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Gift Tax Returns and Adequate Disclosure

Article By:

John P. Dedon

With the income tax filing deadline approaching, it reminds us that gift tax returns also are necessary for taxpayers who have made 2014 gifts.

In prior Posts, I have written about the importance of filing a gift tax return to start the three year Statute of Limitations (see my March 25, 2013 Post). This ensures that, at the expiration of three years from the filing of the return or the return due date, the IRS cannot question the valuation placed on the gift. This assumes, however, that the gift tax return includes an appraisal, or at least information necessary to alert the IRS of the gift, its value, the methodology chosen, and other important information. This appraisal or information is referred to as "adequate disclosure." Absent adequate disclosure, the Statute does not run and the gift value can later be questioned upon the donor's death.

This is a sticking point for many clients because of the expense of preparing either the valuation or compiling the information necessary for the return. But a recent Tax Court case, ***Sanders v. Commissioner*, *T.C. Memo 2014-100***, again illustrates the problem of failing to comply with these rules. The Taxpayer made gifts over a nine year period and filed gift tax returns for the gifts. When the IRS assessed a $3 million gift tax upon the taxpayer's death nine years after the date of the first gift, the taxpayer claimed that the three year Statute had run. However, the Court held that the Statute did not run because the gift returns did not contain the necessary "adequate disclosure."

There is no way around the importance of filing the gift tax return with adequate disclosure in order to lock in the three year limitation period.

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