

INTERNAL REVENUE SERVICE
NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM

March 10, 2004

Number: **200432016**
Release Date: 8/6/04
Index (UIL) No.: 2035.02-00
CASE-MIS No.: TAM-159487-03, CC:PSI:B04

Taxpayer's Name:
Taxpayer's Address:

Taxpayer's Identification No
Years Involved:
Date of Conference:

LEGEND:

Decedent	=
Spouse	=
Date 1	=
Date 2	=
Year 1	=
Year 4	=
<u>X</u>	=
<u>Y</u>	=

ISSUE:

Whether the amount of gift tax paid by Decedent, with respect to gifts made on Date 1, Year 1, was properly excluded from Decedent's gross estate under section 2035(b) of the Internal Revenue Code?

CONCLUSION:

The gift tax paid by Decedent, with respect to gifts made on Date 1, Year 1, was properly excluded from Decedent's gross estate under section 2035(b).

FACTS:

Spouse made gifts during Year 1 to various individuals, trusts, and charitable organizations totaling \$x. Decedent and Spouse filed respective Forms 709, United States Gift (and Generation-Skipping Transfer) Tax Return, reporting Spouse's transfers, and Spouse's and Decedent's consent to treat the transfers as made half by Spouse and half by Decedent under section 2513.

The Year 1 Form 709 filed by Decedent reflected gift tax payable in the amount of \$y, which remittance was paid.

Decedent died on Date 1, Year 4. On Form 706, United States Estate (and Generation-Skipping Transfer) Tax Return, Decedent's estate excluded the gift tax paid for gifts made on Date 1, Year 1. An attachment to Schedule G, Transfers During Decedent's Life, was provided stating, in part, "Gift taxes paid on gifts made by the decedent during the three year period ending on the date of death, do not include gifts made on Date 1, Year 1. These gifts have been deemed to have been made one day beyond the requisite three year period, as such period of time is defined in I.R.C. Sec. 2035(b)."

LAW AND ANALYSIS:

Section 2035(b) provides that the amount of the gross estate (determined without regard to this subsection) shall be increased by the amount of any tax paid under chapter 12 by the decedent or his estate on any gift made by the decedent or his spouse during the 3-year period ending on the date of the decedent's death.

In general, the day of an act, event or default from which a designated time period begins to run is not to be included when computing any period of time prescribed by statute unless the statute provides otherwise. See Fed. R. Civ. P. 6(a); Tax Ct. R. 25(a). For example, section 6501(a) provides the general rule that the amount of any tax imposed shall be assessed within 3 years after the return was filed. When applying section 6501(a), the period of limitations begins to run on the day after the return is filed. See Burnet v. Willingham Loan & Trust Co., 282 U.S. 437, 439 (1931) (holding that the day on which an event happens should be excluded when computing periods of limitations). See also Owensboro v. Owensboro Water Works Co., 243 U.S. 166, 171 (1917). Thus, if a taxpayer files her return on April 15, 2003, the 3-year period of limitations on assessment commences on April 16, 2003 and expires on April 15, 2006. See also sections 6503(a) and 6511.

The general rule regarding beginning a period of limitations the day after the triggering event does not apply when the statute at issue plainly provides otherwise. Section 2035(b) is such a statute, as it provides that the first day of the period *is included* in the computation of the three-year period; unlike several statutes that compute a period of limitations forward from a particular date, section 2035(b) requires a computation of a period of limitations backward from a particular date. Section 2035(b) provides that the triggering event (the date of death) *is included* when determining the period of limitations. As defined in Rev. Rul. 72-42, 1972-1 C.B. 398, “[t]he term ‘year’, when used to designate a statutory period of limitation, means ‘calendar year’ unless some other meaning is clearly indicated.” Thus, if a decedent had died on December 31, 2001 and the gift tax was paid for a gift made on December 31, 1998, the 3-year period that ends on December 31, 2001 began on January 1, 1999. We see no reason why the term “year” should have any different meaning when the dates at issue are Date 1, Year 1 and Date 1, Year 4. Thus, the 3-year period ending on the date of the decedent’s death in this case began on Date 2, Year 1, which is the day after Date 1, Year 1. Consequently, we believe the gift tax paid by Decedent for the split gift made on Date 1, Year 1 was properly excluded from the gross estate.

CAVEAT:

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

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