



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

December 1, 2011

SMALL BUSINESS/SELF-EMPLOYED DIVISION

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MEMORANDUM FOR CHIEF, ESTATE AND GIFT TAX

FROM: John H. Imhoff, Jr. *"/s/ John H. Imhoff, Jr."*
Director, Specialty Programs

SUBJECT: Interim Guidance on Requests for Prior Gift Tax Returns

The purpose of this memorandum is to provide interim guidance to all Group Managers and Examiners regarding the procedures to request prior gift tax returns in gift tax examinations. The Estate and Gift Tax Program will modify IRM 4.25.1.1.6.2 to provide the following:

4.25.1.1.6.2

Gift Tax Examinations

- (1) Chief, Estate and Gift Tax Program will establish guidelines for the gift tax program.
- (2) In examining a gift tax return, it is the responsibility of the examiner to obtain a MFTRA Type C and/or Type E transcript to determine if prior gift returns were filed. If you need help in securing a transcript or interpreting it, call the Processing Unit at the Cincinnati Campus that services your territory. A list of the Managers for each Processing Unit is found on the E&G Web Site.
- (3) The first step in locating gift tax returns is reading the transcript. Before starting the examination, the examiner should review the transcript to ensure all gift tax returns are included in the gift tax return audit package.
- (4) If all the returns are not included, the examiner should request the missing gift tax returns by completing a Form 2275, *Records Request, Charge and Recharge* (commonly referred to as "Charge-Out"). The returns are stored at the C-Site in Kansas City, MO, based on alphabetical spelling of the last name and on the Campus or Service Center where they were originally filed. Some taxpayers may have appropriately filed returns at

various Service Centers and Campuses during their lifetime. The first two digits of the DLN, the file location codes, will identify the Campus or Service Center with which a return was filed. DLN file location codes should be utilized to locate the gift tax returns. A list of Campuses and their file location codes may be found in Document 6209, *IRS Processing Codes and Information*.

- (5) Two copies of the Form 2275 should be faxed to the Cincinnati Campus. The Form 2275 must clearly identify that this is related to a Gift Tax Examination. The fax numbers can be found on the E&G Web Site. The examiner must prepare a Form 2275 for each service center where a Form 709 may have been filed. On the fax cover sheet, the examiner should "request a fax of charge out information if tax return is not found."
 - (6) If the examiner is unable to locate the gift tax return, a copy may be requested from the taxpayer.
 - (7) Examine gift tax returns in a manner that will promote public confidence as stated in the Mission of the Service. Policy Statement 1-1. IRM 1.2.10.1.1.
 - (8) Verify the statute of limitations for each gift tax return and discuss the actions necessary to protect the statute of limitations with the group manager. Refer to SBSE-04-1211-101, Interim Guidance on Gift Tax Statute of Limitations in Estate and Gift Tax Examinations and IRM 25.6.23-3 pertaining to the substantial omission rules pursuant to IRC section 6501(e)(2) .
 - (9) When possible, schedule an examination appointment with the taxpayer/representative, unless information concerning questionable items appearing on a tax return can be readily furnished by mail or by telephone. When the initial contact with the taxpayer or authorized representative is by telephone or in person, examiners will explain/discuss the taxpayer's rights as outlined in Publication 1, *Your Rights As A Taxpayer*, and answer any questions the taxpayer may have concerning their rights. See IRC section 7801. See IRM 4.10.2.7.3.
 - (10) When the initial contact is by mail, the following documents must be mailed to the taxpayer along with the initial letter addressed to the taxpayer and the enclosures noted:
 - a. Publication 1, *Your Rights As A Taxpayer*
 - b. Notice 609, *Privacy Act and Paperwork Reduction Act*
- See IRM 4.10.2.7.4.2(4).
- (11) Except for a limited scope examination, probe for undisclosed transfers.
 - (12) Maintain significant and meaningful examination activity and/or taxpayer contact at least every 45 days. See IRM 4.25.1.1.5

- (13) Practitioners are subject to regulations contained in Treasury Circular No. 230. Initiate a referral to the Office of Professional Responsibility regarding practitioners who fail to comply with these regulations. See IRM 4.25.1.1.10 for specific procedures.
- (14) Request internal specialists, outside fee appraisers, and paraprofessional support, when their participation enhances the quality, accuracy, and fairness of the examination. However, the examiner to whom the return was assigned, under the direction of the group manager, is responsible for making the recommendation of tax liability, ensuring conclusions are properly supported by the facts and law, and explaining adjustments to the taxpayer.
- (15) Obtain omitted copies of documents and information required to be filed with the return. Such documents should be attached as exhibits to the workpapers.
- (16) Information and copies of documents should not be obtained and made a part of the case file unless they are:
- a. Required to be filed with the return. See IRM 4.25.1.1.2(4)(b).
 - b. Necessary to support adjustments.
 - c. Necessary for a complete examination of the return.
 - d. Needed for complete explanation of questioned items which resulted in a no-change.

Please ensure that this information is distributed to all affected employees within your organization.

This change is effective with the issuance of this Interim Guidance, SBSE-04-1211-103, which will be incorporated into Internal Revenue Manual 4.25.1 to reflect the above procedures by December 1, 2012.

If you have any questions, please contact Estate and Gift Tax Planning and Special Programs Manager, Melissa Wuebbels.

cc: www.irs.gov