



**LEGAL SERVICES CENTER
OF HARVARD LAW SCHOOL
CENTRO DE SERVICIOS LEGALES**

Comment on Forms 8822

The following comments are offered by the Federal Tax Clinic of the Legal Services Center of Harvard Law School.¹ Benjamin Chanenson is the principal drafter of the comments. Keith Fogg and Elizabeth Segovis offered additional assistance. For questions, please contact Benjamin Chanenson at benjaminchanenson@gmail.com.

Summary: On June 1st, 2022 the Internal Revenue Service (IRS) invited the public to comment on form 8822.² The IRS specifically invited comments on five general areas.³ The Federal Tax Clinic has five recommendations that touch on four of those areas:

1. Change the word “Decedent” to the phrase “Deceased Person”
2. Remove the boxes for prior names
3. Move the discussion of the importance of giving the IRS your current address from the “Privacy Act and Paperwork Reduction Act Notice” section to the “Purpose of Form” section
4. Add information on other ways the IRS can be notified of a taxpayer’s address change
5. Add an option for taxpayers to notify the IRS of a change in address before they move

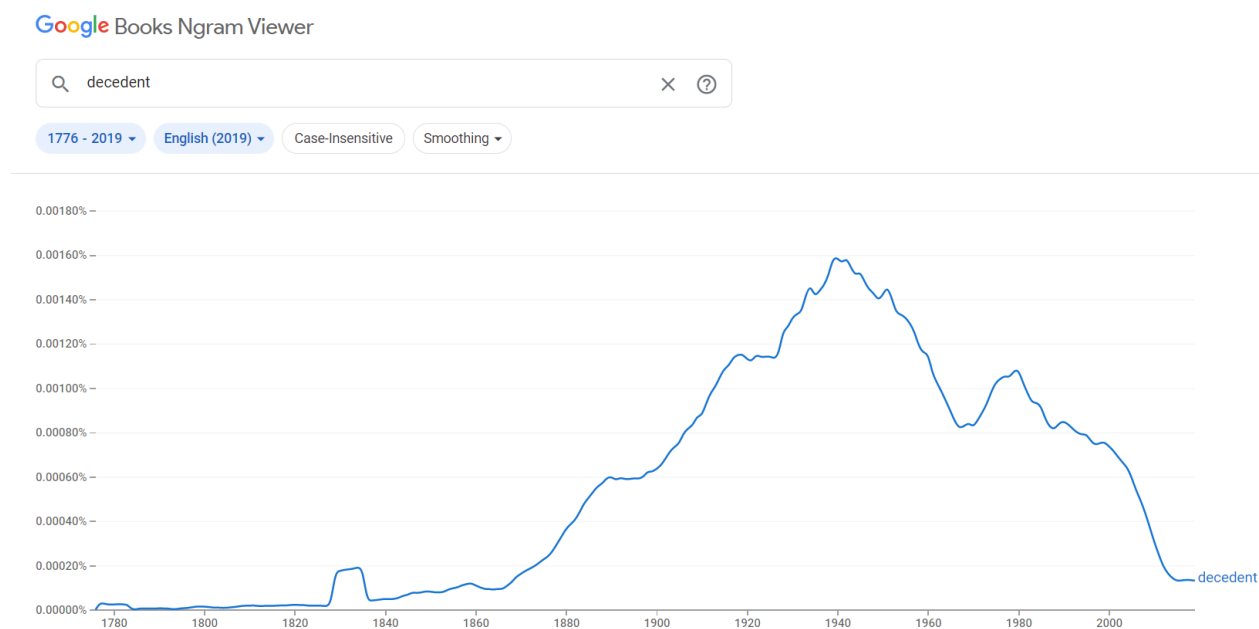
¹The Federal Tax Clinic of the Legal Services Center of Harvard Law School is a low-income taxpayer clinic located in Jamaica Plain, Massachusetts which represents local clients in Tax Court and Federal District Courts. The Federal Tax Clinic also regularly comments on proposed rules and regulations and files amicus briefs.

²Internal Revenue Service, Notice, *Comment Request for Forms 8822 and 8822-B*, published June 1, 2022, 87 FR 33311.

³Id. “(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency’s estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.”

Recommendation #1: Change the word “Decedent” to the phrase “Deceased Person”

Presently, form 8822 uses the word “decendent” twice but never defines or explains what the word means. To enhance the clarity for taxpayers, the IRS should either define “decendent” on page two of form 8822, or it should use another word/phrase. Changing the “decendent” to a more commonly used term would satisfy the IRS obligations under the Plain Writing Act of 2010, which aimed to promote “clear Government communication that the public can understand and use.”⁴ A search on Google Books Ngram Viewer indicates that the use of “decendent” has gone down over time.⁵



This data indicates that people are using the word “decendent” substantially less than prior generations and as such might be unfamiliar with the word. It would be prudent to change “decendent” to a word that is commonly used and known by the general public.

⁴ Public Law No: 111-274

⁵ Google Books Ngram Viewer “displays a graph showing how [often] those phrases have occurred in a corpus of books (e.g., "British English", "English Fiction", "French") over the selected years” and can be found at <http://books.google.com/ngrams>.

Recommendation #2: Remove the boxes for prior names

The inclusion of boxes for “Your prior name(s)” and “Spouse’s prior name(s)” on form 8822 is not “necessary for the proper performance of the functions of the agency” and the removal would reduce the “burden of the collection of information” on taxpayers.⁶ While the IRS has included a box for the taxpayer’s prior name since at least 1990, the IRS only added a box for the taxpayer’s spouse’s prior name in 2011.⁷ Form 8822 exists to allow taxpayers to notify the IRS that they changed their address, it is not intended to be the place for taxpayers to notify the IRS that they changed their name.

Moreover, the IRS does not need a taxpayer’s prior name to identify them in their system. A taxpayer’s social security number, along with their current name, is sufficient. The absence of a box on form 1040 (which is another way that taxpayers can notify the IRS that they have changed addresses) for prior names indicates that the IRS does not need a taxpayer’s prior name to change their address in the IRS system.⁸

There is also no statutory or administrative requirement that a taxpayer includes their prior name when changing their address with the IRS. Revenue Procedure 2010-16 does not require your prior name as one of the requirements of “clear and concise” written notice.⁹ By asking for this extraneous information, all the IRS does is make a written notice intended to be “clear and concise” less concise.

⁶This recommendation falls under categories (a) and (d) on which comments were invited by the IRS on

⁷“Prior Year Products,” INTERNAL REVENUE SERVICE,

<https://apps.irs.gov/app/picklist/list/priorFormPublication.html?resultsPerPage=200&sortColumn=sortOrder&indexOffFirstRow=0&criteria=formNumber&value=Form%208822&isDescending=false>.

⁸The United States Postal Service’s National Change of Address database, which the IRS is allowed to use to update a taxpayer’s address under 26 CFR § 301.6212-2 (b)(2)(I), also does require a prior name.

⁹Rev. Proc. 2010-16

By removing the boxes for prior names from form 8822 and thus making the form more concise, the IRS would reduce the paperwork burden on taxpayers. This result would fulfill the IRS's obligations under The Paperwork Reduction Act of 1980.¹⁰ The burden placed on taxpayers by the inclusion of a box for prior names and incorrect instructions adds up. One expert on names estimated that 50,000 people change their name every year.¹¹ This burden is especially heavy for immigrants and LGBTQ+ individuals. For example, an immigrant who changed their name upon becoming a citizen could hypothetically have to write their prior name, their spouse's prior name and then include the prior name of each child that files income tax returns on a separate form for each child. In sum, given that there is no need to collect prior names the IRS should not attempt to collect that information.

If the boxes for prior names are not removed, then the instructions for "Prior Names" should be revised. The form states "If you or your spouse changed your name because of marriage, divorce, etc., complete line 5." That statement is inconsistent with Revenue Procedure 2010-16 which says, "Individuals who have changed their last name should provide the last name shown on the most recently filed return and the new last name."¹² This means that a prior name should only be *requested* (not required) by the IRS when the taxpayer has changed their name since they last filed their tax return. The instructions on form 8822 should be changed to say "If you or your spouse changed your name because of marriage, divorce, etc., **since you last filed your federal income taxes** complete line 5."¹³

¹⁰Public law No: 96-511

¹¹Leslie Mann, "What's in a name? A lot for those who change theirs" CHICAGO TRIBUNE (Aug. 8th, 2017)

¹²Rev. Proc. 2010-16

¹³Proposed additions are bolded

Recommendation #3: Move the discussion of the importance of giving the IRS your current address from the “Privacy Act and Paperwork Reduction Act Notice” section to the “Purpose of Form” section

On the middle of the second page of form 8822 the following paragraph appears under the heading “Privacy Act and Paperwork Reduction Act Notice:”

“The use of this form is voluntary. However, if you fail to provide the Internal Revenue Service with your current mailing address, you may not receive a notice of deficiency or a notice and demand for tax. Despite the failure to receive such notices, penalties and interest will continue to accrue on the tax deficiencies.”

This paragraph is important and taxpayers should read it. However, by placing this information in the middle of a wall of words, many taxpayers may not read it. By moving the information under “Purpose of the Form” section, taxpayers may be more likely to read the information.

Furthermore, presently the “Purpose of the Form” section does not do a great job explaining the true purpose of form 8822. The only sentence in the section that provides information on the purpose of the form is the first sentence: “You can use Form 8822 to notify the Internal Revenue Service if you changed your home mailing address.” Adding information on *why* a taxpayer would want to notify the IRS if they changed their mailing address would make the form more complete.

Recommendation #4: Add information on other ways the IRS can be notified of a taxpayer's address change

Form 8822 is not the only way a taxpayer can notify the IRS that they have changed addresses. Taxpayers can also notify the United States Post Office (USPS) that they are changing their address by filling out an online form at *USPS.com/move* or by going to a physical post office and completing PS Form 3575. Then the IRS will automatically update a taxpayer's address using the USPS's National Change of Address database. This process "takes around three weeks from the time a taxpayer notifies the USPS to when the IRS will change their records."¹⁴ In contrast, form 8822 advises taxpayers that it takes 4 to 6 weeks to process a change of address. Revenue Procedure 2010-16 further explains that "A clear and concise written notification of a change of address will be considered properly processed after a 45-day processing period which begins the day after the date of receipt."¹⁵

Form 8822 should inform taxpayers of this time discrepancy. The IRS is not a for-profit business. It does not hurt the IRS if taxpayers choose to take advantage of the USPS system. Similarly, form 8822 is not the only way to notify the IRS that you have changed addresses. Taxpayers can also notify the IRS that they have changed addresses by filing a form 1040. However, if a form 1040 is filed "after February 14 and before June 1, the return will be considered properly processed on July 16."¹⁶ It best serves taxpayers to notify them of the pros and cons of each method of notifying the IRS of a change of address.

¹⁴ Larry Jones and Rachel Multer Michalewicz, *The Last Known Address: A Joint Effort between the IRS and the U.S. Postal Service* 16 J. TAX PRAC. & PROC. 33 (2015)

¹⁵Rev. Proc. 2010-16

¹⁶Id.

Recommendation #5: Add an option for taxpayers to notify the IRS of a change in address before they move

Given that form 1040, which most taxpayers are required to file annually, is also an option to notify the IRS of a change in address, the IRS should modify form 8822 to give taxpayers a reason to use the form and not just wait to file their income taxes. This reason could be an option for taxpayers to notify the IRS in form 8822 *when* they are moving to a new permanent address. This would allow taxpayers to file form 8822 with the IRS before they move and would serve three purposes. First, it would take one item off an organized taxpayer's plate when they are busy moving and have lots of matters to attend to. Second, it would blunt the negative impact that the long IRS processing time could have on the taxpayer.¹⁷ Third, it could reduce waste in the legal system and save taxpayers and the IRS alike money by ensuring that more taxpayers receive notices. It is not the best use of anyone's time to litigate over who is at fault, the IRS or the taxpayer, for the mailing of a notice to the incorrect address.¹⁸

Taxpayers often know in advance that they will be leaving their current permanent address and moving into a new one. For example, taxpayers know when they will be leaving if their lease is expiring and they do not plan to renew it, or if they move to another city for a new job. Proactive and diligent taxpayers should not be forced to rely on USPS to forward their mail while they wait for the IRS to process their form 8822. USPS mail forwarding is not without errors and unfortunately (at least from the taxpayer's perspective) the IRS is not liable for mistakes made by the USPS.

¹⁷This is especially important when the IRS is facing long backlogs as it is in the summer of 2022.

¹⁸For examples of last known address litigation see *Gregory v. Commissioner*, 152 T.C. 129 (2019), *McCormick v. Commissioner*, 55 T.C. 138 (1970), and *Gregory v. United States*, 57 F. Supp. 962, 973 (Ct. Cl. 1944).

Conclusion: The aforementioned five recommendations are small, incremental improvements that would help form 8822 better serve both taxpayers and the IRS. Ensuring that the IRS has the correct address for a taxpayer is extremely important. Ideally more changes beyond the five proposed in this comment would be implemented by the IRS.

It would be a massive improvement if the IRS made form 8822 into an online form that taxpayers could submit without ever leaving the IRS website.¹⁹ The USPS website, which effectively serves as an alternative to form 8822, already has an online form that does not require taxpayers to leave their website to complete.

Moreover, it would also be beneficial if the IRS allowed taxpayers to notify them of a temporary permanent address.²⁰ Federal courts have held since at least 1944 that that a temporary address of a definite duration can be considered a permanent address.²¹ The USPS website allows for temporary changes of address.

The IRS should update form 8822 to be better than the USPS alternative. Making the five changes recommended in this comment would be the first step on the road to a world in which that is a reality.

¹⁹Nina Olson, the former National Taxpayer Advocate of the United States, has advocated for a “mobile-friendly, multi-lingual digital application for taxpayers to change their address.” Nina Olson, “My IRS Wishlist for 2021 – Part 1: The mail and return processing backlog” *PROCEDURALLY TAXING* (Jan. 4th, 2021) *available at* <https://procedurallytaxing.com/my-irs-wishlist-for-2021-part-1-the-mail-and-return-processing-backlog/>

²⁰Temporary being defined as of a definite period. In other words, not indefinite.

²¹*Gregory v. United States*, 57 F. Supp. 962, 973 (Ct. Cl. 1944).