properties have been sold and what assets remain in the estate in which the estate tax lien attaches. For example: the estate has sold four properties there is only one remaining piece of real property according to Form 4422. It will be necessary to determine using Number Cruncher software or with assistance from Exam to derive an estimated liability to ensure that all assets are not released before the return is filed. In this scenario it may be necessary to require additional documentation from the estate to substantiate the estimated liability or deductions reflected on the Form 4422. Review to determine if additional sales proceeds need to be held in escrow.
- m. Check Form 706 schedules to see if sales price is higher than the fair market value at date of death or alternative valuation date. If so consider an SRS referral to Exam, include a copy of the sales contract, Form 706 and inquire if there is a potential valuation issue that may increase the tax liability. For example, the return reports the property's value as \$1 million, but the property is selling for \$3 million, you should submit an SRS referral to E&G Exam before making a decision on the application. E&G Exam could provide an opinion on the appropriate returned value and the impact on the estate tax liability computation or where there are questions regarding the effect of any deduction(s) on the estate tax liability computation.
- n. Consider if the examination case has been sent to Appeals or is in litigation — in this scenario the proposed tax liability has been established — sale proceeds should be secured to resolve as much of the proposed liability as possible.

- o. Look at IDRS for a TC 420 posted on the account, check AMDISA to see if the return is assigned to an Exam group for audit. If yes check with the examiner to see if there are any proposed changes to the tax liability when determining the amount of sale proceeds to secure in exchange for the discharge or request feedback on audit status.
- p. If an amended return has been filed to reduce the tax liability, until a determination on an amended is made by Exam, the original tax is still due.

5.5.8.12.1
(07-24-2018)
**Requests for Discharge
of the Unrecorded IRC
6324(a) Lien**

- (1) Advisory may receive requests for release of the unrecorded estate tax lien. However, just as there is no provision for filing a notice of the unrecorded estate tax lien, there is no provision for filing a release. Applicants should be instructed to provide documentation to potential purchasers of the decedent's property that either there was no Form 706 filing requirement, or, if Form 706 was filed and a closing letter has been provided to the estate by E&G Exam, a copy of the return, the Estate Tax Closing Letter 627, and verification of payment or transcript, are evidence that the IRC 6324(a) lien has been satisfied.
- (2) If an estate requests a release of the statutory IRC 6324(a) estate tax lien Advisory will issue Letter 1352, Request for Discharge of Estate Tax Lien, selecting the applicable paragraph for no estate tax return filing requirement.

5.5.8.12.2
(07-24-2018)
**Requests for Discharge
in which the Estate
wants all proceeds
applied to the estate tax
account**

- (1) If the estate wants all sale proceeds to be applied to the estate's tax account in exchange for a certificate of discharge, an escrow agreement will not be necessary (see discussion regarding IRC 6325(b)(2)(A)). Funds will be applied to the tax period as a TC 670 with designated payment code 53 for discharges.
- (2) Advisory will also request and monitor for input of TC 570 on the payment posting voucher to prevent refund offset prior to posting of a tax return or completion of the audit and any subsequent assessment. The frozen status will release if a TC 150 posts. If a return is not required or audit results in no additional tax due Advisory is responsible for input of the TC 571 to release funds that should not be held.
- (3) A control will be opened under code 187 miscellaneous with a "PP" indicator after the name of the estate or SSN. Quarterly follow ups must be input into ICS to see if the return has been filed and if necessary release funds timely to avoid additional interest to be paid after filing of the return or completion of the audit/assessment.

5.5.8.12.3
(07-24-2018)
**Reviewing Requests for
Discharge when a Tax
Return Has Not Been
Filed**

- (1) If an estate requests a certificate of discharge yet indicates that no return is needed for the estate because the estate's gross value is less than the amount for which a return must be filed a discharge will not be issued. Send Letter 1352 to advise the estate under these circumstances a discharge will not be issued or if additional information is required to investigate the request.
- (2) If the request is for a 2010 date of death, no certificate of discharge will be issued unless a Form 706 was filed for that year.
- (3) If the estate is requesting a discharge certificate early in the administration and does not have sufficient documentation to evaluate assets, consideration should be given to an escrow agreement related to the sale proceeds (see dis-

cussion regarding IRC 6325(b)(3)). Some allowance for administrative expenses may be considered if there are no other funds or estate assets available to pay administrative expenses. When considering requests for discharge ensure the Government's interests are protected and that the discharge will not adversely affect the Government's ability to collect the tax. *Example:* The estate is selling the residence of the decedent for \$400,000. The executor estimates the tax liability to be \$200,000. In addition to the estate tax lien, there are junior third party liens attached to the residence. Other estate assets consist of a trust and Family Limited Partnership. Since it may be harder to determine the value or sell the estate assets that the estate does not have complete control of and the tax liability is not yet determined it may be in the Government's best interest to use an escrow agreement to secure all proceeds from the sale of the decedent's residence until the tax return is filed and the tax liability can be established.

- (4) Conduct a compliance check to see if the estate has related outstanding periods, for returns such as Form 1040, Form 1041 or Form 709. Look at BMFOLT to see if there are unfiled or balance due returns.

5.5.8.12.4
(07-24-2018)
**Reviewing Requests for
Discharge when a Tax
Return Has Been Filed**

- (1) Employees must investigate, evaluate information and consider factors when calculating the interest of the Government in each case that a discharge request is submitted. For example some factors would be:
 - Check Form 706 schedule to see if sales price is higher than the fair market value at date of death or alternative valuation date. If so consider an SRS referral to Exam, include a copy of the sales contract, Form 706 and inquire if there is a potential valuation issue that may increase the tax liability.
 - Check Form 706 page 2 to see if any special elections are claimed return under IRC 6166 or 2032A. Determine if the property being sold is part or all of the property that qualifies for the special election.
 - Will sale of this property disqualify the estate for the special election that results in additional tax due? Has the proper special election lien been secured?
 - Consider the other assets reported on Form 4422 that the estate tax lien attaches to in the event of additional estate liability.
 - Consider the types of assets, i.e. other real property, cash or marketable securities that have liquidity and are sufficient in value to pay any additional tax liability?
 - Consider if the examination case has been sent to Appeals or in litigation – in this scenario the proposed tax liability has been established - sale proceeds should be secured to resolve as much of the proposed liability as possible.
 - Consider if the Estate Tax Attorney report has been issued indicating additional tax liability or a decrease when determining the amount of sale proceeds to secure in exchange for the discharge or request feedback on audit status.
 - Has the estate tax liability been paid? If not sales proceeds should be applied directly to the account.
 - If an amended return has been filed to reduce the tax liability, until a determination on an amended return is made by Exam, the original tax is still due.
 - If a TC 421 has been input on the account, release any funds above full payment of tax, penalties and interest. If there is a special election

involved make sure the qualifying property has not been sold and the special election lien has been addressed.

5.5.8.12.5
(05-31-2019)

Reviewing Requests for Discharge with an IRC 6166 Special Election

- (1) On accounts that have a portion of the tax deferred by an IRC 6166 election and estate property is sold that *is not subject to the IRC 6324A lien*, the Service cannot claim the right to payment from the sale proceeds.
- (2) Such sale proceeds may be applied:
 - to any unpaid non-deferred tax,
 - when the property pledged on the IRC 6324A lien is sold.
- (3) Termination procedures should be initiated:
 - when sale of the property triggers acceleration in which any portion of the interest in the qualifying business is distributed, sold, exchanged or otherwise disposed of, or money or property attributable to the interest is withdrawn, etc. equals or exceeds 50 percent of the value of the entire interest, measured at the value reported on the Form 706 or as adjusted. Dispositions are cumulative, so a record should be kept of dispositions.
 - if any unpaid annual installments are past due or outstanding from previous years.

5.5.8.13
(07-24-2018)

Application for Discharge with Request for Allowance of Administrative Expenses

- (1) In some requests for discharge of property from the estate tax lien that are submitted before the tax return is filed the estate administrator may request some of the sales proceeds to pay administrative expenses ahead of the estate tax lien priority.
- (2) 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.
- (3) The estate tax lien will be divested of assets used for the payment of charges against the estate and expenses of administration which have been allowed by any court having jurisdiction over the estate. See IRC 6324(a)(1). Review court records for such orders and consult with Counsel to address questions. However, 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. See *Kleine v. United States*, 539 F.2d 427, 432-33 (5th Cir. 1976).
- (4) The Service in its discretion may permit reasonable, necessary expenses to be paid before the federal estate 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 can be paid from other estate assets/funds or 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 without prior agreement from the Service.

- (5) Reasonable administrative expenses are limited to expenses for preserving and marshalling estate assets. Consideration should be given to how does allowance of this expense benefit the Government giving up its lien position.
- (6) Review guidance in IRM 5.5.2.6, Administrative Expenses, and related subsections.
- (7) 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.
- (8) 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.
- (9) Determine if administrative expenses can be paid from other non-probate assets or if provisions have been made to pay estate expenses from a trust or other estate asset. Advisory will review submitted expenses and make a determination on what are reasonable and necessary expenses that will be allowed before the estate tax lien and have the balance of the funds paid to IRS or held in escrow until the tax return is filed.
- (10) Review the completed application and determine if the discharge or subordination proposed by the applicant is appropriate. If there are discrepancies between what is proposed by the taxpayer and what is determined as acceptable by the Service, including the amount of the Government's interest in the transaction, contact the applicant and attempt to resolve.
- (11) Issue the appropriate commitment letter, Letter 5751, Estate Tax Lien Conditional Commitment for Discharge, or Letter 5752, Estate Tax Lien Conditional Commitment - Escrow, when the application is acceptable and there is a tentative agreement with the applicant regarding the amount of the Government's interest.

5.5.8.13.1
(07-24-2018)
Allowable Expenses

- (1) Certain expenses may be treated as reasonable and necessary expenses for the financial transaction and should be considered in calculating the amount of the Government's interest. These expenses, which do not have to be present, may include, but are not limited to:
 - Fees related to the application process such as title report, appraisal, etc.
 - Fees inherent to the transaction, such as realtor commission or loan origination fee.
 - Costs associated with the administration of the proceeds.
 - Payment of transfer taxes including ad valorem taxes, document stamp fees, transfer stamps, and transfer fees, if their assessment and collection is required on sales in the jurisdiction where the sale occurred/will occur (exception: some commercial sales, see IRM 5.12.10.7.4.1.
 - Recordation fees.
- (2) Allowance of the expenses listed in (1) is prohibited if:

- Monies were or will be paid to the taxpayer.
 - It is the expense of a buyer.
 - The allowance of fees and taxes are not mandated by state, county or other local law.
 - The fees are not applied to all sales of the same type; or the fees are excessive or unusual.
- (3) Review the proposed itemized closing statement to determine whether any proceeds are used to pay prohibited expenses. See IRM 5.5.2.6, Administrative Expenses, for guidance on reasonable and necessary expenses. In some circumstances property may be sold to pay administrative expenses such as the preparation of the tax return, in such cases documentation should be provided to determine if it is a reasonable and necessary expense that should be allowed to get the estate in compliance with filing and paying requirements. Expenses should not be allowed for administration and/or maintenance of foreign assets.
- (4) In addition review the itemized statement for:
- Correct legal description for property being discharged
 - Verification that costs in connection with the securing of an escrow agent and other related expenses are paid directly by the estate
 - Determination of how much reasonable administrative expenses, if any, should be allowed
 - An acceptable escrow agent
 - Escrow Form 15056 (any changes must be approved by SBSE Counsel as this is a legally binding contract)
 - Amount to be deposited in escrow matches escrow agreement.
- (5) Sale proceeds can only be allowed to pay any mortgage or other debt if the debt was recorded before the estate tax lien arose - at date of death. Review the recorded debt instrument and/or title report to determine if it was recorded prior to the date of death.

5.5.8.14
(07-24-2018)
**Securing Escrow
Agreements**

- (1) IRC 6325(b)(3) and Pub 783, Instructions on how to apply for a Certificate of Discharge of Property From Federal Tax Lien, provide guidance for securing escrow agreements. IRM 5.12.10.3.4, Substitution of Proceeds of Sale, also addresses escrow agreements.
- (2) The estate must identify an acceptable, bonded escrow agent who will hold the sale proceeds in a federally insured commercial bank or similar institution while the estate tax return is being prepared for filing or the pending audit is completed. The agent can be a bonded title company, law firm, accounting firm, bank or brokerage firm. The agent may not be an individual unless that person is a CPA or an attorney, not representing the estate. If the agent is a CPA or attorney, he or she should not be related to the decedent or any of the decedent's heirs. Ask the firm if they are bonded and with whom or do an internet search for references to a bonding company for the firm or ask for a copy of the bond. Finally, the agent must be located in the United States.
- (3) If the estate wants to submit an escrow agreement, Advisory will mail to the estate Form 15056, Escrow Agreement for Estates, and provide a deadline to complete and return the agreement. In most cases, deadlines to provide the escrow agreement should be kept to 5 to 10 calendar days, due to the urgency to proceed with the sale by its closing date. Only the IRS approved escrow

agreement form will be used. There may be unique circumstances where modifications are needed to the form. No changes can be accepted without review by SB/SE Counsel. The title company or escrow agent will be provided a conditional commitment letter by Advisory stating that the discharge certificate will only be issued after the IRS has verified the escrow funds have been deposited.

- (4) Advisory must review the draft escrow agreement. The Advisory Group Manager approves the escrow agent selected by the applicant; any reasonable expenses submitted as incurred in connection with the sale of the property; the claim amounts and priorities; and the distribution timing of the fund.
- (5) If there are discrepancies between what is proposed by the taxpayer and what is determined as acceptable by the Service, including the amount of the Government's interest in the transaction, contact the applicant and attempt to resolve.
- (6) Issue the commitment Letter 5752, Conditional Commitment to Discharge Certain Property from Federal Estate Tax Lien, when the escrow agreement is acceptable and there is a tentative agreement with the applicant regarding the amount of the Government's interest.
- (7) The agreement must be finalized and contain signatures of all parties involved including the Advisory Group Manager prior to the discharge being issued. An escrow agreement is considered a legal contract, electronic signatures cannot be used. **Pen and ink signatures will be required when approving escrow agreements.**

Note: The escrow account must be funded before payment of any claim or lien through money paid by the applicant or from the sale proceeds.

5.5.8.14.1
(07-24-2018)
**Monitoring and Controls
for Escrow Agreements**

- (1) Escrow agreements are considered collateral agreements per IRM 5.6.1.3.5, Escrow Arrangements, and must be controlled and monitored by Advisory. Collateral inventory is controlled through the Interim Revenue Accounting and Control System (IRACS). The advisor is responsible for sending documentation to ensure a control is established on IRACS.
- (2) Advisory will open a control on ICS no later than seven (7) calendar days after receipt in the group of the collateral agreement using the action code 184 – Collateral. A control will be opened once the advisor confirms that the net sale proceeds have been deposited with the escrow agent.
- (3) The inventory will be maintained in the IRACS database. Refer to IRM 5.6.1.6, CEASO Actions and IRM 5.6.1.8.2, Interim Revenue Accounting and Control System (IRACS), for procedures on establishing and monitoring controls on escrow agreements. Escrow agreements will be maintained as an open NFOI control until the account is resolved.
- (4) Agreements will be screened **quarterly** to determine if a return has been filed and associated with any balance due accounts. Establish quarterly follow up dates in ICS to check IDRS for the status. Escrows should be released as soon as deemed necessary to prevent additional interest from being paid after tax balance is established.
- (5) After the tax liability is established, Form 10492 may be provided to the escrow agent to notify the agent how much in certified funds must be paid to the IRS

to satisfy the Government's interest in the escrowed funds. Once the funds are paid to IRS and applied to the account the IRACS controls may be closed. If the funds are released for any reason the IRACS control should also be closed once the collateral is no longer being held. Write "VOID" across all pages of the escrow agreement and forward back to the taxpayer.

5.5.8.15
(07-24-2018)
**Preparation and
Issuance of Certificates
of Discharge**

- (1) Prepare the Form 792, U.S. Certificate Discharging Property Subject to the Estate Tax Lien, in duplicate, one copy is sent to the estate one is kept for IRS records. The form is available as a PDF fillable form from the *Publishing* website.
 - a. Block or line out the unused area in the description portion of the form so as to prevent the insertion of a description of other property.
 - b. Do not modify form or content of lien certificates at the request of local recording offices.
 - c. Redact Social Security Numbers (SSNs) that appear on the certificate so only the last 4 digits are shown. Employer Identification Numbers (EINs) should be redacted in a similar manner (e.g., xx-xxx1234).
 - d. Only reference that the discharge is being granted under IRC 6325(c).
- (2) Upon receipt of the closing documents, ensure the requirements listed in the conditional commitment letter have been met. Generally this includes the actions described below:
 - a. Review the copy of the recorded deed (for discharge) or mortgage for accuracy.
 - b. Review the copy of the final settlement statement and reconcile any differences from the preliminary statement to ensure proper accounting of all funds.
 - c. If applicable, receive payment of the amount specified in certified funds or other acceptable form.
- (3) Deliver the original of executed Form 792 to the applicant after all requirements are met. Advise the applicant of their responsibility to file the document with the appropriate recording office. **If any payment received is not by certified funds, withhold issuance of the certificate until it is verified that the payment has cleared.**
- (4) Post all payments received in conjunction with certificate applications on the date of receipt.
- (5) It is the responsibility of the applicant to record the certificate unless a particular recording agency only records certificates presented by the Service. If Advisory must file the certificate, no filing fee need be collected from the applicant.
- (6) See retention guidance in IRM 5.5.8.19.

5.5.8.16
(07-24-2018)
**Denied Requests for
Certificate of Discharge**

- (1) Issue a denial letter, Letter 1352, Request for Discharge of Estate Tax Lien when the proposed request is not acceptable or discrepancies in the amount of the Government's interest cannot be resolved. See IRM 5.12.10.12, Denial of Applications for Discharge or Subordination.
- (2) Enclose Pub 1660, Collection Appeal Rights, with the denial determination letter.

- (3) Document the case history with the reason(s) for denial.
- (4) Advisory closes its NFOI control on ICS fifteen (15) calendar days after sending the denial letter.
- (5) Process any appeal requests received from the taxpayer in accordance with standard appeal processing. See IRM 5.1.9, Collection Appeal Rights.
- (6) If a timely CAP appeal is filed, maintain an open NFOI until resolved.

5.5.8.17
(07-24-2018)
**Request for
Subordination under IRC
6325(d)**

- (1) Applications for subordination under IRC 6325(d) will be processed by Advisory to make a determination if the United States will be adequately secured after such subordination. The Service is not required to issue a subordination but may do so when it is in the best interest of the Government to do so. Requests for subordination will normally be made under IRC 6325(d)(2) or (d)(3). Provided it is determined that the amount realizable by the United States from the property will ultimately be increased, or that the ultimate collection of the tax liability will be facilitated by the subordination, a certificate may be issued.

- (2) Discharge factors should be considered such as:

- Has a special election lien been secured?
- Have events occurred that would disqualify the estate for the special election that results in additional tax due?
- Should a recapture tax return be secured?
- Is all of the special use property impacted or only a portion?
- Are there other estate properties should the subordinated creditor not be paid?

If Form 706 has not been filed or if a closing letter has not been issued, Advisory will consult with E&G Exam in order to determine the Government's lien interest.

- (3) In addition, consider general guidance concerning processing of subordinations in IRM 5.12.10.6, Subordination of Lien, when reviewing subordination requests.
- (4) The instructions for applying for a subordination can be found in Pub 1153, Certificate of Subordination of Federal Estate Tax Lien Under Section 6325(d) of the Internal Revenue Code.
- (5) A subordination will be issued using Form 669-F, Certificate of Subordination of Federal Estate Tax Lien. All SSNs must be redacted, for example, XXX-XX-1234V.

5.5.8.18
(12-16-2022)
**IRC 6163
Remainder/Reversionary
Interest Cases**

- (1) An estate can make an election under IRC 6163, Extension of Time for Payment of Estate Tax on Value of Reversionary or Remainder Interest in Property, when Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, is filed. When an estate is granted an IRC 6163 election, the time for payment of the estate tax will be postponed for six months after the termination of the preceding interest in the property. For example, the assets may be bequeathed to one beneficiary, but the tax is not triggered until that beneficiary dies. The tax is then due six months after the date of the beneficiary's death. Estate and Gift (E&G) examiners determine if the election should be allowed.

- (2) As a prerequisite to allowing this election, the estate must provide a bond that is at least equal to double the amount of the tax for the estimated duration of the precedent interest. If the estate does not provide the required bond, the E&G examiner will deny the IRC 6163 election.
- (3) A condition of the bond must indicate that the principal or surety will provide notice when the precedent interest terminates. The E&G examiner will consult with IRS Counsel to ensure that the language on the bond is sufficient.
- (4) If the election is granted, the E&G examiner will send a copy of Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, notification of the IRC 6163 election, and the original bond to Advisory. Campus E&G will input a transaction code (TC) 488, Installment and/or Manual Billing, on Integrated Data Retrieval System (IDRS) to keep the account out of collection status.
- (5) Advisory will take the following actions when they receive the bond:
 - Confirm that the amount of the bond is at least equal to twice the amount of tax deferred under IRC 6163.
 - Open a Non-Field Other Investigation (NFOI) code 184, Collateral, on Integrated Collection System (ICS) and follow the collateral procedures in IRM 5.6.1.6, CEASO Actions.
 - Assign a collateral serial number to the bond. See procedures in IRM 5.6.1.7, Collateral Agreement and Other Acquired Property Serial Numbers.
 - Complete Form 2276, Collateral Deposit Record. See procedures in IRM 5.6.1.8, Preparing Form 2276, Collateral Deposit Record.
 - Place the original bond in the Advisory safe for safekeeping.
- (6) Campus E&G monitors these cases, and they issue an annual letter to the estate to determine if the tax has been triggered. The principle or surety must provide an annual notice to the IRS during the month of September indicating the status of the precedent interest if the duration of the precedent interest depends on the life of any person.
- (7) Campus E&G will notify Advisory when there is termination of the precedent interest that triggers the tax to be due. The tax is owed six months after the event occurs that triggers the tax. Advisory will seek assistance from E&G Examination through the *Specialist Referral System (SRS)* to calculate the accrued interest.
- (8) Advisory will contact the estate to request payment of the tax. If the tax is not paid, Advisory will issue an Other Investigation (OI) on ICS to a Field Collection revenue officer to initiate collection against the bond. For guidance on collecting on bonds, see IRM 5.5.7.22.2, Estate Tax Collection on Bonds.
- (9) If the estate has reasonable cause, the estate can request to extend the time for payment of the tax for a reasonable period or reasonable periods (for multiple requests) not to exceed three years from the expiration of the previously elected postponement under IRC 6163(a) (due date of the tax). See IRC 6163(b), Extension for Reasonable Cause, and IRM 5.5.5, Processing Estate and Gift Tax Extensions, for information on reasonable cause determinations.
- (10) After the tax is paid, Advisory will release the bond. See IRM 5.6.2, Collateral Agreements, Maintenance.

- (11) See IRM 4.25.11.11, IRC 6163 Election Examination, for information on E&G Examination processing procedures, and see IRM 4.25.2.8.2.6, Estate Tax Extension of Time to Pay Under IRC 6163, for Campus E&G processing procedures, for additional information on IRC 6163 elections.

5.5.8.19
(07-24-2018)
**Retention of Advisory
Estate Tax Lien Files**

- (1) Keep original or copies of all documents that relate to investigation of lien certificate applications. Specifically, keep the following in case files during investigation of applications and after investigations are complete:
- Original application and attachments
 - A copy of the notice of estate tax lien to which the application or investigation applies (or document the ICS history if the IRC 6324(a) lien applies)
 - All documents referenced in the ICS history
 - A copy of the signed certificate or letter issued as a result of the investigation.
- (2) Advisory must print all lien agreements, forms and correspondence with the estate, and any documents issued through ICS that cannot be retrieved. Any forms, correspondence with taxpayers related to extensions to pay, notices of termination of special elections, notices of tax due or late installment payments are used as evidence in litigation cases and to calculate or support CSED calculations. This includes copies sent to persons having power of attorney for the estate.
- (3) The retention period for estate tax case files is **two years after the account is closed (Status 12) not two years after Advisory closes the case**. These case files contain key documents that are used as evidence in litigation cases.
- (4) Before any lien discharge case file is destroyed, current IDRS transcripts should be obtained to ensure that there is no balance owed on the account. If IDRS reflects there is a balance due on the account **do not destroy the file**.
- (5) A best practice is to destroy only after the assessment SOL has expired, or there is **no** TC 420 or 520 and with assurance that there is no outstanding balance on the tax module.

5.5.8.20
(05-31-2019)
Disaster Guidance

- (1) IRC 7508A(a) and the regulations thereunder provide that for taxpayers **affected** by a federally declared disaster, the IRS **may** specify a period **up to one year** to postpone filing of a return or a payment due date or extended due date *if the original or extended due date falls within the disaster relief period*. This includes filing any estate tax return and paying an estate tax or installment. For example, if the news release states the IRS gives the affected taxpayers until the end of the specified postponement period to file an estate tax return, the postponement would apply to any estate tax return that had an original or extended due date occurring between the beginning and ending dates of the postponement period.
- (2) The postponement period varies on each disaster incident and is specified in the news releases found on:
- <https://www.irs.gov/newsroom/tax-relief-in-disaster-situations>
- (3) Refer to general disaster guidance provided in:
- IRM 5.1.12.2, Disaster Assistance and Emergency Relief

- IRM 25.16.1, Disaster Assistance and Emergency Relief
- <http://mysbse.web.irs.gov/opsupport/hc/facilitiesorganizationalsupport/continuityofop/disaster/default.aspx>
- <http://serp.enterprise.irs.gov/databases/irm-sup.dr/disaster/faq.html>

This section is to provide guidance on unique scenarios related to estate tax accounts.

- (4) In general, do not take collection actions against taxpayers located in disaster areas who received an -O freeze during the compliance activity suspension period. These actions include, but are not limited to:
 - a. Initiating contact with the estate executor if the executor or principal place of business of the closely held business for which the estate made the 6166 election **is located** in the designated disaster area.
 - b. Filing a new Notice of Federal Estate Tax Lien on property in the designated disaster area.

Note: A consensual lien may be filed **provided that such request is made by the executor after the beginning of the postponement period announced in the IRS news release.** This exception only applies if the taxpayer specifically **requested** the exception on its own initiative and that such request was made by the taxpayer after the taxpayer had experienced the disaster effects (if any) for the disaster postponement period at issue.
 - c. Initiating enforcement action if the estate missed a deadline established prior to the disaster. Determine if estate records that are necessary to meet the deadline occurring during the postponement period were **located** in the IRS designated disaster area.
- (5) If contact with the executor results in information that the estate is *not* impacted by the disaster and an -O freeze was placed on the entity:
 - Resume normal collection activity immediately with managerial approval. Do not remove the -O freeze as doing so will reinstate the penalty and interest that were previously waived.
 - Document the ICS case history with the estate/taxpayer's status regarding the disaster, see IRM 5.1.12.2.5, Revenue Officer Inventory with "-O" Freeze.
- (6) For accounts with an -O freeze, casework will resume after the expiration or lifting of the suspension period with "soft contact" procedures to determine the impact of the disaster on the estate executor or estate assets and any changes in their ability to comply with special elections or other pre-disaster requests. The IRS news release describes a specific beginning date and a specific ending date for the postponement and the applicable disaster tax relief. See guidance in IRM 5.1.12.2.7, Soft Contact Procedures.
- (7) Identify cases on ICS by state abbreviation, zip code or by -O freeze. Indicators are posted on IDRS, via IT systemic programming to identified zip codes, through the use of computer transaction code (TC) 971. TC 971, action code 087 will post a corresponding -O freeze on the tax account of the affected taxpayer. It allows for special penalty/interest computation for taxpayers meeting the criteria for the filing and payment relief granted, see IRM 25.16.1.7.2,- O Freeze.

- (8) Document the ICS case history (or scan the declaration) with the state/county affected, the specific beginning/ending date for the postponement and the applicable disaster tax relief.
- (9) Review cases to verify if the executor or property pledged on liens are **located** in the designated disaster area. If you have been working with an executor who is located in a disaster area it may be necessary based on their individual circumstances to delay contact during the suspension period. For example, the executor is selling estate property located in an area *not* affected by the disaster and you have received a request for discharge, determine if the sale will continue or be delayed due to personal circumstances of the executor. Schedule follow ups, as needed, in ICS after the suspension period expires.
- (10) After the suspension period of collection activity has expired follow soft contact procedures, conduct IDRS research and/or contact the estate executor to determine the following:
 - a. Was the closely held business **located** in the disaster area?
 - b. Is the closely held business *operating* after the disaster?
 - c. If the closely held business is no longer operating, can the estate pay the remaining deferred tax?
 - d. After conducting the above research decide if the IRC 6166 special election should be terminated. If so, send the estate Letter 950-I, 30 Day Letter - Intent to Terminate IRC 6166 Election and send a copy to the Campus to put the E&G unit on notice to issue the Letter 6335-F, Notice of IRC 6166 Denial or Termination. Refer to procedures in IRM 5.5.8.5.1, Bond/Lien Determinations for Estate Tax Deferred Under IRC 6166.
 - e. Are any assets pledged on a special election 668-J lien impacted by the disaster?
 - f. If collateral for the 668-J lien has decreased in value, contact the executor to inquire if the estate can provide substitute property equal to the remaining deferred tax or pay the remaining portion of the deferred tax. Follow monitoring procedures in IRM 5.5.8.5.3, Monitoring Accounts During The Deferral Period, requesting additional collateral and send Letter 4346, Additional Collateral.
 - g. If the family-owned business has ceased to exist on accounts with 668-H liens, a cessation of the qualified use may trigger a recapture tax event - refer to IRM 5.5.8.4.2, Monitoring Lien Form 668-H.
- (11) An -S freeze will perform the same functions as the -O freeze but does not provide automatic compliance relief and will not stop generation of notices, see IRM 5.1.12.2.6, Revenue Officer Inventory with “-S” Freeze.
- (12) Requests for extensions of time to pay may be submitted or already under review during the postponement period. As part of the review process make a determination if the Government’s interest is adequately protected in other estate assets outside of the affected disaster area for the amount of the unpaid tax liability. Document findings to applicable factors in (9) above and follow guidance in IRM 5.5.5.4, Evaluating Requests for Extensions of Time to Pay when determining the estate’s ability to pay the liability.
- (13) An affected taxpayer, who received an extension of time to file, but not an extension of time to pay, is eligible for a postponement of time to file and relief from penalties relating to failure to file. The taxpayer is not eligible for penalty and interest relief relating to failure to pay, as the *payment due date* was not extended.

- (14) Similarly, if an affected taxpayer received an extension of time to pay, payment will be timely on or before the last day of the postponement period, and the taxpayer is eligible for relief from interest, penalty, additions to tax, or additional amounts related to the failure to pay *during the postponement period*.
- (15) Affected taxpayers that have both an extension of time to file and an extension of time to pay, and both extended due dates fall during the postponement period, are eligible for relief from the penalties for failure to file and failure to pay and interest that would otherwise accrue *during the postponement period*.
- (16) In cases where an extension to pay has been granted and another extension is requested *before the end of the postponement period* the request will be considered timely made. For example:
 - Estate filed a first extension to pay, good for 12 months and is accepted by IRS.
 - Before the end of those 12 months, at the 11 month mark, IRS declares that disaster relief postponements began for the applicable county (e.g, where the executor resides) on that date and the taxpayer postpone-ment continues for 4 months from that date.
 - On the day the 4 month postponement periods ends, the estate submits a second extension to pay, for another 12 months.
 - The IRS would treat this second request for extension to pay by the estate as being timely filed.
 - Whether the second extension should be accepted or for what amount of time its merits would be decided under the criteria in IRM 5.5.5.5, Evaluating Requests for Extension of Time to Pay.
- (17) The expiration of the extension to pay request would be postponed until the end of the disaster relief period, whether or not a new extension to pay request was made by the end of the disaster relief period, *provided the IRS decided to grant this relief*.
- (18) Disaster tax relief is not automatic, it needs to be included in the press release or other document the IRS publishes to describe the discretionary disaster tax relief being granted and the specified period of time for the relief. This period of time may be extended by subsequent notices.
- (19) It is not required to return voluntary payments received prior to or during the disaster compliance activity suspension period.

5.5.8.21
(12-16-2022)
**Qualified Domestic
Trusts**

- (1) When assets in an estate pass to a surviving spouse, the estate may be entitled to an unlimited marital deduction on those assets. The citizenship of the decedent's spouse will affect how this deduction is taken.
- (2) If a decedent was married to a United States (U.S.) citizen at date of death, the estate is entitled to an unlimited marital deduction on the assets that were received by the surviving U.S. citizen spouse. These assets are listed on Form 706 or Form 706-NA estate tax returns, on Schedule M, Bequests etc. to Surviving Spouse.
- (3) If a decedent was married to a non-U.S. citizen spouse, the estate is not entitled to the unlimited marital deduction unless the property received by the surviving spouse passes into a qualified domestic trust (QDOT). The assets received by the non-U.S. citizen surviving spouse are also listed on Form 706, Schedule M. Estate and Gift (E&G) examiners determine if an estate is eligible

for an IRC 2056A qualified domestic trust election. See IRC 2056A, Qualified Domestic Trust, and see QDOT requirements in IRM 4.25.4.6.2, Qualified Domestic Trusts.

- (4) In some of these cases, the qualified domestic trust will provide the IRS with collateral in the form of a bond or letter of credit when the estate files the estate tax return. In these cases, the E&G examiner will forward the collateral to Advisory along with the following documents:
 - Copy of the first three pages of Form 706 or Form 706-NA with Schedule M listing the qualifying assets.
 - A copy of the qualified domestic trust document.
 - Taxpayer identification numbers for the trust and social security number of the surviving spouse, if available, if the information is not already included on Form 706, Form 706-NA, or Schedule M.
 - Original collateral provided to the IRS which will be placed in Advisory's safe for safekeeping.
- (5) When the Advisory Estate Tax Lien Group receives a referral from E&G on an approved QDOT election with collateral, they will open a case on Integrated Collection System (ICS) under Non-Field Other Investigation (NFOI) code 184, Collateral, and they will maintain a case file with the documents from E&G.
- (6) Advisory holds the collateral for safekeeping. See IRM 5.6, Collateral Agreements, which provides the procedures for receiving, monitoring, and releasing collateral. At least every three years, Advisory will review internal records and will contact the qualified domestic trust to determine if a taxable event has occurred.

5.5.8.21.1
(12-16-2022)
**Qualified Domestic Trust
Requirements**

- (1) Qualified Domestic Trusts (QDOT) must meet certain additional requirements if the assets in the QDOT have a value that exceeds \$2,000,000.00, as determined without regard to any encumbrances owed on the assets. In these cases, the trustee must ensure that one of the following additional requirements have been met per 26 CFR 20.2056A-2(d), Additional requirements to ensure collection of the section 2056A estate tax:
 - One of the trustees must be a United States (U.S.) Bank or U.S. branch of a foreign bank if, during the term of the QDOT, a U.S. Trustee acts as co-trustee with the foreign bank. See 26 CFR 20.2056A-2(d)(1)(i)(A), Bank trustee. The status of a bank can be verified on the *FDIC Website*; or
 - The QDOT must provide the IRS with an irrevocable letter of credit issued by a U.S. bank or a U.S. branch of a foreign bank in an amount equal to at least 65% of the fair market value (FMV) of the trust assets; or
 - The QDOT must provide the IRS with a bond in an amount equal to at least 65% of the FMV of the trust assets.
- (2) The QDOT can alternate between any one of these arrangements provided that at least one of these arrangements are in effect at any given time.
- (3) If a QDOT has assets under \$2,000,000.00, one of the following requirements must be met:

- No more than 35% of the fair market value of trust assets, determined annually on the last day of the taxable year of the trust, will consist of real property located outside of the United States; or
 - The trust meets the same requirements as QDOTs that have assets over \$2,000,000.00 as described in (1) of this IRM subsection.
- (4) If there is more than one QDOT in an estate, the value of all the QDOTs in aggregate is used to determine if the \$2,000,000.00 threshold has been exceeded.
 - (5) The executor of the decedent's estate may elect to exclude up to \$600,000.00 in real property value (including furnishings) from the fair market value of the trust assets when determining if the \$2,000,000 threshold has been exceeded and to determine the required amount for the bond or letter of credit, if applicable. The exclusion is available if the property is used for the surviving spouse as a personal residence, and the property is owned directly by the QDOT. The election may be made whether the real property is located within or outside the United States.
 - (6) The U.S. trustee must include a written statement listing the assets that will fund the QDOT, the values of those assets, and whether the personal residence exclusion is being claimed.

5.5.8.21.1.1
(12-16-2022)

**Bond and Letter of
Credit Requirements**

- (1) If the bond or letter of credit is the initial security provided by the qualified domestic trust (QDOT), the document must be filed with Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, or Form 706-NA, United States Estate (and Generation-Skipping Transfer) Tax Return Estate of nonresident not a citizen of the United States.
- (2) The bond or letter of credit must be in favor of the IRS in an amount equal to at least 65% of the fair market value of the trust assets (determined without regard to any indebtedness with respect to the assets) as of the date of the decedent's death or at the alternate valuation date which is six months from the date of death. If the value of the assets is adjusted after examination of the estate tax return, the trustee has 60 days after the final determination to adjust the amount of the bond or letter of credit accordingly.
- (3) The bond or letter of credit must be for a term of at least one year. It must be automatically renewable at the end of that term on an annual basis thereafter unless notice of failure to renew is mailed to the United States (U.S.) trustee and to the IRS at least 60 days prior to the end of the term.
- (4) Any notice of failure to renew to the IRS must be sent to the Estate and Gift (E&G) Examination Group in the office of the IRS that has examination jurisdiction of the decedent's estate. The IRS will not draw on the bond or letter of credit if, within 30 days of receipt of the notice of failure to renew, the U.S. trustee notifies the IRS that an acceptable alternative arrangement has been secured. That alternative arrangement must take effect immediately prior to or upon expiration of the bond or letter of credit.
- (5) Bonds and letters of credit issued on QDOT cases have the following additional requirements depending on which collateral is provided:

| Type of Collateral | Requirements | Format of Collateral |
|--------------------|--|---|
| Bond | The bond must be with a satisfactory surety. A list of surety companies approved by the Department of Treasury is listed in <i>Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies</i> . Alternatively, the surety must meet the requirements of other acceptable surety as described in 26 CFR 301.7101-1, Form of bond and security required. | The specific format for a bond provided on a QDOT case is in CFR 20.2056A-2(d)(1)(i)(B)(2), Form of bond. Any material changes to this format must be reviewed by Counsel. |
| Letter of Credit | Must be irrevocable and issued by a U.S. bank or a U.S branch of a foreign bank. | The specific format for a letter of credit on a QDOT case is in CFR 20.2056A-2(d)(1)(i)(C)(2), Form of letter of credit. Any material changes to this format must be reviewed by Counsel. |

5.5.8.21.2
(12-16-2022)

Advisory Form 706-QDT Procedures

- (1) Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts, should be filed to report certain taxable and non-taxable events related to the qualified domestic trust (QDOT).
- (2) The following events will trigger the tax on Form 706-QDT:
 - Distributions of the **corpus** of the trust assets from a QDOT.
 - Death of the surviving non-US citizen spouse. A copy of the death certificate should be provided with Form 706-QDT.
 - Trust ceases to qualify as a qualified domestic trust. Consult with Estate and Gift (E&G) Examination through the *Specialist Referral System (SRS)* to make this determination.
- (3) The following events might not trigger a tax liability for a QDOT:
 - Distributions of **income** to the surviving spouse.
 - Any distributions of the principle of the trust made to the surviving spouse due to a hardship. There must be an immediate and substantial financial need related to the spouse's health, education, maintenance, or support of any person that the surviving spouse is legally obligated to support. A hardship determination is made by E&G Examination.
 - The surviving spouse has become a U.S. citizen. In this case, the trust should file a final Form 706-QDT with proof of U.S. citizenship to notify

the IRS that the spouse has become a U.S. citizen. The QDOT is still liable for tax if there were distributions of the corpus of QDOT assets or the trust ceased to qualify as a qualified domestic trust before the spouse became a U.S. citizen.

- (4) Form 706-QDT assessments are Non-Master File assessments with a master file transaction (MFT) Code of 53. Consult with E&G Examination through the *Specialist Referral System* if there is a question on the amount of tax that is due.
- (5) The failure to pay penalty and failure to file penalty may be assessed on returns that are not paid or filed by the return due date. Interest is also owed if the tax is not paid timely.
- (6) The trustee is responsible for filing Form 706-QDT and paying the tax due. If there is more than one trustee for any single trust, each trustee is liable for filing the return and paying the tax. If the surviving spouse is the beneficiary of more than one QDOT from a single decedent, the executor may identify a designated filer to be responsible for filing Form 706-QDT and paying the tax. Each trustee will still be responsible for completing Schedule B of Form 706-QDT and forwarding the information to the designated filer. Notification of a designated filer can be made on either the decedent's estate tax return or the first Form 706-QDT that is timely filed.
- (7) The return due date for Form 706-QDT depends on the event that triggered the requirement to file the return as shown on the chart below:

| Event | Due Date |
|---|---|
| Death of surviving spouse. | Nine months from date of death of the surviving spouse. |
| Trust no longer meets QDOT requirements. For example, the U.S. trustee dies and is not replaced. | Nine months from the date in which the trust ceased to qualify as a QDOT. |
| Distributions from trust | April 15th of the year following the calendar year of the distribution. |
| Surviving spouse becomes a United States citizen. | April 15th of the year following the calendar year the spouse became a United States citizen. |

Note: If the due date falls on a Saturday, Sunday, or legal holiday, the return is due on the next business day.

- (8) Form 706-QDT should be filed through Advisory if they are holding collateral. If collateral is not being held by Advisory, the QDOT can file Form 706-QDT with the IRS office listed in the *Form 706-QDT Instructions*. Advisory will take the following actions when an original Form 706-QDT is received in their office:
 - Ensure that the correct taxpayer identification number (TIN) is reflected on Form 706-QDT so that the return and payment can be processed

- correctly. The return is assessed under the trustee's social security number (SSN) or the trust employer identification number (EIN).
- Copy Form 706-QDT and payment for the case file.
- Send Form 706-QDT and payment to the Non-Master File Unit for processing.
- Confirm with Non-Master File Unit that the tax and payment are properly posted to the account. Advisors can request a transcript by sending an e-mail to **W&I KCSPC Non-Master File Team*.

- (9) If the QDOT qualifies, the trustee may elect an IRC 6166 extension of time to pay estate tax that is attributable to an interest in a closely held business. See IRM 5.5.8.5, Collateral from Estates with IRC 6166 Elections.
- (10) The QDOT can also request an IRC 2032A special use valuation election which creates a tax savings for the estate. See IRM 5.5.8.4, IRC 2032A special use Valuation Elections.
- (11) The estate can apply for an automatic six-month extension of time to file, and they can apply for an extension of time to pay. Both are requested on Form 4768, Application for Extension of Time to File a Return and/or Pay U.S. Estate (and Generation-Skipping Transfer) Taxes. Campus Estate & Gift works Form 706-QDT extension of time to file requests. Advisory works Form 706-QDT extension of time to pay requests. Once Advisory makes a determination on these cases, they should notify both Campus Estate and Gift and the Non-Master File Unit of their determination. See IRM 5.5.5, Processing Estate and Gift Tax Extensions, for extension of time to pay procedures.
- (12) If voluntary payment is not made on Form 706-QDT, Advisory will issue an Other Investigation (OI) on Integrated Collection System (ICS) to a Field Collection revenue officer to collect from the collateral. Guidance on collecting on bonds is in IRM 5.5.7.22.2, Estate Tax Collection on Bonds. Also see IRM 5.6.2, Collateral Agreement, Maintenance.

5.5.8.21.3
(12-16-2022)
**Advisory Qualified
Domestic Trust
Collateral Release**

- (1) If a taxable event has occurred, Advisory must ensure that Form 706-QDT, U.S. Estate Tax Return for Qualified Domestic Trusts, is filed and the liability is paid before releasing the collateral.
- (2) Once the liability is paid in full, Advisory will arrange to have the bond or letter of credit released. See IRM 5.6.2, Collateral Agreement Maintenance, for information on releasing collateral.
- (3) If the tax has not been triggered and the trust is substituting a suitable bond or letter of credit for different collateral or substituting collateral by having a suitable U.S. bank serve as trustee, the collateral can be released. See IRM 5.5.8.21.1, Qualified Domestic Trust Requirements, for the requirements that must be in effect while the qualified domestic trust is in existence.

