

**Office of Chief Counsel
Internal Revenue Service
Memorandum**

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PTMcCary

Via Electronic Mail

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Date: May 10, 2017

To: Miliene McCutcheon
Supervisory Estate Tax Attorney

From: Associate Area Counsel (Jacksonville, Group 2)
(Small Business/Self-Employed)

Subject: Assessing tax on gifts not reported on Forms 709 or not adequately disclosed under I.R.C. § 6501(c)(9).

INTRODUCTION

This memorandum responds to your e-mail dated April 12, 2017. It contains privileged information. Any unauthorized disclosure of the contents of this document may have an adverse effect on these privileges, including the attorney-client privilege. If any disclosure is contemplated, please contact this office for our views prior to revealing any of the contents of this memorandum. Nothing in this memorandum should be cited or relied upon as precedent.

LEGEND

Donor =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

Year 5 =

Year 6 =

Year 7 =

ISSUES

1. Whether the period of limitations on assessing gift tax remains open for gifts made in Years 1 through 6 for which no Forms 709 were filed?
2. Whether the period of limitations on assessing gift tax remains open for gifts made in Year 7 for which a Form 709 was filed, but where the Form 709 did not describe the transferred property, nor did it provide a description of the method used to determine the value of the transferred property?

CONCLUSIONS

1. Yes. The period of limitations on assessing gift tax for Years 1 through 6 remains open because no returns were filed. IRC § 6501(c)(3).
2. Yes. The period of limitations on assessing gift tax for Year 7 remains open because the gifts were not adequately disclosed. IRC § 6501(c)(9).

FACTS

We understand the facts to be as follows: Donor made gifts in Years 1, 2, 3, 4, 5, and 6, but did not file Forms 709 for those years. Donor also made gifts in Year 7, and filed a Form 709 for that year. On the Year 7 Form 709, Donor did not describe any of the property transferred in Year 7, nor did Donor provide a description of the method used to determine the value of that property.

LAW AND ANALYSIS

Section 2501(a) of the Internal Revenue Code imposes a tax for each calendar year on the transfer of property by gift by any individual during such calendar year. The amount of tax is computed as (1) a tentative tax, computed under section 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over (2) a tentative tax, computed under such section, on the aggregate sum of the taxable gifts for each of the preceding calendar periods. IRC § 2502(a).

The amount of any internal revenue tax shall generally be assessed within three years after the return was filed. IRC § 6501(a). An exception applies to the tax on a gift not adequately disclosed on a gift tax return on which it was required to be reported. IRC § 6501(c)(9). If a transfer of property is not adequately disclosed on a gift tax return, or in a statement attached to the return, filed for the calendar period in which the transfer occurs, then any gift tax on the transfer may be assessed, or a proceeding in court for the collection of the appropriate tax may begin without assessment, at any time. Treas. Reg. § 301.6501(c)-1(f)(1). If no return was filed, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. IRC § 6501(c)(3).

A gift is not adequately disclosed unless it is "reported in a manner adequate to apprise the Internal Revenue Service of the nature of the gift and the basis for the value so reported." Treas. Reg. § 301.6501(c)-1(f)(2). A gift is adequately disclosed if the gift tax return reports certain information, including a description of the transferred property and any consideration received by the transferor, and a detailed description of the method used to determine the fair market value of the gift. Id.

Here, Donor did not file Forms 709 and did not otherwise report the gifts made in Years 1 through 6. Therefore, under § 6501(c)(3) the period of limitations on assessing tax on these gifts has not expired. Donor filed a Form 709 to report the Year 7 gifts, but failed to adequately report any of the Year 7 gifts because Donor did not describe the transferred property, nor did Donor provide a description of the method used to determine the value of the transferred property. Therefore, under § 6501(c)(9) the period of limitations on assessing tax on the Year 7 gifts has not expired.

Under Rev. Proc. 2000-34, 200-2 C.B. 186, Donor may commence the running of the statute of limitations by filing complete and accurate Forms 709 for Years 1-7.

If you have any questions, please contact Senior Attorney Peter McCary at 904-661-3035.

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By: _____
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Area 3 Reading File