



OFFICE OF
CHIEF COUNSEL

DEPARTMENT OF THE TREASURY
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MEMORANDUM FOR: D. LYNDELL PICKETT, ASSOCIATE AREA COUNSEL
(SB/SE)
LOUISVILLE, KY

FROM: Curt G. Wilson
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(Administrative Provisions & Judicial Practice) CC:PA:APJP

SUBJECT: Extension to File Gift Tax Returns

This memorandum is in response to your request for Significant Advice dated May 31, 2001, in connection with a question posed by the Submission Processing Director in the Cincinnati Service Center.¹

ISSUE

Whether the current Form 4868 and accompanying instructions should be revised to insure that payments are properly applied when a taxpayer seeks an extension for income and gift tax.

CONCLUSION

Some taxpayers are confused by the instructions to Form 4868. We have recommended changes to the Forms and Publications Division to revise the form and instructions.

LEGAL DISCUSSION

I.R.C. § 6081 states that the Secretary may grant a reasonable extension of time for filing *any* return. (Emphasis added). In addition, section 6075(b)(2) authorizes an extension for filing a gift tax return. Specifically, it provides for an extension of time to file the gift tax when an extension of time is granted to the taxpayer for filing the income tax return, so long as the taxpayer is a calendar year taxpayer.

¹ In the memorandum dated May 31, 2001, you requested that we forward a copy of an advisory opinion related to this matter. Based on the information provided, we are unable to find that opinion.

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In order to get the automatic extension, the taxpayer should file a Form 4868, with the Service by the due date (the 15th day of the 4th month of the year). This form provides for an extension of income tax, gift tax or generation skipping tax returns if it is timely filed.

The Submission Processing Director requested assistance to resolve a problem with Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return. The Form 4868 is used to automatically extend the time for filing individual income tax returns as well as gift tax and generation skipping transfer (GST) tax returns.

The problem arises when a taxpayer submits a Form 4868 seeking an extension of time to file both the income tax return and the gift tax return and encloses a payment for the gift tax. If the Service applies the payment to the taxpayer's income tax account instead of the gift tax account, an income tax overpayment results and a balance due on the gift tax account is created. This may occur due to a variety of circumstances: (1) if the Service did not notice that the gift tax box in Part II of Form 4868 was checked; (2) if the gift tax box is checked but the taxpayer does not designate how to apply the payment to the income tax or gift tax accounts or does not specify an amount in the appropriate boxes in Part IV of the form; (3) if the gift tax box is not checked, but the taxpayer completes section IV of the form (relating to the gift tax payment). The Service Centers perform additional perfection research to help determine how to split the payment. Mistakes are apparently occurring due to some processing errors by the Service Center in addition to mistakes made by some taxpayers.

You asked whether the form and instructions can be made easier to use for taxpayers requesting both an extension of time to file the income tax return and an extension of time to file the gift tax return. While researching this issue, we collected numerous comments on how the form and the instructions can be improved. Some of the suggested changes are as follows:

- Reword Part II to make it clearer to taxpayers that this section is only completed if they are requesting a gift tax extension.
- Increase the font size and/or change the color in Part II.
- Reorganize the form to clarify that certain sections only require information about the taxpayer's income taxes and that other sections only require information about the taxpayer's gift taxes.
- Use form numbers in Part II in addition to the type of tax.
- Include instructions for Part II in the instructions for the form.
- Make it clear that taxpayers should not include any gift or GST tax in Part III.
- Request that taxpayers send in two separate checks when they are requesting both extensions and making payments on both.

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We will work with Forms and Publications and Submissions Processing to incorporate these changes.

If you have any questions regarding this response, please contact Branch 2 of Administrative Provisions & Judicial Practice.

By: Judith M. Wall
Chief, Branch 2