Administering the Revocable Trust After Death

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I. Preliminary Matters

A. Tax Identification Number

A new tax identification number is required once an inter vivos revocable trust becomes irrevocable. See IRS Publication 1635. The fiduciary should file Form SS-4.

B. Form 56 – Notice Concerning Fiduciary Relationship

When a fiduciary relationship is created, the fiduciary is required to notify the IRS of the relationship (IRC 6903).

A separate notice should be filed for each role the fiduciary serves (e.g. trustee, executor).

Generally, the fiduciary should attach Form 56 with the filing of the initial Form 1041 or if no filing is required, as soon as fiduciary relationship is established.

The fiduciary should notify IRS once the fiduciary's work is complete thereby terminating the fiduciary relationship.

II. Administration

The fiduciary must attend to the transfer of assets from revocable trust identified by decedent's social security number to newly created irrevocable trust identified by tax identification number.

Query: What is the name of the irrevocable trust?

Logic dictates that if you have a newly created entity, the entity should have its own name. In fact, the IRS online service may reject your application for a tax identification number if the word revocable appears in the name of the trust when you are applying for a tax identification number for an irrevocable trust. For instance if the name of the revocable trust is the "Joe Jones Revocable Trust" and you attempt to use that same name when applying for a new tax identification number, the IRS may reject your application. Consider using the following language:

> ***On the death of the creator, this agreement shall become irrevocable and may not be amended thereafter and shall be referred to as the "Joe Jones Administrative Trust".***

Query: If the revocable trust owns real property, do you transfer title first to the administrative trust and then to the beneficiaries?

As a general administrative matter, no action should be taken to purchase or sell securities until the assets are retitled to the administrative trust.

III. Tax Matters

The fiduciary must determine the need to file Form 1041 which must be filed by the 15th day of the fourth month after year end, without extension. Form 1041 must be filed if:

1. there is any taxable income;

2. gross income of the trust exceeds $600.00;

3. any beneficiary is a non-resident alien.

The fiduciary must determine whether to report the income of the trust on a calendar or fiscal year.

Practice Tip: The fiduciary should begin compiling monthly statements for each account owned by the trust. Regardless of whether the fiduciary is reporting on a calendar basis or fiscal basis, the 1099s received at year-end will be incorrect. A spreadsheet needs to be prepared to allocate income between the individual and trust. This can only be done with the monthly statements.

The fiduciary must consider the necessity of making an IRC Section 645 Election. The trustee of a decedent's qualified revocable trust and the decedent's executor can elect to treat the trust as a part of the estate instead of a separate trust for income tax purposes.

If the election is made, the trust's income and expenses will be reported on the estate's income tax return. Thus, only Form 1041 only needs to be filed for the estate. The election is irrevocable and must be made on Form 8855 by the due date of the estate's initial return (without extension). If there is no Form 1041 for the estate, Form 8855 must be filed by the due date of the trust's tax return (including extensions), regardless of whether there is sufficient income to warrant the filing of a return for the trust. Consideration should be given to always making the election.

Some of the more common benefits of making election:

i. Estates are allowed to use a fiscal year, whereas trusts cannot;

ii. Estates are allowed a charitable deduction for amounts permanently set aside whereas trust are only allowed a deduction for amounts actually paid; and

iii. The personal exemption for estates is $600.00.

The election ends on the date the trust distributes all of its assets or:

(i) if Form 706 is required, the later of two years after the decedent's death or the date that is six months after the date of final determination of estate tax liability; or

(ii) if Form 706 is not required, two years from the decedent's date of death.

One administrative burden of not administering the trust within the period of the election is that once the election terminates, the trust would have to revert to a calendar year basis and file its own Form 1041.