STATUTE OF LIMITATIONS ON TAXABKE GIFTS[1]

By: Jason R. Handal, Esq.

Introduction

In Revenue Procedure 2000-34 (2000-34 IRB 196), the IRS explains the procedures required for commencement of the statute of limitations period for a prior gift that was not adequately disclosed.

Background

The period of assessment does not begin to run for a gift made in a calendar year ending after August 5, 1997 unless the gift is adequately disclosed on a federal gift tax return. See I.R.C. sec. 6501(c)(9). If a gift is adequately disclosed and the three year limitations period expires, the gift cannot be revalued in an attempt to determine the gift tax on a later gift or estate tax. See I.R.C. secs. 2504(c) and 2001(f).

In December 1999, the IRS issued final regulations regarding adequate disclosure of gifts. See Treas. Reg. sec. 301.6501(c)-1(f)(2) and (3). The regulations provide that a gift is adequately disclosed on a gift tax return if the gift is reported in a manner adequate to apprise the IRS of the nature of the gift and the basis for the value so reported. Subsection (f)(2) lists the information that must be provided on the gift tax return (or on a statement attached to the return). This information includes a detailed description of the method used to determine the fair market value of the property transferred and a description of any discounts claimed in valuing the property.

Section 301.6501(c)-1(f)(3) allows the taxpayer to submit an appraisal in lieu of the information required under subsection (f)(2). The appraisal must satisfy specific requirements set forth in the Regulations. For example, the appraisal must contain a description of the appraisal process employed, a description of the appraisal procedures followed, and description of the reasoning that supports the analyses, opinions, and conclusions.

As a result of these specific requirements, it is generally a wise idea to discuss the adequate disclosure regulations with the appraiser prior to commencing the appraisal engagement and filing the federal gift tax return. Often times the appraisers will be surprised to learn of the specificity called for by the Treasury Regulations.

[1] We cannot guarantee that this information is consistent with current law. Please contact Willms, S.C. for current information on this topic.

Rev. Proc. 2000-34

The Rev. Proc. provides guidance for submitting the information required under the regulations to adequately disclose a gift if such information was not initially submitted with a gift tax return filed for the calendar year in which the gift was made.

The limitations period on assessment will begin with respect to such a gift or gifts when the taxpayer has adequately disclosed the gift on an amended gift tax return filed pursuant to Rev. Proc. 2000-32, and the period of assessment generally will expire three years after the date of filing the amended return. Thus, the taxpayer must file an amended gift tax return to commence the running of the limitations period for a gift that was not adequately disclosed on the originally filed gift tax return, including the following on page one of the amended return:

- "Amended Form 709 for gift(s) made in [insert the calendar year that the gift was made] - In accordance with Rev. Proc. 2000-34, 2000-34 I.R.B. 186."

The Rev. Proc. is effective for amended returns filed to comply with Treas. Reg. sec. 301.6501(c)-1(f)(2) after August 21, 2000.

Conclusion

The Revenue Procedure reminds of the importance of adequately disclosing gifts. Doing so will restrict the IRS' ability to attempt to revalue the gift and ultimately will increase the likelihood that the taxpayer will pay the minimum amount of transfer taxes