DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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MEMORANDUM FOR DISTRICT COUNSEL
NEW ENGLAND DISTRICT
CC:NER:NED:BOS
Attn: ████████████

FROM: Heather C. Maloy
Acting Assistant Chief Counsel (Income Tax & Accounting)
CC:DOM:IT&A

SUBJECT: Significant Service Center Advice

This responds to your request for Significant Advice, dated February 18, 2000, in connection with a question posed by the Andover Service Center regarding the issuance of Employer Identification Numbers ("EINs").

ISSUES

1.   Whether it is proper for a State, for information reporting requirements under the Internal Revenue Code ("Code"), to request an EIN from an individual who purports to act as a fiduciary of an estate, when State, engaged in a trade or business, pays income to such individual in an amount of $600 or more in a calendar year.

2.   Whether the Internal Revenue Service ("Service") should issue an EIN to an individual, when such individual requests the EIN for the estate of a decedent, but informs the Service that he or she is not the fiduciary of the estate.

CONCLUSION

1.   It is proper for a State, for information reporting purposes, to request an EIN from an individual who purports to be act as a fiduciary of an estate, when State, engaged in a trade or business, pays income to such individual in an amount of $600 or more in a calendar year.

2.   The Service should not issue an EIN to an individual who requests an EIN for the estate of a decedent when the individual informs the Service that he or she is not the fiduciary of the decedent's estate.

FACTS

In accordance with ▇▇▇▇▇▇▇ General Laws, Chapter ▇▇▇, Section ▇, the holder of property deemed to be abandoned under ▇▇▇▇▇▇▇ law must turn the property over to the Treasurer of the ▇▇▇▇▇▇▇▇▇▇▇▇▇▇▇ ("Treasurer"). ▇▇▇▇▇▇ ▇▇▇▇▇▇▇ pays interest on funds that have been surrendered to it as abandoned property when such funds are distributed to a successful claimant.

The executor or administrator of an estate who files a claim with the Treasurer for the abandoned property of a decedent is required by the Treasurer to provide the original or attested copy of appointment as Executor(rix) or Administrator(rix). The Treasurer also requests the EIN of the decedent's estate when the Treasurer distributes abandoned property with interest of $600 or more in a calendar year to a successful claimant.

A number of individuals who have recently filed claims for the abandoned property of a decedent with the Treasurer have requested Andover Service Center to issue them an EIN for the estate of the decedent. These individuals have informed Andover Service Center that the Treasurer requires them to have an EIN for the estate of the decedent in order to claim the decedent's abandoned property. Only one of twenty-five individuals who requested an EIN for the estate of a decedent had been appointed the fiduciary of the estate of the deceased individual.

DISCUSSION

1.   Whether it is proper for a State, for information reporting requirements under the Internal Revenue Code ("Code"), to request an EIN from an individual who purports to act as a fiduciary of an estate, when State, engaged in a trade or business, pays income to such individual in an amount of $600 or more in a calendar year.

Section 6041(a) of the Code, and the Treasury regulations promulgated thereunder, require every person engaged in a trade or business, including a state, that makes payment of $600 or more of fixed or determinable income in the course of such trade or business to another person during a calendar year to file an information return (Form 1099) with the Service. The information return must set forth the amount of such income and the name and address of the payee.

Section 6109(a)(3) provides that any person required to make a return, statement, or other document with respect to another person, shall request from such other person,

and shall include on such return, statement, or other document, such identifying number as may be prescribed for securing such person's proper identification.

Section 6109(a)(2) provides that when required by regulations prescribed by the Secretary, any person with respect to whom a return, statement, or other document is required under the authority of the Code to be made by another person, or whose identifying number is required to be shown on a return of another person, shall furnish to such other person such identifying number as may be prescribed for securing such person's identification.

Section 301.6109-1(a)(1)(ii)(C) of the Regulations on Procedure and Administration provides that any person other than an individual (such as corporations, partnerships, nonprofit associations, trusts, estates, and similar nonindividual persons) that is required to furnish a taxpayer identifying number must use an EIN.

Based on sections 6041, 6109 and the regulations thereunder, the Treasurer must file a Form 1099 when, in the course of its trade or business, it pays another person $600 or more of income during the calendar year. The Form 1099 must reflect the payee's taxpayer identification number. If the payee receives the funds in his or her capacity as a fiduciary of a decedent's estate, the identifying number is the estate's EIN. Accordingly, when the Treasurer pays the fiduciary $600 or more of income during the calendar year, the Treasurer must include the estate's EIN on Form 1099.

In view of the foregoing, the Treasurer is properly requesting EINs from the fiduciaries.

2. Whether the Internal Revenue Service ("Service") should issue an EIN to an individual, when such individual requests the EIN for the estate of a decedent, but informs the Service that he or she is not the fiduciary of the estate.

As stated above, the fiduciary of a decedent's estate is required to furnish the Treasurer with the estate's EIN when the fiduciary receives $600 or more of income from the Treasurer during the calendar year.

The Andover Service Center has informed us that a number of individuals have requested EINs as the fiduciary of a decedent's estate because they are claiming abandoned property under ███████████ law. Most of these individuals are not the fiduciaries of these estates.

Treasury Regulation section 301.6109-1(d)(2)(i) provides that any person required to furnish an EIN must apply for one on Form SS-4. The form must be prepared and filed in accordance with the accompanying instructions and relevant regulations, and must set forth fully and clearly the requested data. Form SS-4 indicates that, in the case of an estate, it is the fiduciary who must execute the form on behalf of the estate.

In Revenue Ruling 64-99, 1964-1 C.B. 482, the Service ruled that if a return or other document, including information returns, was required to be filed for an estate, the fiduciary must obtain and furnish an identifying number to be included in that return or other document. The identifying number to be used by the estate is an EIN.

Section 301.6903-1(d) defines the term "fiduciary" as a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in a fiduciary capacity for any person.

According to the facts you have provided, the individuals requesting EINs from Andover Service Center are not the fiduciaries of the decedents' estates. Treasury Regulation 6109-1(d)(2)(i), Rev. Rul. 64-99, and Form SS-4 indicate that in the case of an estate, an EIN is issued only to the fiduciary of an estate. Because these individuals are not the fiduciaries of these estates, the Service should not issue EINs to them. In the event that the individuals subsequently provide satisfactory evidence that they are fiduciaries of the decedents' estates, the Service may issue EINs to them. Satisfactory evidence of a fiduciary relationship includes an appointment as the Executor or Administrator of a decedent's estate by the Probate Court. Treas. Reg. § 301.6903-1(b).

If you have any further questions regarding this matter, please contact Elizabeth Kaye at (202) 622-4910.

HEATHER C. MALOY

By:_____
PAMELA W. FULLER
Assistant to the Branch Chief
Branch 1