INADEQUATE GIFT DESCRIPTION – I.R.S. TRIES FOR A SECOND BITE AT THE APPLE

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Any individual who makes a taxable gift in a taxable year is required to file a Form 709, *United States Gift Tax Return*, under Code §6019. The I.R.S. generally has three years to assess the amount of tax owed, but it may indefinitely assess and collect the tax on any gift or property required to be ‘"shown" on a return that is not "adequately shown."

TAXABLE GIFTS

Any transfer to an individual, either directly or indirectly, where full consideration for fair market value is not received in return is considered to be a gift. Fair market value is the price at which the property would change hands between a willing buyer and a willing seller, neither being under the compulsion to buy or to sell and both having reasonable knowledge of relevant facts.[1]

All gifts are taxable gifts except for (i) gifts that are not more than the annual exclusion for the calendar year; (ii) tuition or medical expenses paid for someone; (iii) gifts to spouse; (iv) gifts to a political organization for its use; and (v) charitable gifts.

The annual exclusion[2] applies to a gift to each donee and changes every year. The annual gift exclusion for 2015 is $14,000 per individual and $28,000 per couple.

ADEQUATE DISCLOSURE

A gift is considered "shown" on a tax return when it has been disclosed in a manner that is adequate to apprise the I.R.S. of the nature of the gift. To meet this requirement, the following is necessary:[3]

1. A description of the property transferred and consideration received;
2. The identity of and the relationship between the transferor and each transferee;
3. A trust identification number if the donee is a trust;

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[1] Treas. Reg. §§20.2031-1

[2] To fall under the annual exclusion, a gift must be a present interest that the donee can use immediately. A gift to a trust are not present interests if the beneficiary's interest in the trust does not vest immediately.

[3] Treas. Reg. §§301.6501(c)-1(f)(2)

4. A detailed description of the method used to determine the fair market value, including but not limited to appraisal copies, discounts, marketability, transfer documents, and documentation of any unusual items shown on the return; and

5. A description of any position taken that is contrary to the regulations.

LEGAL ADVICE MEMORANDUM 20152201F (5/29/2015)

Legal Advice Memorandum 20152201F addresses whether the statute of limitations was considered open against a deceased donor who transferred two gifts to his daughter and filed an allegedly lacking Form 709. The decedent's estate disputed the I.R.S.'s position, stating that the disclosure was adequate, and refused to extend the statute of limitations. If the statute has expired, the I.R.S. must bear the burden of proving that an exception to the statute of limitations is present. This field service legal advice memorandum summarizes those grounds.

"The I.R.S. must bear the burden of proving that an exception to the statute of limitations is present."

The donor filed a Form 709 claiming two gifts were transferred to the donor's daughter: partnership interests in two family limited partnerships whose common general partner was a subchapter S corporation. The assets held by the partnerships were primarily farm land, which was appraised by a certified appraiser. The gifts were described on the form and the annual deduction was claimed. An additional document with a single paragraph description of the valuation methods was attached.

The I.R.S. found that despite satisfying certain criteria, the return failed the adequate disclosure test. The I.R.S. claimed that the taxpayer failed to clearly identify the partnerships whose interests were transferred and to adequately describe the interests transferred and appraisal methods used. It cited that the full legal names of the partnerships were not reported and that the tax identification number of one the partnerships was missing a digit. Further, the appraisals that had been completed were for the land held by the partnerships, rather than for the partnership interests themselves. Additionally, the return's valuation did not explain the method used to determine the value reached and was found to be vague. Therefore, the gift was not considered shown on the tax return.

CONCLUSION

The gift tax return is essential for allowing the I.R.S. to timely assess taxes, but more importantly, it causes the statute of limitations to run on the value of the gift, if adequately disclosed. The adequate disclosure criteria ensure that a taxpayer sufficiently describes the property transferred and valuation methods used. Failure to comply leaves the statute open against the taxpayer and allows the I.R.S. to levy a tax at any time. What constitutes adequate disclosure continues to be a source of dispute between taxpayers and the I.R.S.