

Memo to Gift Tax Return Preparers

TO: Gift Tax Return Preparer
FROM: Lois Lawyer
RE: Gift Tax Return Adequate Disclosure

New laws included in the Taxpayer Relief Act of 1997 encourage taxpayers to "adequately disclose" all completed gifts on Form 709, the U.S. Gift (and Generation-Skipping Transfer) Tax Return, and the attachments thereto, to establish value for gift and estate tax purposes. As the preparer of Form 709 for your clients, you should discuss with them all gifts made during the year, and the importance of disclosing the gifts. Pay particular attention to gifts of hard-to-value assets, including real estate and closely-held business interests, whether the gift appears to be covered by the annual exclusion or not. If necessary, engage a qualified appraiser for these assets. Failure to ensure that your clients comply with the adequate disclosure requirements may be malpractice on your part. Because the North Carolina Department of Revenue relies on the IRS in large part for compliance with North Carolina gift tax rules (see N.C. Gen. Stat. § 105-197.1), noncompliance with federal rules resulting in a gift revaluation and additional tax payable will also likely result in gift revaluation and additional tax for North Carolina gift tax purposes, as well.

By adequately disclosing the gifts on the gift tax return or an attachment thereto, you will start running the three year statute of limitations that prevents the IRS from later revaluing the gift for gift and estate tax purposes. Adequate disclosure is such that the IRS is informed of the nature of any controversy regarding the gift tax treatment of the transfer, and can make a "reasonably informed" decision as to whether to audit the return. If you do not adequately disclose the gift, the IRS may attempt to revalue the gift at any time. Revaluation may result in your clients paying significantly more gift and estate tax.

Proposed regulations provide guidance on what constitutes adequate disclosure. Under Proposed Regulation Section 301.6501(c)-1, you must furnish the following information:

- (1) the transferred property and any consideration the donor has received;
- (2) the identity and relationship between the donor and donee;
- (3) a description of the method of valuation, including any relevant financial data and discounts;
- (4) for transfers of corporate or partnership interests that are not actively traded, a description of any discounts, including a statement regarding the total value (before discounts), the *pro rata* percentage of the entity transferred, and the value of the transferred interest as reported on the gift tax return;
- (5) for transfers in trust, the trust's tax identification number and a brief description of the trust's terms;
- (6) a description of any restrictions on the transferred property considered in valuing the

property;

- (7) a statement explaining the relevant facts about the transfer that could reasonably apprise the IRS of any potential controversy regarding the gift tax treatment of the transfer or, alternatively, provide a brief description of the relevant legal issue; and
- (8) a statement explaining the donor's position if it is contrary to any temporary or final Regulations or revenue rulings.

According to the Tax Court, adequate disclosure does not imply a detailed description of every underlying fact. In fact, even if the disclosure is erroneous it could be adequate as long as it does not hamper the Service from making a decision as to whether to audit the return.

Reporting an incomplete gift will not commence the statute of limitations. However, a gift reported as a completed gift will commence the statute of limitations, even if the IRS later determines it to be an incomplete gift.