

IRS Proposes Rules for Tax on Gifts From Expatriates

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On Sept. 9, 2015, the **IRS** issued long-awaited guidance on the 2008 legislation relating to gifts to United States persons made by former U.S. citizens and long-term residents who expatriate on or after June 17, 2008, and are classified as “covered expatriates.”^[1] The guidance came in the form of proposed regulations, which will be effective only after final regulations, potentially incorporating changes made as a result of further analysis and responses to comments, are published in the Federal Register.

The statutory provision that imposes the tax and is interpreted by these proposed regulations is Section 2801 of the Code.^[2] Under that section, the applicable tax is not imposed on the donor, which is the typical case under the Code, but rather on the donee, in this case, the U.S. taxpayer^[3] recipient of the gift.

[1] Section 2801 of the Code defines “covered expatriate” by reference to the section 877A(g)(1) definition of that term. Section 877A(g)(1) generally provides that an individual who expatriates on or after June 17, 2008, is a covered expatriate if, on the expatriation date, (1) the individual’s average annual net income tax liability is greater than \$124,000 (indexed for inflation) for the previous five taxable years, (2) the individual’s net worth is at least \$2,000,000 (not indexed), or (3) the individual fails to certify under penalty of perjury that he or she has complied with all U.S. tax obligations for the five preceding taxable years. The proposed regulations provide that, if an expatriate meets the definition of a covered expatriate, the expatriate is considered a covered expatriate for purposes of section 2801 at all times after the expatriation date, except during any period beginning after the expatriation date during which such individual is subject to United States estate or gift tax as a U.S. citizen or resident.

[2] All references to the “Code” are to the Internal Revenue Code of 1986, as amended.

[3] For purposes of Section 2801, a U.S. taxpayer is defined as a person who is a U.S. citizen or a U.S. resident at the time of the receipt of the gift.

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