

the prior year's Form 1040, reporting \$20,000 of retirement fund capital gain which didn't even belong there.)

Rather than setting the Schedule K-1 aside, thinking it's inapplicable to our client, what we should do is look at Line 20V on the Schedule K-1 and see if there is a reported amount. Line 20V is the line for the flow-through entity to report UBI. If no amount is shown, and to be thorough, we might peruse the statements to the Schedule K-1, as some partnership return preparers have been known to miss the Line 20V requirement. However, if one IRA Schedule K-1 shows \$600 of UBI, and the other IRA Schedule K-1 shows \$500 of UBI, the trustee of the IRA has a Form 990-T filing requirement as the cumulative total for that particular plan exceeds \$1,000.

The trustee may charge the client for the preparation of Form 990-T. More importantly, any tax paid must come from the plan assets, thereby avoiding a potential prohibited transaction under IRC §4975. Even though Line 20V in excess of \$1,000 does not impact the client's Form 1040, we as practitioners perhaps have an obligation to inform our client of the Form 990-T filing requirement, and recommend that he/she discuss it with the plan's trustee.

For practitioners with clients fitting the above situation, we have included a sample letter that you might consider for such an occasion.

To download the client letter go to:

<http://www.caltax.com/spidellweb/public/editorial/IRAUBIletter.doc>



<sup>1</sup> Treas. Regs. §1.6012-2(e)

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## FUN: The job of being a fiduciary of an estate

### **ESTATES: Wrapping up an estate doesn't have to be confusing.**

By Richard Malamud, CPA, J.D., LL.M.

*Guest Contributor*

When someone dies, the trustee or executor (the "fiduciary") usually is undertaking that job for the first, and often the only, time. The process varies by state and depends on the trust, will, or how title to the property is held. Some estates will have to go through probate while others won't because title is in joint tenancy.

There is an easy place to start. The fiduciary will need to:

- Find documents, assets, and liabilities;
- Understand the process; and
- Notify (select) the family attorney and tax professionals to get advice to figure out the meaning of the will, trust, and other documents in order to legally comply with their terms and finalize the estate.

#### **Find documents, assets, and liabilities**

Financial information: Now it's time to play detective. Usually the will and trust are easy to find. Other documents may be held only electronically. Children who become a trustee often are unaware of the decedent's bank accounts, life insurance, financial transactions, and debts. Even a surviving spouse may be uninformed. Gathering all of the assets and liabilities will be necessary, even if the estate is small.

An additional issue is now pervasive: locating assets that don't show up on a monthly paper statement because so many people have gone paperless. A good place to start is the decedent's prior-year income tax return. Since information is now sent by e-mail, it is important for the fiduciary to obtain the password for the decedent's e-mail, bank account, or even for Quicken. That may be very difficult or time consuming if there is no paper trail. This requires pre-death planning, and those who know they will be fiduciaries should try to convince the trustor when they get older to provide them with a list of passwords. It is recommended that the future fiduciary not rely on the accuracy of such a list. He or she should attempt to access the information so any issues can be resolved while it is still easy to solve any problems.

Legal information: There is no way around it. Someone has to find the will, partnership agreements, and other documents. Most are very long, but the important parts are usually fairly short. Then they have to be read to find out what needs to be done, what the assets and liabilities are, and who the beneficiaries are. Unfortunately, most documents use legalese, like QTIP, QSST, and Exemption Equivalent, and the tax professional can be asked to clarify. This is usually best done in a face-to-face meeting. The initial meeting provides the fiduciary with a "Reader's Digest" version of what needs to be done, who needs to be consulted, and who has to do what. This is not the time to resolve all or even most of the fiduciary's questions. There will be plenty of time for that later.

### **Understand the process**

The next step is for the fiduciary to understand the process. Initially, this may simply be figuring out what needs to be done and referring matters to the appropriate representative for advice. Once the will and trust have been reviewed and a basic understanding of the types and values of assets in the estate has been established, it should be clear what needs to be done and which professional should be consulted.

The most common question is whether there will be an estate or inheritance tax. For those dying in 2015, the answer is there is no federal estate tax as long as the net value of the estate (plus all prior taxable gifts) is less than \$5,430,000. Larger estates will be free from estate tax only if the excess goes to a surviving spouse (directly or in trust) or to charity. The federal tax is 40% on the net value of the taxable estates over \$5,430,000. Not being subject to the federal estate tax doesn't mean there is no state inheritance tax. A few states have an inheritance tax on very low-valued estates. Others have an inheritance tax starting at \$1 million or \$2 million of value.

A very difficult question that will almost always require the fiduciary to consult with a tax professional is whether the estate should elect portability of the unused unified credit, which was added in 2011. If an estate is worth less than \$5,430,000 (for a decedent dying in 2015), the difference can be passed to a surviving spouse, but only if a federal estate tax return (Form 706) is filed and an election is made. In effect, it is likely that if a married person dies with a \$2 million to \$5 million estate, the prudent thing to do is to file a Form 706 — even though one is not required, and it may be of no value unless the spouse dies with an estate of over the exemption amount, currently \$5,430,000.

### **Notify the experts**

Which experts will be required depends on the knowledge and experience of the fiduciary and the complexity (and size) of the estate. Probate usually requires the advice and assistance of an attorney. While some fiduciaries can understand the terms of the trust or will, it is helpful (even if not required) to have the attorney or accountant explain the terms to the trustee or executor. Tax returns, especially complex trust returns, will require a tax preparer, as will the estate or inheritance tax return, which can be prepared by either an accountant or attorney. Real estate may require an appraiser for valuation for the estate tax, plus a real estate agent

may be required if the family home is going to be sold. A stock broker will be needed if the decedent had securities or bonds that need to be sold. Lots of experts may be needed.

Now it's time to gather the assets, pay the bills, sell assets, and file the various income tax returns for the decedent, the estate, and even for new trusts that must be set up (exemption, marital, minor, charitable remainder, etc.). Then it will be time to make the distributions to the beneficiaries and maybe even pay the fiduciary.

#### Checklist of Topics to Discuss with Experts

Item	Yes	No
Final tax return (Form 1040)	<input type="checkbox"/>	<input type="checkbox"/>
Estate tax return (Form 706) and portability; inheritance tax return (state)	<input type="checkbox"/>	<input type="checkbox"/>
Life insurance	<input type="checkbox"/>	<input type="checkbox"/>
Joint tenancy property/community property	<input type="checkbox"/>	<input type="checkbox"/>
Living trust ( <i>inter vivos</i> )	<input type="checkbox"/>	<input type="checkbox"/>
Funding of trust(s)	<input type="checkbox"/>	<input type="checkbox"/>
Title to real estate/partnerships/autos	<input type="checkbox"/>	<input type="checkbox"/>
Fund future trusts	<input type="checkbox"/>	<input type="checkbox"/>
Pay debts	<input type="checkbox"/>	<input type="checkbox"/>
Make distributions to beneficiaries	<input type="checkbox"/>	<input type="checkbox"/>
Fiduciary income tax returns (Form 1041)	<input type="checkbox"/>	<input type="checkbox"/>
Notifying Social Security, pensions, annuities, insurers, landlords, etc., of the death	<input type="checkbox"/>	<input type="checkbox"/>

#### Important Financial Contacts

	Name	Contact info
Tax professional		
Attorney		
Insurance – life/home/car		
Stockbroker		
Financial planner		
Banker		
Pension plan administrator		

To download a checklist of FUN items, go to:

<http://www.caltax.com/spidellweb/public/editorial/FDT/0315FUNchecklist.pdf>

#### About the Author

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## IRS issues return preparer "best practices" with respect to ACA

**TAX: There are no special or specific due diligence requirements.**

By Tim Hilger, CPA  
Senior Editor

On its website, the IRS has issued two sets of "Return Preparer Best Practices" with respect to:

- The Individual Shared Responsibility Provisions;<sup>1</sup> and
- The Premium Tax Credit.<sup>2</sup>

Both begin by noting that there are "no special or specific due diligence requirements related to Affordable Care Act (ACA) issues." Under general due diligence requirements, tax preparers may rely on statements made by their clients. However, preparers may not do so blindly; preparers are expected to resolve conflicting or contradictory statements from their clients during the return preparation process.

### Individual Shared Responsibility

Generally all individuals must have coverage for 2014. If not, they must either have an exemption or make an Individual Shared Responsibility Payment (i.e., pay a penalty). The determination is made on a monthly basis. Coverage during any one day during a month is treated as coverage during the entire month.