

**Office of Chief Counsel
Internal Revenue Service
memorandum**

Number: **201249015**

Release Date: 12/7/2012

CC:PA:01:AGriffin

POSTS-125707-12

UILC: 6601.00-00

date: August 14, 2012

to: Michele L. Moser
Supervisory Attorney, Estate Tax
(Small Business/Self-Employed)

from: Elizabeth Girafalco Chirich
Branch Chief
(Procedure & Administration)

subject: Underpayment Interest Start Date for a Gift Tax Deficiency

This Chief Counsel Advice responds to your request for assistance. This advice may not be used or cited as precedent.

LEGEND

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

Amount 1 = \$

Amount 2 = \$

ISSUES

Taxpayer made a taxable gift in Year 1. Had taxpayer filed a gift-tax return, she could have used some of her I.R.C. § 2505 unified credit to offset the entire Year 1 gift tax, but she did not file a gift-tax return. In Year 2, taxpayer made subsequent taxable gifts, filed a gift-tax return, and used up the entire unified credit against these Year 2 gifts. In 2010, the taxpayer's estate reported the Year 1 gift on the estate tax return. When does I.R.C. § 6601 underpayment interest start to accrue on the Year 1 gift-tax deficiency?

CONCLUSIONS

Underpayment interest provided for by I.R.C. § 6601 will begin to run on the 1990 taxable gift as of Date 1, the due date for the Year 1 gift tax return.

FACTS

In Year 1, the taxpayer made a gift of a one-half undivided interest in real property to

According to the taxpayer, the gift's value was Amount 1. During those years, the unified credit against gift tax was \$192,800. Had the taxpayer filed a Year 1 gift-tax return and reported this gift, she could have used up part of this unified credit against the gift tax due for Year 1. The taxpayer, however, did not file a gift-tax return for this gift.

In Year 2, the taxpayer made additional gifts, and on Date 2, reported them on a Year 2 gift-tax return, using the entire unified credit of \$345,800 that was in effect at that time. The assessment statute of limitations for this Year 2 return expired on Date 3.

The taxpayer died in Year 3. Her estate filed an estate-tax return, disclosing the Year 1 gift. The Service plans to assess the tax due on the Year 1 gift at the tax rates in effect when the gift should have been reported, which creates a Year 1 tax liability of \$Amount 2. In applying I.R.C. § 6601 to assess interest on this Year 1 tax liability, the Service would like to know whether to start the running of interest at: (1) the due date of the Year 1 gift-tax return, Date 1; or (2) the due date of the Year 2 gift tax return, Date 2.

LAW AND ANALYSIS

I.R.C. § 6501(a) provides that "the amount of any tax . . . shall be assessed within 3 years after the return was filed." If the taxpayer fails to file a return, however, the assessment may be made at any time. I.R.C. § 6501(c)(3). In this case, the taxpayer never filed a gift-tax return disclosing the 1990 gift, so assessment of tax related to that gift may be made at any time.

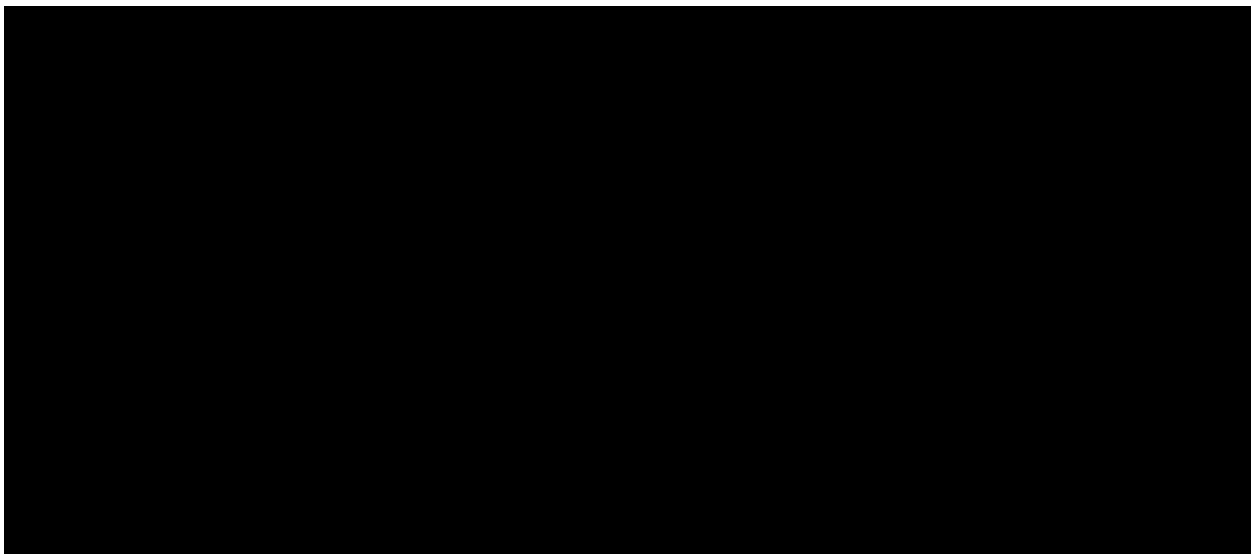
A tax is imposed for each calendar year on the transfer of property by gift during such calendar year by any individual. I.R.C. § 2501. The tax imposed by § 2501 is an amount equal to the excess of (1) a tentative tax, computed under § 2001(c), on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar periods, over (2) a tentative tax, computed under such section on the aggregate sum of the taxable gifts for each of the preceding calendar periods. I.R.C. § 2502. A unified credit against the gift tax imposed by § 2501 is allowed, but this credit must be reduced by the sum of the amounts allowed as a credit to the individual under § 2505 for all preceding calendar periods. I.R.C. § 2505. Applying the § 2505 credit is mandatory, and the donor's available credit must be used in computing net gift tax liability. Rev. Rul. 79-398, 1979-2 C.B. 388.

In this case, the taxpayer should have reported the Year 1 gift and used a portion of the I.R.C. § 2505 unified credit to eliminate tax liability on that gift. Then, when the taxpayer reported her Year 2 gifts, she should have used the remainder of the unified credit at that time, and paid the remaining tax liability. It is the Service's position that the available unified credit for an unreported gift must be reduced to reflect the use of the credit in a subsequent year for a reported gift. In this case, the taxpayer used the entire § 2505 unified credit with respect to her reported Year 2 gifts. There is thus no unified credit available to use for the unreported Year 1 gift, and tax may be assessed for that year. See TAM 199930002, 1999 WL 554339.

Interest Start Date

If any amount of tax is not paid on or before the last date prescribed for payment, interest on such amount at the underpayment rate established under section 6621 shall be paid for the period from such last date to the date paid. I.R.C. § 6601(a). Similarly, interest shall be paid on any unpaid amount of tax from the last date prescribed for payment of the tax (determined without regard to any extension of time for payment) to the date on which payment is received. Treas. Reg. § 301.6601-1(a)(1). The due date of a gift-tax return is generally April 15th of the year following the year in which the gift was made. I.R.C. § 6075(b). In general, the date prescribed for payment is the time fixed for filing the return, determined without regard to any extension of time for filing. I.R.C. § 6151(a). For determining interest on underpayments, "the last date prescribed for payment" is determined without regard to any extension for payment or filing. I.R.C. § 6601(b)(1). In this case, the assessment will be made for the Year 1 tax year; the due date of the Year 1 gift tax return was Date 1. Underpayment interest will thus run on the assessed deficiency from Date 1. I.R.C. § 6601(a). There is no other logical start date since the deficiency now arises in Year 1 because the taxpayer used up the unified credit in later years, creating a deficiency in the earlier year.

CASE DEVELOPMENT, HAZARDS AND OTHER CONSIDERATIONS





This writing may contain privileged information. Any unauthorized disclosure of this writing may undermine our ability to protect the privileged information. If disclosure is determined to be necessary, please contact this office for our views.

Please call (202) 622-4910 if you have any further questions.