ID: CCA_2013061910280146

Office:

UILC: 6501.08-08, 6501.08-21, 6213.02-02, 6213.03-05, 6213.08-00

Number: **201334040**
Release Date: 8/23/2013

From:
Sent: Wednesday, June 19, 2013 10:28:07
To:
Cc:
Subject: Who may sign returns and Form 870 or 872 for deceased taxpayers

Hi,

You posed three scenarios and asked in each about who can sign unfiled tax returns and sign Forms 870 and 872 after the death of the taxpayer.

Case A:

Q. Decedent is a non-filer who died intestate with one asset: a bank account held by the decedent, her daughter, and her daughter's husband. Field counsel considers the daughter a distributee and proposed having the daughter to sign a Form 56, Notice Concerning Fiduciary Relationship, and then sign the decedent's unfiled tax returns and Form 870 or 872.

A. The daughter may sign the decedent's unfiled returns, because section 6012(b)(1) provides that "Tax returns of decedents are to be made by the decedent's executor, administrator, or other person charged with the property of the decedent." The daughter has the decedent's property. If the daughter submits balance due returns, those are acceptable without proof of authority; but if she claims credit elects or refunds, the Service may demand Form 1310 and/or documentary authority before refunding or crediting any claimed overpayment. See IRM 3.11.3.10.2(3). The Service may communicate with the daughter and her representatives about returns the daughter signs for her mother.

Section 6501(c)(4)(A) provides for extending the ASED and section 6213(d) provides for waiving restrictions on assessment, but who may sign ASED extension consents and waivers for decedents is not specified in the statutes or regulations. Although Revenue Ruling 83-41, 1983-1 C.B.349, clarified, amplified by Rev. Rul. 84-165, 1984-2 C.B. 305, held that "the Service will generally apply the rules applicable to execution of the original returns to consents to the extension of time to make an assessment", it ruled that in the absence of a court-appointed administrator for an intestate decedent, nobody may sign an ASED extension for the intestate decedent. Under the revenue rulings, the

daughter may sign ASED extensions for her liability as a transferee, because it's her own liability, but she may not sign Form 870 or 872 for her mother's estate without being appointed as the personal representative (administrator) for her mother's estate by a court of competent jurisdiction. The same rules should apply to Form 870, as well. The Service should require letters of administration or equivalent proof of such appointment before accepting an 870 or 872 from the daughter.

The daughter should also submit a Form 56 to document her fiduciary relationship as the personal representative of her mother's estate. The regulations require the fiduciary to retain proof of authority to act for the principal, sec. 301.6903-1(b)(2), and the same authority that would provide a foundation for Form 56 would likely suffice for Forms 870 and 872 (that is, letters of administration from a state probate court).

Case B:

Q: Decedent established a revocable trust into which he transferred all his assets before he died. He died testate, naming B his executor. B is also one of three trustees of the trust. The will has not been probated, and nothing passed under the will. Field counsel proposes treating the trustees as "testamentary trustees" and having them sign Form 56 and Form 870 or 872. The trust documents require the trustees to act unanimously, and the trustees have voted to appoint B the person to handle IRS matters.

A: B may execute any unfiled returns for the decedent, because section 6012(b)(1) provides that "Tax returns of decedents are to be made by the decedent's executor, administrator, or other person charged with the property of the decedent." The Service will accept returns signed by B as trustee in possession of the decedent's property, but the Service may require a Form 1310 and/or documentation of B's appointment by a court if the returns claim an overpayment.

As for filing a Form 870 or 872, the Service should require proof of authority, confirmed by a court (that is, letters testamentary), before accepting either an ASED extension or a waiver of restrictions on assessment.

Case C:

Q: The day after decedent died (in New Jersey) and before his attorney-in-fact learned the decedent (principal) had died, the POA (acting in Florida) executed a Form 872 extending the ASED. No probate has been opened, and no representative has been appointed.

A: The ASED extension signed by the attorney-in-fact the day after the taxpayer's death and at a time when neither the attorney-in-fact nor the IRS knew that the taxpayer had died is valid, because under both Florida law (where the attorney-in-fact acted) and New Jersey law (where the taxpayer died and may have been domiciled) acts by an

attorney-in-fact done in good faith and without knowledge that the principal is dead are valid and binding. Fla. Stat. § 709.2109(4); N.J. Stat. § 46:2B-8.5(a).

Now that the attorney-in-fact is aware of the principal's death, the POA is terminated, and he is not authorized to act for the decedent. If the estate wishes to submit a Form 870 or 872, the Service should require proof of authority to bind the estate. If the decedent died intestate, then court appointment of an administrator (and letters of administration) will be required. If the decedent died testate and named an administrator, then court approval (and letters testamentary) will be required.

Conclusion: In all cases, if the purported personal representative won't provide proof of authority (letters of administration or letters testamentary from an appropriate court), then no 870 or 872 should be accepted, and notices of deficiency should issue to ensure that the assessments are valid (copies to the taxpayer's last known address and to the address of any fiduciaries, whether confirmed or not).

Please let us know if you have any further questions.

Best,