



January 11, 2016

Mr. Alfredo Valdespino
Acting Director, Specialty Exam Policy
SB/SE Examination
Internal Revenue Service
5000 Ellin Road, C9-400
Lanham, MD 20706

Re: Comments on Updated [IRS Frequently Asked Questions on Estate Taxes](#) (Updated June 16, 2015, November 2, 2015, and December 4, 2015)¹ and New Policy on Issuing Closing Letters Only Upon a Separate Request

Dear Mr. Valdespino:

The American Institute of CPAs (AICPA) submits the below comments in response to the recent update of the [IRS Frequently Asked Questions \(FAQs\) on Estate Taxes](#) and the new Internal Revenue Service (IRS) policy of issuing IRS estate tax closing letters only upon a separate request four months after filing the estate tax return.

The AICPA suggests the IRS:

1. Formally announce its policy regarding issuing estate tax closing letters via issuing an official Procedure or Notice.
2. Revise [Form 706](#), U.S. Estate (and Generation-Skipping Transfer) Tax Return, to add a box to check to request a closing letter. Until the next revision of Form 706, the IRS should allow estates to request a closing letter by adding a hand-written request on the top of the first page of Form 706 or by attaching a page requesting the closing letter to Form 706 when it is filed.
3. Consider procedures to issue closing letters (not just transcripts with codes) through the transcript delivery service (TDS).

The AICPA is the world's largest member association representing the accounting profession, with more than 412,000 members in 144 countries and a history of serving the public interest since 1877. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized business, as well as America's largest businesses.

¹ See IRS website url: <http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Frequently-Asked-Questions-on-Estate-Taxes>.

Background

Estate Tax Return Filing Requirement

Form 706 is required to be filed by an executor or personal representative (collectively hereinafter “executor”) of a decedent’s estate if the value of the gross estate plus adjusted taxable gifts and the specific exemption exceeds the applicable exclusion amount in place in the year of the decedent’s death (\$5,450,000 for 2016). For estates under this threshold amount, Form 706 is required to be filed for the executor to elect to transfer the deceased spousal unused exemption (“DSUE”) amount to the decedent’s surviving spouse (commonly referred to as the “portability election”). The return is due nine months after the date of death of a decedent; a six-month extension of time to file the return is available upon application.

Prior IRS Process for Closing Letters

Until the IRS issued updated FAQs on Estate Taxes on June 16, 2015, the executor expected to receive an IRS Estate Tax Closing Document (IRS Letter 627) (referred to as a “closing letter”) (see end of these comments for a redacted example). The closing letter provides the executor evidence that the IRS has accepted Form 706 as filed or after an adjustment to which the executor had agreed. In the past, the closing letter was automatically sent to every estate that filed a Form 706 and generally was received within four to six months after the filing of the return or completion of an estate tax audit, whichever occurred later.

New IRS Process for Closing Letters

The IRS estate taxes FAQs website page update on June 16, 2015, disclosed a change in the long-standing IRS practice of automatically issuing a closing letter to the executor of every decedent’s estate for which a Form 706 is filed. Pursuant to the newly-issued IRS FAQs, for all Forms 706 filed on or after June 1, 2015, closing letters will be issued only upon request by the executor. Further, the FAQs state that executors will need to wait at least four months after filing Form 706 to separately request a closing letter.

We note that on July 2, 2015, the IRS also posted a short blurb on another IRS [webpage](#) about a change in its policy on closing letters, directing taxpayers to the FAQs website for more information.

As of November 2, 2015, the FAQs website directed executors and practitioners to make their closing letter requests by a phone call to (866) 699-4083 and providing the name of the decedent, the decedent’s social security number, and the date of death.

Then, most recently, on December 4, 2015, the IRS updated the FAQs website to note that as an alternative to requesting a closing letter, an authorized representative of a taxpayer or registered tax professional may obtain an account transcript that will now reflect “transactions including the acceptance of Form 706 and the completion of an examination.”

Further, on December 9, 2015, the IRS posted a [webpage](#) regarding transcripts in lieu of estate tax closing letters. It states: “NOTE: The decision to audit a Form 706 is typically made four to six months after the filing date. Please wait four to six months after filing Form 706 before submitting a request for an account transcript.” As a result, executors may need to wait 6 months (not just the 4 months on the FAQs website) from filing the Form 706 before starting the process for requesting an account transcript or closing letter.

In addition, the recently posted [instructions](#) to Form 706 includes reference to the new policy that closing letters must be requested at least 4 months after filing Form 706, and provides the (866) 699-4083 phone number for questions about requests and references the FAQs website.²

We assume that the IRS changed its policy on automatically issuing closing letters on all Forms 706 because it anticipates an increase in the number of returns filed because estates under the monetary threshold are required to file a Form 706 to make the portability election.

Comments

A. Closing Letters Serve Many Useful Purposes and are Often Required

We believe that the new policy will not change the need for closing letters. Closing letters serve many important purposes, including the following:

1. To assure executors that distributions can be made;
2. To notify states that impose an estate tax that the Form 706 has been accepted by the IRS;
3. To release federal or state tax liens on property owned by a decedent;
4. To satisfy requirements of financial institutions that require this type of assurance before releasing funds or transferring clear title to property; and
5. To provide certainty to the beneficiaries that the estate value is binding.³

² The updated instructions to Form 706 state: “**Closing letter procedure.** Effective for all estate tax returns filed on or after June 1, 2015, closing letters will not be issued unless requested by the executor of the estate or the designated power of attorney. To allow time for processing, please wait at least four months after filing Form 706 to request a closing letter. For questions about estate tax closing letter requests, call (866) 699-4083 or see the *Frequently Asked Questions on Estate Tax* at IRS.gov.”

³ We note that with the recent changes to Internal Revenue Code sections 6035 and 1014 in the Highway Bill, The Surface Transportation and Veterans Health Care Choice Improvement Act of 2015 (Transportation Act), [P.L. 114-41](#)) this summer, there is an increased importance in knowing when the IRS has made a “final determination” of estate value, and, therefore, basis to a beneficiary. A closing letter provides certainty to the beneficiaries that the estate value is binding.

Therefore, the IRS will still need to issue closing letters. The new transcript code will only help in the first above noted purpose. The procedure to obtain the transcript code seems complicated, and the new procedure is not likely to produce the result that is as user friendly as the closing letter.

1. Executors Often Require Closing Letters to Meet Legal Responsibilities Before Making Distributions

The executor of a decedent's estate is legally responsible for marshalling and maintaining the decedent's assets, settling debts and paying expenses (including income, gift, estate and generation-skipping transfer taxes), and distributing assets of the estate to the beneficiaries in accordance with the decedent's will or laws of intestacy. As a practical matter, a prudent executor will need confirmation that Form 706 has been accepted by the IRS before distributing assets to beneficiaries and will, therefore, wait until the closing letter is received before making a partial or final distribution. This practice is especially true if the estate is above the applicable exclusion amount because any adjustments to the return by the IRS could increase the amount of federal estate tax due. We note that the transcript code indicating that Form 706 has been accepted as filed or an examination is complete would satisfy this executor need; however, this procedure would not help with the other above-noted purposes as hereinafter further explained.

2. Many States Require Estate Tax Closing Letters

Every state that levies an estate tax requires a copy of the closing letter from the IRS. Executors need the closing letter to file it with each relevant state tax authority where an estate or inheritance tax return was filed or in states where any estate taxes were paid. The state taxing authority can then issue its closing letter.

3. Closing Letters are Needed to Release Federal or State Tax Liens on Property Owned by the Decedent

Closing letters are often needed in order to release a federal or state tax lien on real property that was owned by, and titled to, the decedent. A closing letter (along with a copy of Form 706 and proof of payment) is often needed to show the purchaser of the property that there is proof that no lien exists or that it has been satisfied. The estate may also need the closing letter to file with the state to release the state's lien.

4. Financial Institutions Often Require Closing Letters Before Releasing Funds or Transferring Title to Property

Banks, brokerage firms, title companies and other institutions may require a copy of the closing letter to evidence that the federal estate tax has been satisfied before releasing funds or transferring clear title to property.

B. The New Policy will Result in Additional Burdens

1. The New Policy will Add Administrative Burdens for Executors and Their Representatives

Adding another requirement for making a separate request to the IRS and another date to keep track of creates additional administrative burdens for executors and the representatives. Adding another layer of possible confusion with processing the request at the IRS is not advised.

With the new policy to obtain a closing letter by speaking over the phone to someone at the IRS, it is possible that it could:

- Take quite a while until the executor or the representative is able to contact someone at the IRS to make the request;
- Result in errors by the IRS representative on the phone because the IRS representative may not hear correctly all the information, may input information incorrectly, or may not submit correctly the request to be processed; and
- Result in the executor or the representative having no record that the request was made.

The new policy will also catch the uninformed executor by surprise as this policy has not been widely communicated to the public other than by a posting on an IRS FAQs website and in the current instructions to the Form 706. Until the new policy is announced formally by the IRS, many executors and the representative, who filed the Form 706 before its instructions were changed, will be expecting the closing letter to be issued automatically, as was the case before the new policy.

The new policy will involve additional burdens for taxpayers and their representative, including: (1) keeping track of the time of filing, and then four months later, remembering to request that the IRS issue a closing letter; (2) additional costs associated with the time involved for such a request; and (3) possibly additional follow-up with the IRS to confirm that the request was processed correctly, and if it was not, then making certain it is handled correctly.

The new procedure to obtain a transcript through the TDS requires tax professionals to register on the IRS.gov website and file a [Form 2848](#), Power of Attorney, or [Form 8821](#), Tax Information Authorization, in order to obtain taxpayer transcripts. The instructions are detailed and complicated,⁴ and at the end, require the tax professional to look for “Transaction Code 421.” A transcript (even one showing the

⁴ <https://www.irs.gov/irspup/Businesses/Small-Businesses-%26-Self-Employed/Transcripts-in-Lieu-of-Estate-Tax-Closing-Letters#tds>.

“appropriate” code) will not easily substitute for a closing letter for state or financial institutions seeking finality from the IRS regarding their estate tax examination.

We note that executors have started to attempt to obtain the Form 706 transcript using the new process through the TDS on the IRS website and have experienced difficulty with that process. The IRS TDS requires, but does not seem to recognize, the practitioners’ [Form 2848](#), Power of Attorney for Forms 706 transcripts. We hope that IRS will fix the system to recognize the Power of Attorney already filed with IRS.

2. The New Policy will Not Improve Efficiency for the IRS

We believe that all estates above the monetary threshold will continue to need a closing letter. Although we realize that the portability election may increase the number of Forms 706 filed, we believe that most of these estates filing a return will still want a closing letter. The new process will not change that need and will not reduce the workload for the IRS to issue closing letters. In fact, we believe it will produce additional work for the IRS in processing these requests.

The AICPA appreciates that the IRS presumably made this change to issuing closing letters only upon request in order to improve its efficiency in processing Forms 706. However, if a large number of executors will request a closing letter, as we anticipate, the new policy could actually make the IRS less effective in processing Forms 706. We believe the requests will unnecessarily require IRS personnel to:

- Understand and log into the system to note the closing letter request;
- Match the request to the correct return;
- Research the status of each of the requests;
- Process and issue the closing letter; and
- Communicate the status and closing letter to executors.

We do not think the new procedure will significantly reduce the IRS workload when processing Forms 706. The new policy will add challenges, complications, and additional risks for such requests to be processed incorrectly.

Recommendations

1. The IRS Should Formally Announce its Policy Regarding Issuing Closing Letters by Issuing an Official Procedure or Notice.

The AICPA suggests that the IRS formally announce its policy regarding issuing closing letters by issuing a revenue procedure or notice. Formal notice will provide all executors and the representatives with the information that is needed regarding the new closing letter process. As changes and updates are made to this policy, the

IRS should communicate formally via an official IRS announcement in order for all executors and the representatives to be timely informed of changes to this policy.

2. The IRS Should Provide a Simplified Procedure to Request a Closing Letter.

The AICPA believes that the IRS should provide a simplified method for requesting a closing letter. We suggest that the next version of Form 706 include a box to check for the executor to request the closing letter. In the interim, we suggest that the IRS allow executors to request a closing letter either by hand-written request on the top of the first page of Form 706 or by attaching a request statement to Form 706 when it is filed.

These recommendations would simplify the closing letter process, provide less opportunity for processing errors, and provide notice to the IRS personnel reviewing the Form 706 that the executor requests the closing letter. We believe our recommendations would add efficiency for the IRS as the agency: (1) would not have to process and input the request into the system; (2) could note the request at the time the return is reviewed by the examiner; and (3) would not need to research and follow up on an executor's request months later.

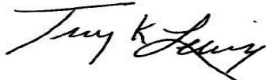
3. The IRS Should Consider Procedures to Issue Closing Letters (Not Just Transcripts with Codes) Through the TDS.

The AICPA suggests that the IRS consider if it is possible to update the existing TDS to provide closing letters (not just transcripts with codes) through its TDS. The TDS already exists, and may, or could, contain all of the information required in a closing letter. The IRS could still require tax professionals to register and use the IRS.gov website, but tax professionals, executors and the representatives requiring closing letters would have the information they need presented in the form of a traditional closing letter that is more readily acceptable for the purposes that it is needed.

* * * * *

We welcome the opportunity to discuss these comments or answer any questions that you may have. I can be reached at (801) 523-1051, or tleywis@sisna.com; or you may contact Mary Kay Foss, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (925) 648-3660 or MaryKay@cpaskllp.com; or Eileen Sherr, AICPA Senior Technical Manager, at (202) 434-9256, or esherr@aicpa.org.

Sincerely,



Troy K. Lewis, CPA
Chair, Tax Executive Committee

Mr. Alfredo Valdespino

January 11, 2016

Page 8 of 8

cc: Ms. Catherine Veihmeyer Hughes, Estate and Gift Tax Attorney Advisor, Office of Tax Policy, Department of the Treasury
Mr. Kerry Hawkins, Attorney-Advisor (Technical), Estate and Gift Tax, Internal Revenue Service
Ms. Lisa Piehl, Policy Manager, Estate and Gift Tax, Internal Revenue Service
Mr. Charles Mangrum, Tax Law Specialist (Form 706), Internal Revenue Service
Ms. Melissa Liquerman, Chief, Branch 4, Office of the Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service
Ms. Karlene Lesho, Senior Technician Reviewer, Office of Associate Chief Counsel for Passthroughs and Special Industries, Internal Revenue Service

Internal Revenue Service
Cincinnati, OH 45999

Department of the Treasury

Person to Contact:

Employee Identification Number:

Contact Telephone Number (Toll Free):

Estate Name:

Social Security Number:

Date of Death:

Date:

Estate Tax Closing Document
(Not a bill for tax due)

We have made the following determination on the estate tax return referenced above.

| | |
|------------------------------------|-----|
| Net Estate Tax | *\$ |
| State Death Tax Credit/Deduction** | *\$ |
| Generation-Skipping Tax | *\$ |

*These figures do not include any interest and penalties that may be charged.

** For dates of death after 12/31/04, this amount represents the State Death Tax Deduction.

This letter is evidence that the Federal Estate Tax Return has either been accepted as filed or has been accepted after an adjustment to which you have agreed. You should keep this letter as a permanent record. You may need it to close probate proceedings, transfer title to property and/or settle state taxes.

If the estate elects and qualifies to pay the estate tax in installments under Internal Revenue Code section 6166 and the IRS has not contacted you, the IRS will contact you to determine whether the estate is required to provide a bond, or alternatively a special extended lien under section 6324A, and may request additional financial information to make this determination. The IRS will continue to monitor whether the government's interest is at risk throughout the section 6166 installment payment period.

This letter is not proof that any amount of tax due has been paid. If you have requested a discharge from personal liability under section 2204, proof of full payment of the amounts shown above (plus applicable interest and penalties) releases you of personal liability. If payment is not timely made or the time for payment is extended under sections 6161, 6163, or 6166, there is a lien on all estate property for the federal estate tax due for 10 years from the date of death or until the entire balance is paid, whichever date is earlier.

We will not reopen or examine this return unless you notify us of changes to the return or there is: (1) evidence of fraud, malfeasance, collusion, concealment, or misrepresentation of a material fact; (2) a clearly defined substantial error based upon established Internal Revenue Service position; or (3) a serious administrative error. (See Revenue Procedure 2005-32, 2005-1 Cumulative Bulletin 1206.)

Sincerely,



Vernon S Williamson

Director, Campus Compliance Operations

Letter 627 (Rev. 11-2007)
Catalog Number 40285J