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**From:** [REDACTED]

**Sent:** Thursday, March 10, 2016 10:45:08

**To:** [REDACTED]

**Cc:**

**Bcc:**

**Subject:** FW: Question re 6501(c)(9) Gift Tax Adequate Disclosure Rules

As you noted, for the \_\_\_\_\_ tax year, § 6501(c)(9) provides an unlimited ASED for the value of the gifts the taxpayer failed to report or to disclose. Thus, if there is any gift tax deficiency for that year, resulting from the unreported and undisclosed gifts, it may be assessed at any time.

For the gift tax returns for subsequent years when the taxpayer understated the amounts of his prior year gifts, the national office view is that the language in § 6501(c)(9) “any tax imposed by chapter 12 on such gift may be assessed ... at any time” refers to the tax imposed on the omitted gift that is subject to tax on that return (i.e., the current year gift amounts), and it does not refer to omissions or understatements of the prior year gift amount on that return. Accordingly, § 6501(c)(9) does not extend the ASED for gift tax returns for subsequent years just because the prior year gift amounts on those returns were understated, even if that resulted in underreported gift tax for those subsequent years.

Treas. Reg. § 301.6501(c)-1(f) provides that: “If a transfer of property ... is not adequately disclosed on a gift tax return ... or in a statement attached to the return, filed for the calendar year period in which the transfer occurs, then any gift tax imposed ... on the transfer may be assessed ... at any time.” Under the regs, only the failure to disclose a gift on the return for the year of that gift keeps the ASED open, not a failure to accurately report the sum of prior year gifts on a return for a later year.

As a result, if the only problem with the subsequent year gift tax returns is understatement of the amounts of prior year gifts, then the understatement of gift tax due for those subsequent years may be assessed only within the normal § 6501(a) 3-year period. The returns for \_\_\_\_\_ should be carefully evaluated, because the ASEDs for those returns should still be open.

The six-year ASED for substantial omission in § 6501(e)(2) will not extend the ASED for gift tax returns whose only defect is underreported prior year gifts, because the

language “if the taxpayer omits from ... the total amount of the gifts made during the period for which the return was filed” also refers to the current-year gifts; gift tax returns are annual returns, even if the taxpayer is required to report prior year gifts and to properly use those when calculating the tax on the current year gifts.

It would take a legislative fix to § 6501(c)(9) and (e)(2) to close this gap.

Of course, if some other exception, like § 6501(c)(1) (false or fraudulent return with intent to evade tax) or § 6501(c)(2) (willful attempt to defeat or evade tax), applies, there would be an independent ground for an unlimited ASED. But there would have to be sufficient facts to support one of those exceptions.

Please let me know if you have any further questions.

Thanks,