

Gift Tax Statutes of Limitation

Introduction

Before a federal tax can be collected, it must first be assessed. The ordinary way a tax is assessed is by the taxpayer doing so on the tax return. Assuming that the IRS seeks to collect more than the taxpayer has assessed against herself, the IRS must follow procedures established by the Code.

Assessment

How long does the IRS have to assess a tax? Barring an event that stops the clock — such as the taxpayer filing a petition in the U.S. Tax Court — the limitations period on assessment is ordinarily three years from the date the return is filed. *See* IRC § 6501(a).¹ There are exceptions, including for fraudulent returns, and for returns that omit large amounts that should have been included. *See* IRC §§ 6501(c)(1) (false return, no limitations period), 6501(e)(2) (substantial omission of gifts or gross estate items, six years from filing).

This assessment period is especially important in the gift and estate tax contexts, because as you may recall from our first week of class, in calculating the tax on a gift or on a decedent's estate, gifts in previous years are taken into account. *See* IRC §§ 2001(b)(1)(B) (inclusion of adjusted taxable gifts), 2502(a)(2) (inclusion of gifts in previous periods). The good news is that once the limitations period has expired on assessment of gift tax for a given year, the IRS can no longer challenge the value claimed by the taxpayer on the gift tax return, either for purposes of future gift tax calculations or for purposes of the estate tax calculation. *See* IRC § 2001(f), 2504(c).

The not-so-good news is that in order to get the gift tax statute of limitations running — for any purpose — the taxpayer must make thorough disclosure of the gift, and especially the method by which the taxpayer arrived at the claimed value. Section 6501(c)(9) authorizes the Service to adopt regulations spelling out the required disclosures, and the Service has done so. The rules are extensive. They can be found at Treas. Reg. § 301.6501(c)-1(f) (not in our Code book).

Collection

In class I vaguely remembered a 10-year statute of limitations. This covers collection of a wealth transfer tax once it has been assessed. *See* IRC § 6502.

¹ Code sections cited here are included in our student Code book.