

Office of Chief Counsel
Internal Revenue Service
Memorandum

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PTMcCary

Via Electronic Mail

Date: 03/13/2015

To: Miliene McCutcheon
Supervisory Estate Tax Attorney

From: A. Gary Begun
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Jacksonville, Florida

Taxpayer:

TIN:
Tax Year:
Assessment Statute: 4/15/

UIL: 6501.00-00, 2001.00-00

Subject: I.R.C. § 6501(c)(9) Exception to Statute of Limitations

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INTRODUCTION

By e-mail dated February 12, 2015, you requested our opinion on whether the assessment statute of limitations exception in I.R.C. § 6501(c)(9) applies to the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, filed by (Donor).

We conclude the exception applies because Donor's Form 709 fails to adequately disclose his transfer of interests in two partnerships. The return failed to sufficiently identify one of the partnerships, and it failed to adequately describe the method used to determine the fair market values of both partnership interests. The Service may assess gift tax based upon those transfers at any time.



FACTS

For our opinion in this matter, we relied upon the facts and documents obtained from Lisa Haidermota, Miliene McCutcheon, and our own research. If you believe that we misstated any facts, please let us know, since our conclusions may change as a result.

is a limited partnership formed on , with EIN number . is a limited liability partnership formed on , with EIN number . Both and are family limited partnerships with a common general partner: , a subchapter S corporation.

Donor filed a Form 709 United States Gift (and Generation-Skipping Transfer) Tax Return on . The return claimed two gifts, both of which went to Donor's daughter, . On Schedule A of the Form 709, Donor provided the following information about the gifts:

<u>Description of Gift</u>	<u>Donor's Adjusted Basis</u>	<u>Date of Gift</u>	<u>Value at Date of Gift</u>	<u>Net Transfer</u>
" % EIN "	\$		\$	\$
" % EIN "	\$		\$	\$
			<u>Total:</u>	\$

After claiming a \$13,000.00 annual exclusion, the Form 709 return reported new taxable gifts in the amount of \$, total lifetime taxable gifts in the amount of \$, and total gift tax due in the amount of \$. Donor attached one additional document to the Form 709: a one-paragraph supplement with the heading "Valuation of gifts." The supplement stated that:

Partnership interests were given in (Taxpayer ID:) and in (Taxpayer ID: []). The assets of the partnership were primarily farm land. The land was independently appraised by a certified appraiser. Discounts of % were taken for minority interests, lack of marketability, etc[.], to obtain a fair market value of the gift.

The EIN number for included on both the Form 709 and the Valuation of gifts statement attached to the 2011 Form 709 was missing a digit. Donor reported , but the correct EIN is .

In a , email, Donor's attorney responded to the IRS's inquiry about extending the assessment period for the gift tax return, as follows:

Appraisals were done specifically for the gifting. You have been sent the appraisals of real estate, the partnership agreements and you have the appraisals of the partnership minority discount/lack of marketability/etc for those partnerships involved in the gifting. Therefore I believe you have the information to show that the form 709 was properly done. Therefore the estate will not be signing to extend the statute for a 2 year 2 month period.

The appraisals in valued the land held by each partnership. They did not value the partnership interests transferred in .

The estate tax attorney handling the examination of the gift tax return and Donor's estate tax return has requested a valuation engineer to appraise the land and partnership interests Donor gave his daughter in . She expects that report by the end of March, 2015. [REDACTED]

LAW

Section 2501 of the Internal Revenue Code imposes a tax for each calendar year on an individual's transfers by gift during that year. In general, any individual who makes a transfer by gift in any calendar year must file a gift tax return for that year using Form 709. I.R.C. § 6019; Treas. Reg. § 25.6019-1(a); Estate of Sanders v. Commissioner, T.C. Memo. 2014-100, *5. Absent an exception, the Service must assess the amount of any gift tax within three years after Form 709 is filed. I.R.C. § 6501(a). In the case of a gift that is required to be "shown" on a return, but which is not shown, the gift tax may be assessed at any time. I.R.C. § 6501(c)(9). This exception does not apply to a gift that is disclosed on the return or in a statement attached to the return in a matter that is "adequate to apprise the [Service] of the nature" of the gift. Id.

A transfer will be considered adequately disclosed to the Service if the return or a statement attached to the return provides the following information:

- (i) A description of the transferred property and any consideration received by the transferor;
- (ii) The identity of, and relationship between, the transferor and each transferee;
- . . .
- (iv) A detailed description of the method used to determine the fair market value of property transferred, including any financial data (for example, balance sheets, etc. with explanations of any adjustments) that were utilized in determining the value of the interest, any restrictions on the transferred property that were considered in determining the fair market value of the property, and a description of any discounts, such as discounts for blockage, minority or fractional interests, and lack of marketability, claimed in valuing the property In the case of the transfer of an interest in an entity (for example, a corporation or partnership) that is not actively traded, a description must be provided of any discount claimed in valuing the interests in the entity or any assets owned by such entity. In addition, if the value of the entity or of the interests in the entity is properly determined based on the net value of the assets held by the entity, a statement must be provided regarding the fair market value of 100 percent of the entity (determined without regard to any discounts in valuing the entity or any assets owned by the entity), the pro rata portion of the entity subject to the transfer, and the fair market value of the transferred interest as reported on the return. If 100 percent of the value of the entity is not disclosed, the taxpayer bears the burden of demonstrating that the fair market value of the entity is properly determined by a method other than a method based on the net value of the assets held by the entity¹ and
- (v) A statement describing any position taken that is contrary to any proposed, temporary or final Treasury regulations or revenue rulings published at the time of the transfer.

Treas. Reg. § 301.6501(c)-1(f)(2).

Our research identified only two opinions involving adequate disclosure under I.R.C. § 6501(c)(9): Lewis v. Commissioner (In re Estate of Brown), T.C. Memo. 2013-50 and Estate of Sanders v. Commissioner, T.C. Memo. 2014-100. Both opinions deny motions for summary judgment without analyzing whether the respective taxpayers had adequately disclosed their gifts under the applicable regulations.

¹ In the alternative, a taxpayer can satisfy the requirements of paragraph (f)(2)(iv) by submitting an appraisal that meets specified requirements. Treas. Reg. § 301.6501(c)-1(f)(3). Donor did not attach an appraisal to the Form 709.

ANALYSIS

Donor's gifts were required to be "shown" on his return. See I.R.C. §§ 2501, 2503, and 6019. The statute of limitations exception will not apply if Donor adequately disclosed the gifts on his return. I.R.C. § 6501(c)(9).

As filed, Donor's Form 709 satisfies at least paragraph (ii) of the adequate disclosure standard.² The return clearly identifies the donee by name and address, in addition to providing her relationship to Donor. Treas. Reg. § 301.6501(c)-1(f)(2)(ii). The return probably satisfies paragraph (v) and the "consideration" part of paragraph (i), as well. The return does not specify any consideration received by Donor or any positions taken contrary to regulation or revenue rulings. Treas. Reg. § 301.6501(c)-1(f)(2)(i), (v). At this time, we cannot identify any consideration received by Donor or any positions contrary to regulations.

Paragraph (i) requires a sufficient "description of the transferred property." Treas. Reg. § 301.6501(c)-1(f)(2)(i). Here, the descriptions are incomplete. The return accurately identifies the percentages of the interests that Donor transferred. The return and statement provide the nine-digit EIN for [redacted], but both include only eight digits for [redacted] EIN. Moreover, the return uses incorrect, abbreviated names for both [redacted] and [redacted]. It refers to "[redacted]" and "[redacted]" without explaining that the "[redacted]" is an abbreviation for "[redacted]". Those labels also omit the "LP" and "LLP" designations, wrongly implying that [redacted] and [redacted] are traditional partnerships under state law. Likewise, the return describes the transferred property as "[p]artnership interests" without explaining whether the donor transferred general, limited, or limited liability interests.

The complete EIN for [redacted] permits the Service to determine the full name of that partnership, but the partial EIN for [redacted] does not. Once the [redacted] partnership is identified by querying its EIN, it is possible to extrapolate that the [redacted] partnership may also have been abbreviated and from there to discover that the EIN provided matches that unabbreviated partnership's EIN once the missing "[redacted]" is inserted after the dash.³ Donor's [redacted] gift tax return and the statement attached to that return may have described the [redacted] partnership, but he failed to adequately describe the [redacted] partnership. The Code requires a disclosure adequate to apprise the Secretary of the nature of the gift, I.R.C. § 6501(c)(9), but the abbreviated name and botched EIN failed to do so for the [redacted] partnership interests.

Paragraph (iv) requires a "detailed description of the method used to determine

² Paragraph (iii) applies to transfers in trust and is inapplicable here. Treas. Reg. § 301.6501(c)-1(f)(2)(iii).

³ Excluding any check digits in an EIN, the missing digit could be any integer between 0 and 9 and in any of the seven positions after the dash. That results in seventy possible EINs that the partial EIN could match. It is not reasonable to expect the Service to look up seventy EINs to find the one that matches the [redacted] partnership, particularly because even when the correct EIN is identified, it matches the unabbreviated partnership, rather than the partnership actually described by Donor.

the fair market value of property transferred,” including any “financial data” used to determine the value of that interest. Treas. Reg. § 301.6501(c)-1(f)(2)(iv). Where the gift consists of an interest in an entity that is not actively traded, the description must include “any discount claimed in valuing the interests in the entity or any assets owned by such entity.” Id. Additionally, if the value of the entity is properly determined based on the net value of its assets, the return must include a statement regarding the value of 100 percent of the entity. Id.

The description in the return of the method used to determine the fair market value of Donor’s gifts appears in the “Valuation of gifts” statement, which states:

Partnership interests were given in _____ (Taxpayer ID: _____) and in _____ (Taxpayer ID: _____)]. The assets of the partnership were primarily farm land. The land was independently appraised by a certified appraiser. Discounts of _____ % were taken for minority interests, lack of marketability, etc[.], to obtain a fair market value of the gift.

This valuation description does not include “a detailed description of the method used to determine the fair market value of the property transferred, including any financial data ... utilized in determining the value of the interests.” § 301.6501-1(f)(2)(iv). This description recites that Donor had the land appraised, not that he had the partnership or the donated partnership interest appraised. The description does not identify “any restrictions on the transferred property that were considered in determining the fair market value”. Id.

This description further suggests (by asserting that the assets are primarily farm land and that the land was appraised) that _____ and _____ are properly valued based upon the net value of their assets. Id. If that is the case, the return’s valuation description is not “detailed” as required by the regulation. There is no financial data (e.g., actual land values) used in determining the value of the gifts. Id. There is no explanation of the method (e.g., comparable sales) used to determine the value nor any explanation of either how the _____ % discount breaks down between different discount types or the basis for the discounts taken. The “etc” in the return’s description suggests that unlisted discounts were applied to the gifts. Id. There is also no statement regarding the 100 percent value of either _____ or _____, even though both entities appear to be valued based upon their net assets.

Donor’s return arguably identifies the _____ partnership (because the complete EIN will lead to the unabbreviated partnership name), but it does not adequately identify the _____ partnership, and it fails to describe adequately the method used to determine the interests’ fair market values. Thus, the statute of limitations exception in I.R.C. § 6501(c)(9) applies to assessing gift tax based upon the _____ Form 709. The Service may assess such tax at any time.

The estate tax attorney examining this gift tax return and Donor’s estate tax

return expects to receive an independent analysis of the value of the farmland and the partnership interests by the end of March. [REDACTED]

The three-year assessment statute of limitations remains open only through April 15, [REDACTED]. The estate has already asserted its position that disclosure was adequate, and it has refused to extend the assessment period of limitations. If the Service issues a notice after April 15, [REDACTED], it will bear the burden of proving that an exception to the three-year statute of limitations applies. See Harlan v. Commissioner, 116 T.C. 31, 39 (2001) (citing Reis v. Commissioner, 142 F.2d 900 (6th Cir. 1944), aff'g 1 T.C. 9 (1942)). [REDACTED]

CONCLUSION

The assessment statute of limitations exception in I.R.C. § 6501(c)(9) applies to Donor's Form 709. That return fails to adequately disclose Donor's transfer of interests in [REDACTED] and [REDACTED]. In particular, the return failed to sufficiently identify the [REDACTED] partnership and failed to sufficiently describe the method and information used to determine the fair market value of the gifts. The Service may assess gift tax based upon those transfers at any time. [REDACTED]

If you have any questions, please contact Senior Attorney Peter McCary at 904-665-1902.

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