

SAN FRANCISCO PARALEGAL ASSOCIATION
RECENT DEVELOPMENTS IN ESTATE & GIFT TAX AT THE IRS
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CURRENT STRUCTURE OF ESTATE AND GIFT TAX AT IRS

The Estate and Gift Tax Program is part of the SB/SE Division Specialty Programs. There are currently four Territories in the country with five groups of Estate Tax Attorneys in each Territory.

West Territory has 5 groups located throughout the western part of the country. In California, there are three Supervisory Attorneys: one in Sacramento, one in Oakland and one in Los Angeles. There is one Supervisory Attorney in Texas and one in Seattle. Each Supervisory Attorney is a former Estate Tax Attorney with field examination experience.

Tax returns are sent from the Cincinnati Campus to the local offices for examination. Due to staffing levels, a return may be sent to an office in another part of the country for examination. This is part of the National Workplan that started a few years ago.

ESTATE AND GIFT TAX IN 2015 AND BEYOND

On January 1, 2013, Congress passed the American Taxpayer Relief Act of 2012, which changed the Estate, Gift and Generation-Skipping Transfer Taxes for 2013 and beyond.

The Estate Tax for decedents dying after December 31, 2012 is taxed at a rate of 40% with an annually inflation-adjusted exclusion amount of \$5 million. The exclusion amount for 2016 is \$5.45 million.

For Gifts made in 2016, the Act provides that the gift tax is computed using a rate schedule having a top tax rate of 40% and maximum applicable annually inflation-adjusted exclusion amount of \$5.45 million.

For Generation-Skipping Transfer Tax, the Act provides an annually inflation adjusted exemption of \$5.45 million for 2015 (equal to the exclusion for estate tax purposes) with a GST tax rate of 40%.

EXTENSIONS OF TIME TO FILE AND PAY

Form 4768 is used to apply for an extension of time to file an Estate Tax Return (Form 706). The same form is also used to apply for an extension of time to pay tax.

REMINDER: Extension of time to file is for 6 months only. Extension of time to pay can be granted for 12 months. Many erroneous forms are filed requesting 12 months for both. Please consult the instructions for details.

PAYING ESTATE TAX IN INSTALLMENTS UNDER IRC §6166

Form 13925 has been created for the lien agreement under IRC § 6324A. The IRS office responsible for securing a lien agreement will send this form to the Taxpayer for signature when the examination of the return is completed.

PRACTICE TIP: If a payment under IRC §6166 installments cannot be made, then apply for an extension of time to pay using the Form 4768 to keep the installment plan from defaulting. This would include the non-deferred tax that is due with the return as well as the annual installments of tax and interest.

FILING A “FAT” RETURN

- Attachments to the Return
- Are all the Schedules attached?
- Is Form 706, Schedule E correct?
- Is Form 706, Schedule M correct?
- Did everyone sign the Return?
- Was Trust Funding done after the death of the first spouse?
- Were any Gift Tax Returns (Form 709) filed during life? How can I find out?

IMPORTANCE OF A GOOD APPRAISAL

- Finding an Appraiser
- Engagement Letter – What are they going to appraise?
- Draft versus Final Report – Fact checking
- Use of Appraisal for Estate Tax purposes versus Gift Tax purposes

ADEQUATE DISCLOSURE ON GIFT TAX RETURNS

- Has each gift been adequately described on the Form 709?
- Is the appraisal attached?
- Did the appraiser value the correct item?
- Does the appraisal contain the necessary requirements from Treas. Reg. §301.6501(c)-1?

PROMISSORY NOTES

- Valuation
- Terms of the Note
- Bona Fide Obligation
- Treatment for Estate Tax versus Gift Tax

CHANGES AFFECTING CASES SENT BY EXAM TO APPEALS

- Estate Tax Returns must have 270 days remaining on the statute of limitations
- Gift Tax Returns must have 365 days remaining on the statute of limitations