

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

Number: **201643020**

Release Date: 10/21/2016

CC:PA:02:EMISHORY

POSTF-103840-15

UILC: 6501.07-18

date: June 04, 2015

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(Small Business/Self-Employed)

from: Pamela W. Fuller
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subject: Section 6501(c)(9) and failure to report prior years' gifts

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

LEGEND

\$a =
\$b =
\$c =
Y1 =
Y6 =
Y7 =
Y8 =
Y9 =
Y15 =
Y31 =
Y32 =
Date 1 =

ISSUE

Where a taxpayer filed a gift tax return that reported a gift for the calendar year in which the gift was made but did not report prior years' gifts on the return as required, causing an under assessment of tax on the reported gift, whether section 6501(c)(9) of the Internal Revenue Code provides an extended period of limitation for assessing the additional tax due on the reported gift.

CONCLUSION

No. Section 6501(c)(9) only applies to gifts that were not reported on a gift tax return. Because the gift was reported on the gift tax return, the extended period of limitation for assessing additional tax due on the reported gift in section 6501(c)(9) does not apply to the reported gift, even though prior years' gifts were not reported on the return.

FACTS

X filed a gift tax return for tax year Y31 on Date 1, Y32, reporting a taxable gift of \$a, and \$b tax due. X had previously made gifts in Y1, Y6, Y7, Y8, Y9 and Y15 that totaled \$c and were reported on prior gift tax returns. On the tax year Y31 return, X failed to report the prior years' gifts as required by Treasury Regulation section 25.6019-3(a). Because the amount of prior years' gifts is necessary to calculate the tax on a current year's gifts, X's failure to report the prior years' gifts on the tax year Y31 return caused the tax on the reported gift to incorrectly be calculated at a lower rate than if the prior years' gifts were reported on the tax year Y31 return.

LAW AND ANALYSIS

Section 6501(a) provides that, generally, tax must be assessed within three years of when the return was filed. There is a limited exception to this general limitation period for unreported gifts. Section 6501(c)(9) states:

If any gift of property the value of which . . . is required to be shown on a return of tax imposed by chapter 12 (without regard to section 2503(b)), and is not shown on such return, any tax imposed by chapter 12 on such gift may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time. The preceding sentence shall not apply to any item which is disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item.

There are two rules in section 6501(c)(9) that limit when the special limitation period applies. The first rule is that it only applies to a gift that is not reported on the gift tax return. The second rule is that it does not apply to an item that was adequately disclosed on the return, or on an attachment to the return. As such, there is a two-step analysis for applying the special limitation period in section 6501(c)(9).

Step one is to determine if the gift was reported on the gift tax return. If the gift was reported, then the special limitation period does not apply to the gift and the analysis is concluded. If the gift was not reported, then the analysis moves to step two. Step two is to determine if the item was adequately disclosed. If the item was disclosed, then the special limitation period in section 6501(c)(9) does not apply to the item. If the item was not disclosed, then the special limitation period applies and tax may be assessed on the gift at any time. Although it is arguable that Treasury Regulation § 301.6501(c)-1(f)(1) is silent concerning the omission of prior taxable gifts, the clear language of section 6501(c)(9) precludes it from applying to a gift that was reported on the gift tax return even if prior years' gifts were omitted.

In this case, the \$a gift was reported on the tax year Y31 gift tax return. Thus, step one is met and the matter is concluded. Therefore, despite X's failure to report prior years' gifts on the Y31 return, the special limitation period in section 6501(c)(9) does not apply to the \$a gift.

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