Gift Tax Returns & IRS Examination: Challenges and Pitfalls for Practitioners

PRESENTED BY:

SETH G. COHEN, ESQ.
Zhong Lun Law Firm

LAWRENCE A. SANNICANDRO, ESQ.
McCarter & English LLP

ANTHONY F. VITIELLO, ESQ.
Connell Foley LLP

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C. The statute of limitations on revaluing gifts is your best friend.

D. Gift tax return audits are rare, but when they happen, they are tough, expensive to defend and if not defended properly, can lead to significant amounts of unnecessary gift tax payments, penalties and interest.

II. The "Art" versus "Science" of Preparing a Gift Tax Return

III. Importance of Adequate Disclosure

A. Taxpayer Relief Act of 1997 – IRC §2001(f), §2504(c), 6501(c)(9)

1. Effective for gifts made after 8/5/97

2. Prior Law (Pre-8/6/97 gifts)

a. IRS could revalue a previously reported gift, even if the limitations period on assessment for gift tax had expired, if no gift tax had ever been paid for the year of the gift.

b. IRS revalued gifts, regardless of how old the gifts were, during the audit of estate/gift tax returns by revaluing adjusted taxable gifts. Estate of Smith, 94 T.C. 872 (1990); Accord, O'Neal v. Commissioner, 102 T.C. 666 (1994).

c. This was/is a "back door" available to the IRS. It could also lead to IRS increasing gift tax on gifts for which taxes were paid by the IRS going back to earlier years to increase tax brackets on gifts in later years that were otherwise closed. Theoretically, this is still possible for pre-1997 gifts. See §25.2504-2(c). Ex.1

3. Current Law

a. IRS can no longer adjust the value of a post 8/5/97 gift after the limitations period has run if the gift was "adequately disclosed".

b. This applies for gift tax purposes (2504(c)) and estate tax purposes (2001(f)).

c. Statute of Limitations ("SOL") Issues (Current Law)

i. An assessment of gift tax must be made within three years after the return was filed. IRS §6501(a).

ii. The three year period can be extended to 6 years if the taxpayer omits from the total amount of gifts for the year an amount of gifts that exceeds 25% of the total amount reported. However, if an item is adequately disclosed on the return, the item is not taken into account in determining the 25% omission. §6501(e)(2). There are similar rules for complete omission of items required to be reported. SOL applies in those cases (unless adequately disclosed §6501(c)(9)).

iii. There is NO SOL for a gift that was not adequately disclosed. §6501(c)(9).

The IRS clarified the boundaries of §6501(c)(9) in CCA 201643020, by concluding that §6501(c)(9) does not refer to either the proper calculation of gift tax or reporting prior-year gifts. According to CCA 201643020, if a current year gift tax return reports and adequately discloses a gift but fails to report prior-year gifts (although previously reported on prior-year gift tax returns), the IRS cannot use §6501(c)(9) to assess any resulting under-reporting of gift tax after the expiration of the 3-year SOL. CCA 201643020.

IV. Adequate Disclosure Regulations

A. On 12/3/99, final regulations regarding adequate disclosure were issued. These regulations apply to gifts made after 1996 for which a return is filed after 12/3/99.

1. Treas. Regs. §301.6501(c)-1(f); 20.2001-1; 25.2504-2.

B. General Rule: A gift is only considered adequately disclosed if it is reported in a manner adequate to apprise the IRS of the nature of the gift and the basis for the value so reported.

1. This rule could lead to a litigation over whether the gift was disclosed on the gift tax return "in a manner adequate to apprise the secretary of the nature [and amount] of such item."

C. Safe Harbor §301.6501(c)–1(f)(2): Transfers reported as a gift will be considered adequately disclosed if the return provides the following 5 required elements.

1. A description of the transferred property and any consideration received by the transferor;

2. The identity of, and relationship between, the transferor and the transferee;

3. If the property is transferred to a trust, the trust's TIN and either a brief description of the terms of the trust or a copy of the trust;

4. Either an appraisal (in the form described in §301.6501(c)-1(f)(3), or a detailed description of how value was obtained (financial data/property information, etc.).

a. Main regulatory requirements for appraisers are described in §301.6501(c)-1(f)(3)(i):

i. Appraiser holds himself out to the public as an appraiser or performs appraisals on a regular basis.

ii. The qualifications of the appraiser (which must be listed in the appraisal): Because of the appraiser's background, experience, education, memberships in professional appraisal associations, the appraiser is qualified to make appraisals of the type of property being valued.

iii. The appraiser is not the donor or the donee of the property or a member of the family of the donor or donee, or any person employed by the donor, the donee, or a member of the family of either.

b. A certain minimum level of information is required to be included in the appraisal and minimum procedures and methodologies for the appraisal are required in the safe harbor regulations. §301.6501(c)-1(f)(3)(ii).

c. If no appraisal is provided, then certain property needs certain descriptions to be included in order to meet the safe harbor (§301.6501(c) – 1(f)(2)(iv)):

i. For publicly traded stock, recitation of the exchange where the stock is traded, CUSIP number, mean between high and low for the date of the gift.

ii. Disclosure of publicly traded securities should meet the "adequately disclosed" standard even though no CUSIP is provided.

d. As to this requirement, in a recent Tax Court case, Estate of Sanders v. Commissioner, T.C. Memo 2014-100 (2014), the Tax Court refused to grant a taxpayer summary judgment on a SOL issue under the adequate disclosure rules. In this case, the taxpayer made gifts of stock over a nine-year period and filed gift tax returns reporting the gifts. Regarding the IRS's assessment of a $3.2 million deficiency, the taxpayer moved for summary judgment asserting that the IRS's assessment was barred by the three-year SOL. However, the IRS claimed that the taxpayer failed to show that the statements attached to the gift returns "adequately" disclosed the nature of the gifted stock or the basis of the value reported so as to trigger the running of the SOL. The IRS also claimed that the taxpayer failed to disclose ownership of another closely-held entity. The Tax Court noted that "whether a statement attached to a gift tax return adequately discloses a gift is a question of fact," and denied the taxpayer's motion for summary judgment, holding that there was a genuine dispute as to material fact on the adequate disclosure issues.

5. A statement describing any position taken that is contrary to any proposed/temporary or final regulations or revenue rulings. §301.6501(c) – 1(f)(1)(v). This seems onerous and not sure it is needed.

D. Non-Gift Transfers §301.6501(c)-1(f)(4)

1. A non-gift transfer will be considered adequately disclosed even if it is not reported on a gift tax return if the transfer is properly reported by all parties for income tax purposes.

a. The transfer must be made "in the ordinary course of operating a business."

i. Example given is salary paid to a family member.

ii. What does "ordinary course of operating a business" mean? Does that exclude sales of interests in a family business from one generation to the next?

b. The income tax return must contain an explanation of why the transfer is not a gift.

c. All the information required for adequate disclosure on a gift tax return must be included on the income tax return.

d. MORAL: File a gift tax return reporting any transfer other than compensation, regardless if it qualifies as an income-taxable sale. Otherwise, you risk losing the adequate disclosure argument. If you lose the argument, the statute of limitations is open forever.

e. In a case, Estate of Brown v. Commissioner, T.C. Memo 2013-50 (2013), a taxpayer sold interests in a family business under the installment method to two trusts established for the benefit of the taxpayer's granddaughters, which was reported for income tax purposes. The IRS assessed a deficiency after the SOL had expired, and the taxpayer moved for summary judgment. The IRS claimed that the records did not adequately disclose the fair market value of the interests. Despite the taxpayer's claims that the transfers were made in the ordinary course of business (and therefore the transfers were not taxable gifts even if made below the fair market value), the Tax Court denied the motion for summary judgment, holding that there were genuine disputes of material fact. Because it was possible that the transfers were gifts, the court could not resolve the SOL issue without assessing the verity of the parties' assertions of fact and considering the merits of the case.

E. Incomplete Gifts

1. If incomplete gifts are reported as complete, those incomplete gifts will be treated as completed gifts after the statute of limitations runs. §301.6501(c)-1(f)(5). There are questionable benefits for this rule.

2, If completed gifts are reported as incomplete, even if adequately disclosed, the statute of limitations period will not begin to run until three years after the taxpayer files a return showing the transfer as a completed gift with adequate disclosure. §§301.6501(c)-1(f)(5), 25.2511-2(j).

V. Amending Gift Tax Returns-Rev. Proc. 2000-34

A. The IRS provides a method to amend a gift tax return for those gifts which were not adequately disclosed on a gift tax return. By following the procedure to amend a gift tax return, the client can satisfy the adequate disclosure rules for filed returns that did not do so.

B. Most experts agree that there are no code sections or regulations that impose a duty to amend a gift tax return on discovering an error that results in additional tax due for that prior year.

VI. The Anatomy of a Gift Tax Return

A. Informational Issues: Line 1-18

1. Line 5. Legal Residence - State (or Foreign Country)

2. Line 12. When gift splitting, it is not necessary for both spouses to file a gift tax return.

a. If one spouse did not make any gifts or made gifts that would not require a gift tax return AND the amount split with the donor spouse would not affect the computations of taxable gifts for the non-donor spouse, (i.e., annual exclusions to the same person) then no gift tax return is needed by that non-donor spouse.

3. Line 19. DSUE

a. Line 19 states: "Have you applied a DSUE amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If yes, complete Schedule C."

B. Schedule A

1. Line A.

a. This specific question asks whether any valuation discounts were used. It applies to any possible discount. Examples include lack of marketability, minority interest, fractional interest in real estate, blockage and market absorption. If the answer is yes, an attachment with an explanation is required, which sets forth the factual basis for the discount and the size of the discount. Query: Is the attachment in addition to the requirement that an appraisal for adequate disclosure purposes be included?

2. Line B.

   a. This specific question is intended to notify the IRS that the client is electing under 529(c)(2)(B) to treat any transfers made as made ratably over a 5 year period. The reporting requirements for making the election are in the instructions.

3. Political organization, educational or medical exclusion gifts are not reported in Schedule A since they are not treated as reportable by the IRS.

C. Schedule A-Part 1

1. Applies to all gifts made to non-skip persons (spouse, children, charities, other non-skip persons).

D. Schedule A-Part 2

1. Applies to direct skips (in trust or outright)

   a. i.e., applies to gifts directly to grandchildren or to a trust only for grandchildren. It applies to a transfer to any skip person directly or to a trust that only has beneficiaries who are skip persons.

2. Report ETIPS's in this section

   a. There are two portions to a transfer involving an ETIP. The first portion is the pure gift portion. For example, a gift to a GRAT where the remainder beneficiaries are only grandchildren. The gift portion is the transfer to the GRAT. This must be reported on Part 1 of Schedule A. However, at the end of the GRAT term, when the property is no longer subject to inclusion in the grantor's estate, the grantor is required to file another gift tax return and report the application of the GST on Part 2 of Schedule A. See Form 709 instructions.

   b. There are special reporting procedures for ETIPs when the ETIP is the only reason for filing the gift tax return.

E. Schedule A-Part 3

1. Applies to any gifts that may become "Indirect Skips"

   a. Applies to any gifts that would cause a taxable termination or taxable distribution in the future.

b. Example: Dynasty Trusts for children and lower generations.

c. This section has become the most important section of the gift tax return since most transfers to trusts are being structured to benefit children and then continue on to grandchildren.

F. Schedule C-DSUE

1. Schedule C has been inserted into the 709 to account for the inclusion of the "portability" of a DSUE Amount.

a. The election to utilize any unused exemption from a deceased spouse must have been made on a timely filed 706.

b. Only can use DSUE from last deceased spouse. DSUE can be lost on remarriage and then death of new spouse. But, as long as DSUE is used before the second spouse dies, both DSUE's are preserved. Treas. Reg. §25.2505-2(c).

c. The SOL for the deceased spouse's return remains open until the surviving spouse's SOL runs on that 706, for purposes of computing DSUE. Treas. Reg. §20.2010-3(d).

VII. Gift Splitting

A married individual may elect to split gifts with that person's spouse for gift tax and GST tax purposes.

A. Election Applies to All Gifts in Tax Year.

An election in any year applies to all gifts to third parties in that year. There is no partial election. (Note: GST exemption allocation must be affirmatively made).

B. Benefit: Allowing the use of the consenting spouse's annual exclusions and applicable exclusion.

C. Gift Splitting Does Not Cause Estate Tax Inclusion for Consenting Spouse.

Electing to split gifts with one's spouse treats the gift as being made one-half by the non-donor spouse for gift tax purposes, but not for estate tax purposes.

1. The reference in 2513(a)(1) indicates that the gifts are deemed made one-half by the consenting spouse "for purposes of this chapter" (referring to Chapter 12 (i.e., the chapter applying to gift taxes)). See Rev. Rul. 74-556, 1974-2 CB 300; PLR 200113030.

D. Grantor Trust Status as to Consenting Spouse.

1. The consenting spouse will not be deemed the grantor of the trust for income tax purposes. The donor spouse will continue to be treated as the grantor of the entire transfer for income tax purposes IRC §672(e).

E. Consenting Spouse is Jointly and Severably Liable for Gift Tax Due. IRC §2513(d) and Transferee Liability IRC §6324(a)(2).

F. Do not gift split in a year where the clients establish a split interest trust (GRAT, QPRT) that uses a portion of the client's applicable exclusion.

1. If the grantor dies during the retained term of the trust, the grantor will be able to recoup the applicable exclusion utilized for the split interest trust (because the transfer is not included in the definition of adjusted taxable gift as defined in 2001(b) and thus, the donor's exemption is effectively restored). However, the consenting spouse would not be able to recoup her applicable exclusion.

G. Gift Splitting on Trusts Where the Consenting Spouse is a Beneficiary With Other Persons.

1. Treas. Reg. §25.2513-1(b)(4)

2. Robertson v. Commissioner, 26 T.C. 246 (1956)

3. Kass v. Commissioner, T.C. Memo 1957-227

4. Wang v. Commissioner, T.C. Memo 1972-143

5. PLRs 200345038; 201523003

6. Gift-Splitting - A Boondoggle or a Bad Idea? A Comprehensive Look at the Rules, Journal of Taxation, June 2007

VIII. Reporting the Basis of Gifts

A. Adjusted basis is required to be listed on the gift tax return.

B. The trouble in obtaining accurate basis figures for assets other than cash or publicly traded securities - basis is often not accurately tracked.

C. The Importance of Making an Effort to Get Basis Right.

1. Carry-over basis

2. Later sales

3. Are you locked into what you report?

IX. Allocation of GST Exemption

A. If you are splitting gifts with your spouse and you want GST allocated to the entire transfer, then the donor's spouse must allocate a portion of his/her GST exemption to the transfer and the donor must allocate a portion of his as well (50/50). In other words, gift split for spouse is automatic on all gifts, while spouse has to specifically allocate GST Exemption on a transfer by transfer basis.

B. Automatic Allocation Rules - §2632(c)

1. Alleviates the requirement to allocate GST exemption to transfers that will most likely need it. – "indirect skips" (e.g. transfers to a trust that will most likely generation skip).

2. Most helpful in insurance trusts with dynasty provisions in those years where no other reportable gifts are made.

3. Caution dictates filing the gift tax returns and allocating GST exemption anyway. It is important to keep a paper trail and a record of use, even if a gift tax return is not technically required.

4. Traps for the Unwary: The automatic allocation rules have provisions that may cause an unintended allocation of GST exemption. For example, if a trust will not distribute more than 25% of its corpus before a non-skip person beneficiary attains age 46, the trust is deemed to receive an automatic GST allocation (whether a gift tax return is file or not). IRC §2632(c)(3)(B).

5. A donor can opt out of automatic allocation rules on Parts 2 or 3 of Schedule A. §2632(b)(3) and (c)(5). This opt out can apply on a going forward basis for all transfers to a particular trust by a one-time election.

C. Formula Clause

Whenever filing a gift tax return, we include a formula clause to achieve an inclusion ratio as close to zero as possible. The formula clause is usually done in an attachment to the gift tax return.

X. Amending Gift Tax Returns for Same-Sex Spouses under Notice 2017-15

A. Following United States v. Windsor, 133 S. Ct. 2675 (2013), the IRS issued Notice 2017-15 permitting a taxpayer to recalculate the taxpayer's remaining applicable exclusion amount (including the DSUE amount) and available GST exemption as a result of the legal recognition of the taxpayer's same-sex marriage after SOL has expired. Notice 2017-15.

B. To recalculate the remaining applicable exclusion amount and available GST exemption, the taxpayer must use Form 709 or an amended Form 709 (unless Form 706 is applicable). The IRS noted that, preferably, the recalculation should be done on the first Form 709 required to be filed by the taxpayer after the issuance of Notice 2017-15.

C. Note that Notice 2017-15 does not apply to gift splitting. Neither does it permit the changing of the value of the reported interest or any position concerning a legal issue (other than existence of the marriage) previously taken on the gift tax return. Similarly, no credit or refund of the tax paid on the marital gift would be given once SOL on claims for credit or refund has expired. Notice 2017-15.

XI. Keep Gift Tax Returns

Don't just keep them for 6 years. Make them a permanent part of a taxpayer's file and always keep them in the office, not in storage. It could be 20 years before they are needed and then you have to find them.

XII. Reviewing Some Samples

A. The need for descriptive summaries on each gift.

B. Establishing workable standards for descriptions. Standardize your descriptions for ease of preparation but always adapt those standards to the needs of the particular client situation.

Exhibit A

IRC §6501

26 USC 6501: Limitations on assessment and collection
Text contains those laws in effect on October 29, 2017

From Title 26-INTERNAL REVENUE CODE
Subtitle F-Procedure and Administration
CHAPTER 66-LIMITATIONS
Subchapter A-Limitations on Assessment and Collection

Jump To:

§6501. Limitations on assessment and collection

(a) General rule

Except as otherwise provided in this section, the amount of any tax imposed by this title shall be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) or, if the tax is payable by stamp, at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid, and no proceeding in court without assessment for the collection of such tax shall be begun after the expiration of such period. For purposes of this chapter, the term "return" means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit).

(b) Time return deemed filed

(1) Early return

For purposes of this section, a return of tax imposed by this title, except tax imposed by chapter 3, 4, 21, or 24, filed before the last day prescribed by law or by regulations promulgated pursuant to law for the filing thereof, shall be considered as filed on such last day.

(2) Return of certain employment and withholding taxes

For purposes of this section, if a return of tax imposed by chapter 3, 4, 21, or 24 for any period ending with or within a calendar year is filed before April 15 of the succeeding calendar year, such return shall be considered filed on April 15 of such calendar year.

(3) Return executed by Secretary

Notwithstanding the provisions of paragraph (2) of section 6020(b), the execution of a return by the Secretary pursuant to the authority conferred by such section shall not start the running of the period of limitations on assessment and collection.

(4) Return of excise taxes

For purposes of this section, the filing of a return for a specified period on which an entry has been made with respect to a tax imposed under a provision of subtitle D (including a return on which an entry has been made showing no liability for such tax for such period) shall constitute the filing of a return of all amounts of such tax which, if properly paid, would be required to be reported on such return for such period.

(c) Exceptions

(1) False return

In the case of a false or fraudulent return with the intent to evade tax, the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time.

(2) Willful attempt to evade tax

In case of a willful attempt in any manner to defeat or evade tax imposed by this title (other than tax imposed by subtitle A or B), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(3) No return

In the case of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(4) Extension by agreement

(A) In general

Where, before the expiration of the time prescribed in this section for the assessment of any tax imposed by this title, except the estate tax provided in chapter 11, both the Secretary and the taxpayer have consented in writing to its assessment after such time, the tax may be assessed at any time prior to the expiration of the period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(B) Notice to taxpayer of right to refuse or limit extension

The Secretary shall notify the taxpayer of the taxpayer's right to refuse to extend the period of limitations, or to limit such extension to particular issues or to a particular period of time, on each occasion when the taxpayer is requested to provide such consent.

(5) Tax resulting from changes in certain income tax or estate tax credits

For special rules applicable in cases where the adjustment of certain taxes allowed as a credit against income taxes or estate taxes results in additional tax, see section 905(c) (relating to the foreign tax credit for income tax purposes) and section 2016 (relating to taxes of foreign countries, States, etc., claimed as credit against estate taxes).

(6) Termination of private foundation status

In the case of a tax on termination of private foundation status under section 507, such tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(7) Special rule for certain amended returns

Where, within the 60-day period ending on the day on which the time prescribed in this section for the assessment of any tax imposed by subtitle A for any taxable year would otherwise expire, the Secretary receives a written document signed by the taxpayer showing that the taxpayer owes an additional amount of such tax for such taxable year, the period for the assessment of such additional amount shall not expire before the day 60 days after the day on which the Secretary receives such document.

(8) Failure to notify Secretary of certain foreign transfers

(A) In general

In the case of any information which is required to be reported to the Secretary pursuant to an election under section 1295(b) or under section 1298(f), 6038, 6038A, 6038B, 6038D, 6046, 6046A, or 6048, the time for assessment of any tax imposed by this title with respect to any tax return, event, or period to which such information relates shall not expire before the date which is 3 years after the date on which the Secretary is furnished the information required to be reported under such section.

(B) Application to failures due to reasonable cause

If the failure to furnish the information referred to in subparagraph (A) is due to reasonable cause and not willful neglect, subparagraph (A) shall apply only to the item or items related to such failure.

(9) Gift tax on certain gifts not shown on return

If any gift of property the value of which (or any increase in taxable gifts required under section 2701(d) 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.

(10) Listed transactions

If a taxpayer fails to include on any return or statement for any taxable year any information with respect to a listed transaction (as defined in section 6707A(c)(2)) which is required under section 6011 to be included with such return or statement, the time for assessment of any tax imposed by this title with respect to such transaction shall not expire before the date which is 1 year after the earlier of-

(A) the date on which the Secretary is furnished the information so required, or

(B) the date that a material advisor meets the requirements of section 6112 with respect to a request by the Secretary under section 6112(b) relating to such transaction with respect to such taxpayer.

(11) Certain orders of criminal restitution

In the case of any amount described in section 6201(a)(4), such amount may be assessed, or a proceeding in court for the collection of such amount may be begun without assessment, at any time.

(d) Request for prompt assessment

Except as otherwise provided in subsection (c), (e), or (f), in the case of any tax (other than the tax imposed by chapter 11 of subtitle B, relating to estate taxes) for which return is required in the case of a decedent, or by his estate during the period of administration, or by a corporation, the tax shall be assessed, and any proceeding in court without assessment for the collection of such tax shall be begun, within 18 months after written request

therefor (filed after the return is made and filed in such manner and such form as may be prescribed by regulations of the Secretary) by the executor, administrator, or other fiduciary representing the estate of such decedent, or by the corporation, but not after the expiration of 3 years after the return was filed. This subsection shall not apply in the case of a corporation unless-

(1)(A) such written request notifies the Secretary that the corporation contemplates dissolution at or before the expiration of such 18-month period, (B) the dissolution is in good faith begun before the expiration of such 18-month period, and (C) the dissolution is completed;

(2)(A) such written request notifies the Secretary that a dissolution has in good faith been begun, and (B) the dissolution is completed; or

(3) a dissolution has been completed at the time such written request is made.

(e) Substantial omission of items

Except as otherwise provided in subsection (c)-

(1) Income taxes

In the case of any tax imposed by subtitle A-

(A) General rule

If the taxpayer omits from gross income an amount properly includible therein and-

(i) such amount is in excess of 25 percent of the amount of gross income stated in the return, or

(ii) such amount-

(I) is attributable to one or more assets with respect to which information is required to be reported under section 6038D (or would be so required if such section were applied without regard to the dollar threshold specified in subsection (a) thereof and without regard to any exceptions provided pursuant to subsection (h)(1) thereof), and

(II) is in excess of $5,000,

the tax may be assessed, or a proceeding in court for collection of such tax may be begun without assessment, at any time within 6 years after the return was filed.

(B) Determination of gross income

For purposes of subparagraph (A)-

(i) In the case of a trade or business, the term "gross income" means the total of the amounts received or accrued from the sale of goods or services (if such amounts are required to be shown on the return) prior to diminution by the cost of such sales or services;

(ii) An understatement of gross income by reason of an overstatement of unrecovered cost or other basis is an omission from gross income; and

(iii) In determining the amount omitted from gross income (other than in the case of an overstatement of unrecovered cost or other basis), there shall not be taken into account any amount which is omitted from gross income stated in the return if such amount is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(C) Constructive dividends

If the taxpayer omits from gross income an amount properly includible therein under section 951(a), the tax may be assessed, or a proceeding in court for the collection of such tax may be done without assessing, at any time within 6 years after the return was filed.

(2) Estate and gift taxes

In the case of a return of estate tax under chapter 11 or a return of gift tax under chapter 12, if the taxpayer omits from the gross estate or from the total amount of the gifts made during the period for which the return was filed items includible in such gross estate or such total gifts, as the case may be, as exceed in amount 25 percent of the gross estate stated in the return or the total amount of gifts stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. In determining the items omitted from the gross estate or the total gifts, there shall not be taken into account any item which is omitted from the gross estate or from the total gifts stated in the return if such item is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature and amount of such item.

(3) Excise taxes

In the case of a return of a tax imposed under a provision of subtitle D, if the return omits an amount of such tax properly includible thereon which exceeds 25 percent of the amount of such tax reported thereon, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return is filed. In determining the amount of tax omitted on a return, there shall not be taken into account any amount of tax imposed by chapter 41, 42, 43, or 44 which is omitted from the return if the transaction giving rise to such tax is disclosed in the return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the existence and nature of such item.

(f) Personal holding company tax

If a corporation which is a personal holding company for any taxable year fails to file with its return under chapter 1 for such year a schedule setting forth-

(1) the items of gross income and adjusted ordinary gross income, described in section 543, received by the corporation during such year, and

(2) the names and addresses of the individuals who owned, within the meaning of section 544 (relating to rules for determining stock ownership), at any time during the last half of such year more than 50 percent in value of the outstanding capital stock of the corporation,

the personal holding company tax for such year may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return for such year was filed.

(g) Certain income tax returns of corporations

(1) Trusts or partnerships

If a taxpayer determines in good faith that it is a trust or partnership and files a return as such under subtitle A, and if such taxpayer is thereafter held to be a corporation for the taxable year for which the return is filed, such return shall be deemed the return of the corporation for purposes of this section.

(2) Exempt organizations

If a taxpayer determines in good faith that it is an exempt organization and files a return as such under section 6033, and if such taxpayer is thereafter held to be a taxable organization for the taxable year for which the return is filed, such return shall be deemed the return of the organization for purposes of this section.

(3) DISC

If a corporation determines in good faith that it is a DISC (as defined in section 992(a)) and files a return as such under section 6011(c)(2) and if such corporation is thereafter held to be a corporation which is not a DISC for the taxable year for which the return is filed, such return shall be deemed the return of a corporation which is not a DISC for purposes of this section.

(h) Net operating loss or capital loss carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a net operating loss carryback or a capital loss carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213 (b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the net operating loss or net capital loss which results in such carryback may be assessed.

(i) Foreign tax carrybacks

In the case of a deficiency attributable to the application to the taxpayer of a carryback under section 904(c) (relating to carryback and carryover of excess foreign taxes) or under section 907(f) (relating to carryback and carryover of disallowed foreign oil and gas taxes), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year of the excess taxes described in section 904(c) or 907(f) which result in such carryback.

(j) Certain credit carrybacks

(1) In general

In the case of a deficiency attributable to the application to the taxpayer of a credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(3)), such deficiency may be assessed at any time before the expiration of the period within which a deficiency for the taxable year of the unused credit which results in such carryback may be assessed, or with respect to any portion of a credit carryback from a taxable year attributable to a net operating loss carryback, capital loss carryback, or other credit carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed.

(2) Credit carryback defined

For purposes of this subsection, the term "credit carryback" has the meaning given such term by section 6511 (d)(4)(C).

(k) Tentative carryback adjustment assessment period

In a case where an amount has been applied, credited, or refunded under section 6411 (relating to tentative carryback and refund adjustments) by reason of a net operating loss carryback, a capital loss carryback, or a credit carryback (as defined in section 6511(d)(4)(C)) to a prior taxable year, the period described in subsection (a) of this section for assessing a deficiency for such prior taxable year shall be extended to include the period described in subsection (h) or (j), whichever is applicable; except that the amount which may be assessed solely by reason of this subsection shall not exceed the amount so applied, credited, or refunded under section 6411, reduced by any amount which may be assessed solely by reason of subsection (h) or (j), as the case may be.

(l) Special rule for chapter 42 and similar taxes

(1) In general

For purposes of any tax imposed by section 4912, by chapter 42 (other than section 4940), or by section 4975, the return referred to in this section shall be the return filed by the private foundation, plan, trust, or other organization (as the case may be) for the year in which the act (or failure to act) giving rise to liability for such tax occurred. For purposes of section 4940, such return is the return filed by the private foundation for the taxable year for which the tax is imposed.

(2) Certain contributions to section 501(c)(3) organizations

In the case of a deficiency of tax of a private foundation making a contribution in the manner provided in section 4942(g)(3) (relating to certain contributions to section 501(c)(3) organizations) attributable to the failure of a section 501(c)(3) organization to make the distribution prescribed by section 4942(g)(3), such deficiency may be assessed at any time before the expiration of one year after the expiration of the period within which a deficiency may be assessed for the taxable year with respect to which the contribution was made.

(3) Certain set-asides described in section 4942(g)(2)

In the case of a deficiency attributable to the failure of an amount set aside by a private foundation for a specific project to be treated as a qualifying distribution under the provisions of section 4942(g)(2)(B)(ii), such deficiency may be assessed at any time before the expiration of 2 years after the expiration of the period within which a deficiency may be assessed for the taxable year to which the amount set aside relates.

(m) Deficiencies attributable to election of certain credits

The period for assessing a deficiency attributable to any election under [1] 30B(h)(9), 30C(e)(5), 30D(e)(4), 35(g)(11), 40(f), 43, 45B, 45C(d)(4), 45H(g), or 51(j) (or any revocation thereof) shall not expire before the date 1 year after the date on which the Secretary is notified of such election (or revocation).

(n) Cross references

(1) For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4).

(2) For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.

(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234.

(Aug. 16, 1954, ch. 736, 68A Stat. 803 ; Pub. L. 85–859, title I, §165(a), Sept. 2, 1958, 72 Stat. 1313 ; Pub. L. 85–866, title I, §§80, 81, Sept. 2, 1958, 72 Stat. 1662 ; Pub. L. 86–69, §3(g), June 25, 1959, 73 Stat. 140 ; Pub. L. 86–780, §3(c), Sept. 14, 1960, 74 Stat. 1013 ; Pub. L. 87–794, title III, §317(c), Oct. 11, 1962, 76 Stat. 890 ; Pub. L. 87–834, §2(e)(1), Oct. 16, 1962, 76 Stat. 971 ; Pub. L. 87–858, §3(b)(4), Oct. 23, 1962, 76 Stat. 1137 ; Pub. L. 88–272, title II, §225(k)(6), Feb. 26, 1964, 78 Stat. 94 ; Pub. L. 88–571, §3(b), Sept. 2, 1964, 78 Stat. 857 ; Pub. L. 89–44, title VIII, §810(a), (b), June 21, 1965, 79 Stat. 169 ; Pub. L. 89–721, §§2(f), 3(a), Nov. 2, 1966, 80 Stat. 1150 , 1151; Pub. L. 89–809, title I, §105(f)(3), Nov. 13, 1966, 80 Stat. 1568 ; Pub. L. 90–225, §2(c), Dec. 27, 1967, 81 Stat. 731 ; Pub. L. 91–172, title I, §101(g)(1)–(3), title V, §512(e)(1), Dec. 30, 1969, 83 Stat. 525 , 639; Pub. L. 91–614, title I, §102(d)(8), Dec. 31, 1970, 84 Stat. 1842 ; Pub. L. 92–178, title V, §504(c), title VI, §601(d)(1), (e)(2), Dec. 10, 1971, 85 Stat. 551 , 558, 560; Pub. L. 93–406, title II, §1016(a)(14), Sept. 2, 1974, 88 Stat. 930 ; Pub. L. 94–455, title X, §§1031(b)(5), 1035(d)(3), title XIII, §§1302(b), 1307(d)(2)(F)(vi), title XIX, §1906(b)(13)(A), title XXI, §2107(g)(2)(A), Oct. 4, 1976, 90 Stat. 1623 , 1633, 1714, 1728, 1834, 1904; Pub. L. 95–30, title II, §202(d)(4)(A), (5)(B), May 23, 1977, 91 Stat. 149 , 151; Pub. L. 95–227, §4(d)(4), (5), Feb. 10, 1978, 92 Stat. 23 ; Pub. L. 95–600, title II, §212(a), title III, §321(b)(2), title V, §504(b)(3), title VII, §§701(t)(3)(A), 703(n), (p)(2), Nov. 6, 1978, 92 Stat. 2818 , 2835, 2881, 2912, 2943, 2944; Pub. L. 95–628, §8(c)(1), Nov. 10, 1978, 92 Stat. 3631 ; Pub. L. 96–222, title I, §§102(a)(2)(A), 103(a)(6)(G)(x), Apr. 1, 1980, 94 Stat. 208 , 210; Pub. L. 96–223, title I, §101(g)(1), Apr. 2, 1980, 94 Stat. 253 ; Pub. L. 97–248, title IV, §402(c)(5), Sept. 3, 1982, 96 Stat. 667 ; Pub. L. 98–369, div. A, title I, §§131(d)(2), 163(b)(1), title II, §211(b)(24), title III, §314(a)(3), title IV, §§447(a), 474(r)(39), title VII, §714(p)(2)(F), title VIII, §801(d)(14), July 18, 1984, 98 Stat. 664 , 697, 757, 787, 817, 846, 965, 997; Pub. L. 99–514, title XVIII, §§1810(g)(3), 1847(b)(12)–(14), Oct. 22, 1986, 100 Stat. 2828 , 2857; Pub. L. 100–203, title X, §§10712(c)(2), 10714(c), Dec. 22, 1987, 101 Stat. 1330–467 , 1330-471; Pub. L. 100–418, title I, §1941(b)(2)(H), Aug. 23, 1988, 102 Stat. 1323 ; Pub. L. 100–647, title I, §1008(j)(1), title IV, §4008(c)(2), Nov. 10, 1988, 102 Stat. 3445 , 3653; Pub. L. 101–239, title VII, §7814(e)(2)(E), Dec. 19, 1989, 103 Stat. 2414 ; Pub. L. 101–508, title XI, §§11511(c)(2), 11602(b), Nov. 5, 1990, 104 Stat. 1388–485 , 1388-500; Pub. L. 104–188, title I, §§1702(e)(3), 1703(n)(8), 1704(j)(4)(B), Aug. 20, 1996, 110 Stat. 1870 , 1877, 1882; Pub. L. 105–34, title V, §506(b), title XI, §1145(a), title XII, §§1239(e)(2), 1284(a), title XVI, §1601(g)(2), Aug. 5, 1997, 111 Stat. 855 , 985, 1028, 1038, 1092; Pub. L. 105–206, title III, §3461(b), title VI, §§6007(e)(2)(A), 6023(27), July 22, 1998, 112 Stat. 764 , 809, 826; Pub. L. 108–357, title IV, §413(c)(28), title VIII, §814(a), Oct. 22, 2004, 118 Stat. 1509 , 1581; Pub. L. 109–58, title XIII, §§1341(b)(4), 1342(b)(4), Aug. 8, 2005, 119 Stat. 1049 , 1051; Pub. L. 109–135, title IV, §403(y), Dec. 21, 2005, 119 Stat. 2629 ; Pub. L. 110–172, §7(a)(2)(B), Dec. 29, 2007, 121 Stat. 2482 ; Pub. L.

110–343, div. B, title II, §205(d)(3), title IV, §402(d), Oct. 3, 2008, 122 Stat. 3839 , 3854; Pub. L. 111–5, div. B, title I, §§1141(b)(4), 1142(b)(7), Feb. 17, 2009, 123 Stat. 328 , 331; Pub. L. 111–147, title V, §§501(c)(2), (3), 513(a)(1), (2)(A), (b), (c), Mar. 18, 2010, 124 Stat. 106 , 111, 112; Pub. L. 111–226, title II, §218(a), Aug. 10, 2010, 124 Stat. 2403 ; Pub. L. 111–237, §3(b)(2), Aug. 16, 2010, 124 Stat. 2498 ; Pub. L. 113–295, div. A, title II, §221(a)(2)(E), Dec. 19, 2014, 128 Stat. 4037 ; Pub. L. 114–27, title IV, §407(e), June 29, 2015, 129 Stat. 382 ; Pub. L. 114–41, title II, §2005(a), July 31, 2015, 129 Stat. 456 ; Pub. L. 114–74, title XI, §1101(f)(3), Nov. 2, 2015, 129 Stat. 637 .)

AMENDMENT OF SUBSECTION (N)

Pub. L. 114–74, title XI, §1101(f)(3), (g), Nov. 2, 2015, 129 Stat. 637 , 638, provided that, applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, subsection (n) of this section is amended by striking paragraphs (2) and (3) and by striking "Cross references" and all that follows through "For period of limitations" and inserting "Cross reference" and "For period of limitations". See 2015 Amendment note below.

AMENDMENTS

2015-Subsec. (e)(1)(B)(ii). Pub. L. 114–41, §2005(a)(1), added cl. (ii). Former cl. (ii) redesignated (iii).

Subsec. (e)(1)(B)(iii). Pub. L. 114–41 redesignated cl. (ii) as (iii) and inserted "(other than in the case of an overstatement of unrecovered cost or other basis)" after "In determining the amount omitted from gross income".

Subsec. (m). Pub. L. 114–27 inserted ", 35(g)(11)" after "30D(e)(4)".

Subsec. (n). Pub. L. 114–74 substituted "Cross reference" for "Cross references" in heading, struck out par. (1) designation before "For period of limitations", and struck out pars. (2) and (3) which read as follows:

"(2) For extension of period in the case of partnership items (as defined in section 6231(a)(3)), see section 6229.

"(3) For declaratory judgment relating to treatment of items other than partnership items with respect to an oversheltered return, see section 6234."

2014-Subsec. (m). Pub. L. 113–295 struck out "section 30(e)(6)," before "30B(h)(9),".

2010-Subsec. (b)(1). Pub. L. 111–147, §501(c)(2), inserted "4," after "chapter 3,".

Subsec. (b)(2). Pub. L. 111–147, §501(c)(3), substituted "and withholding taxes" for "taxes and tax imposed by chapter 3" in heading and inserted "4," after "chapter 3," in text.

Subsec. (c)(8). Pub. L. 111–226 designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Pub. L. 111–147, §513(b), (c), substituted "pursuant to an election under section 1295(b) or under section 1298(f), 6038, 6038A, 6038B, 6038D," for "under section 6038, 6038A, 6038B," and "tax return, event," for "event".

Subsec. (c)(11). Pub. L. 111–237 added par. (11).

Subsec. (e)(1)(A). Pub. L. 111–147, §513(a)(1), added subpar. (A). Former subpar. (A) redesignated (B).

Subsec. (e)(1)(B). Pub. L. 111–147, §513(a)(2)(A), substituted "Determination of gross income" for "General rule" in heading and "For purposes of subparagraph (A)" for "If the taxpayer omits from gross income an amount properly includible therein which is in excess of 25 percent of the amount of gross income stated in the return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed. For purposes of this subparagraph" in introductory provisions.

Pub. L. 111–147, §513(a)(1), redesignated subpar. (A) as (B). Former subpar. (B) redesignated (C).

Subsec. (e)(1)(C). Pub. L. 111–147, §513(a)(1), redesignated subpar. (B) as (C).

2009-Subsec. (m). Pub. L. 111–5, §1142(b)(7), substituted "section 30(e)(6)" for "section 30(d)(4)".

Pub. L. 111–5, §1141(b)(4), which directed amendment of subsec. (m) by substituting "section 30D(e)(4)" for "section 30D(e)(9)", was executed by substituting "30D(e)(4)" for "30D(e)(9)", to reflect the probable intent of Congress.

2008-Subsec. (i). Pub. L. 110–343, §402(d), substituted "foreign oil and gas taxes" for "oil and gas extraction taxes".

Subsec. (m). Pub. L. 110–343, §205(d)(3), inserted "30D(e)(9)," after "30C(e)(5),".

2007-Subsec. (m). Pub. L. 110–172 inserted "45H(g)," after "45C(d)(4),".

2005-Subsec. (c)(10)(B). Pub. L. 109–135 struck out "(as defined in section 6111)" after "material advisor".

Subsec. (m). Pub. L. 109–58, §1342(b)(4), inserted "30C(e)(5)," after "30B(h)(9),".

Pub. L. 109–58, §1341(b)(4), inserted "30B(h)(9)," after "30(d)(4),".

2004-Subsec. (c)(10). Pub. L. 108–357, §814(a), added par. (10).

Subsec. (e)(1)(B). Pub. L. 108–357, §413(c)(28), reenacted heading without change and amended text of subpar. (B) generally. Prior to amendment, text read as follows: "If the taxpayer omits from gross income an amount properly includible therein under section 551(b) (relating to the inclusion in the gross income of United States shareholders of their distributive shares of the undistributed foreign personal holding company income), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time within 6 years after the return was filed."

1998-Subsec. (c)(4). Pub. L. 105–206, §3461(b), designated existing provisions as subpar. (A), inserted heading, and added subpar. (B).

Subsec. (c)(9). Pub. L. 105–206, §6007(e)(2)(A), struck out at end "The value of any item which is so disclosed may not be redetermined by the Secretary after the expiration of the period under subsection (a)."

Subsec. (m). Pub. L. 105–206, §6023(27), substituted "election under section 30(d)(4), 40(f), 43, 45B, 45C(d)(4), or 51(j) (or any" for "election under sections 30(d)(4), 40(f), 43, 45B, or 51(j) (or any".

1997-Subsec. (a). Pub. L. 105–34, §1284(a), inserted at end "For purposes of this chapter, the term 'return' means the return required to be filed by the taxpayer (and does not include a return of any person from whom the taxpayer has received an item of income, gain, loss, deduction, or credit)."

Subsec. (c)(8). Pub. L. 105–34, §1145(a), amended heading and text of par. (8) generally. Prior to amendment, text read as follows: "In the case of any tax imposed on any exchange or distribution by reason of subsection (a), (d), or (e) of section 367, the time for assessment of such tax shall not expire before the date which is 3 years after the date on which the Secretary is notified of such exchange or distribution under section 6038B(a)."

Subsec. (c)(9). Pub. L. 105–34, §506(b), reenacted par. (9) heading without change and amended text of par. (9) generally. Prior to amendment, text read as follows: "If any gift of property the value of which is determined under section 2701 or 2702 (or any increase in taxable gifts required under section 2701(d)) 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 not shown as a gift on such return if such item 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."

Subsec. (m). Pub. L. 105–34, §1601(g)(2), provided that sections 1703(n)(8) and 1704(j)(4)(B) of Pub. L. 104–188 shall be applied as if the reference in the directory language to the redesignation by section 1602 referred to the redesignation by section 1702. See 1996 Amendment note below.

Subsec. (n)(3). Pub. L. 105–34, §1239(e)(2), which directed the addition of par. (3) to subsec. (o), was executed by adding par. (3) to subsec. (n) to reflect the probable intent of Congress and the redesignation of subsec. (o) as (n) by Pub. L. 104–188, §1702(e)(3)(A). See 1996 Amendment note below.

1996-Subsec. (m). Pub. L. 104–188, §1704(j)(4)(B), substituted "sections 30(d)(4), 40(f)" for "section 40(f)". See 1997 Amendment note above.

Pub. L. 104–188, §1703(n)(8), substituted "45B, or 51(j)" for "or 51(j)". See 1997 Amendment note above.

Pub. L. 104–188, §1702(e)(3), redesignated subsec. (n) as (m) and substituted "section 40(f), 43, or 51(j)" for "section 40(f) or 51(j)".

Pub. L. 104–188, §1702(e)(3)(A), which directed in part that subsec. (m) relating to deficiency attributable to election under section 44B, be struck out, could not be executed because subsec. (m) was previously repealed. See 1990 and 1988 Amendment notes for subsec. (m) and 1984 Amendment note for subsec. (p), below.

Subsecs. (n), (o). Pub. L. 104–188, §1702(e)(3)(A), redesignated subsec. (o) as (n). Former subsec. (n) redesignated (m).

1990-Subsec. (c)(9). Pub. L. 101–508, §11602(b), added par. (9).

Subsec. (m). Pub. L. 101–508, §11511(c)(2), which directed the substitution of "43 or 44B" for "44B" wherever appearing in subsec. (m), could not be executed because subsec. (m) was repealed by Pub. L. 100–418, §1941(b)(2)(H), and did not contain the term "44B". However, such term was contained in a prior subsec. (p) which was repealed by Pub. L. 98–369, §474(r)(39). See 1984 Amendment notes below.

1989-Subsec. (n). Pub. L. 101–239 struck out ", 41(h)," after "section 40(f)".

1988-Subsec. (m). Pub. L. 100–418 struck out subsec. (m) relating to special rules for windfall profit tax.

Subsec. (n). Pub. L. 100–647, §4008(c)(2), substituted ", 41(h), or 51(j)" for "or 51(j)".

Subsec. (o)(3). Pub. L. 100–647, §1008(j)(1), struck out par. (3) which read as follows: "For extension of period in the case of certain contributions in aid of construction, see section 118(c)."

1987-Subsec. (l)(1). Pub. L. 100–203, §10714(c), substituted "by section 4912, by chapter 42 (other than section 4940)," for "by chapter 42 (other than section 4940)".

Pub. L. 100–203, §10712(c)(2), substituted "plan, trust, or other organization" for "plan, or trust".

1986-Subsec. (c)(8). Pub. L. 99–514, §1810(g)(3), substituted "exchange or distribution" for "exchange" in two places, and "subsection (a), (d), or (e)" for "subsection (a) or (d)".

Subsecs. (k) to (p). Pub. L. 99–514, §1847(b)(12), inserted "(as amended by sections 211, 314, and 474 of this Act)" in directory language of section 163(b)(1) of Pub. L. 98–369, which resulted in no change in text but removed an ambiguity which had resulted from failure of directory language as originally enacted to indicate that amendments of this section by sections 211, 314, and 474 of Pub. L. 98–369 were to be executed before the amendment by section 163(b)(1) of Pub. L. 98–369. See 1984 Amendment notes below.

Subsec. (k). Pub. L. 99–514, §1847(b)(14), substituted "or a credit carryback (as defined in section 6511(d)(4)(C))" for "an investment credit carryback, or a work incentive program carryback, or a new employee credit carryback".

Subsecs. (n), (o). Pub. L. 99–514, §1847(b)(13), added subsec. (n) and redesignated former subsec. (n) as (o).

1984-Subsec. (c)(6). Pub. L. 98–369, §211(b)(24)(A), redesignated par. (7) as (6) and struck out former par. (6) which provided that, in the case of any tax imposed under section 802(a) by reason of section 802(b)(3) on account of a termination of the taxpayer as an insurance company or as a life insurance company to which section 815(d)(2)(A) applied, or on account of a distribution by the taxpayer to which section 815(d)(2)(B) applied such tax could be assessed within 3 years after the return was filed (whether or not such return was filed on or after the date prescribed) for the taxable year for which the taxpayer ceased to be an insurance company, the second taxable year for which the taxpayer was not a life insurance company, or the taxable year in which the distribution was actually made, as the case might be.

Subsec. (c)(7). Pub. L. 98–369, §447(a), added par. (7).

Pub. L. 98–369, §211(b)(24)(A), redesignated former par. (7) as (6).

Subsec. (c)(8). Pub. L. 98–369, §131(d)(2), added par. (8).

Subsec. (g)(3). Pub. L. 98–369, §801(d)(14), substituted "section 6011(c)(2)" for "section 6011(e)(2)".

Subsec. (k). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated subsec. (m) as (k).

Pub. L. 98–369, §211(b)(24)(B), struck out former subsec. (k) which provided that in the case of a deficiency attributable to the application to the taxpayer of section 815(d)(5) (relating to reductions of policyholders surplus account of life insurance companies for certain unused deductions), such deficiency could be assessed at any time before the expiration of the period within which a deficiency for the last taxable year to which the loss described in section 815(d)(5)(A) was carried under section 812(b)(2) could be assessed.

Subsec. (l). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated subsec. (n) as (l) and struck out former subsec. (l) which read "For period of limitations for assessment and collection in the case of a joint income return filed after separate returns have been filed, see section 6013(b)(3) and (4)."

Subsec. (l)(3). Pub. L. 98–369, §314(a)(3), substituted "section 4942(g)(2)(B)(ii)" for "section 4942(g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub. L. 98–369, §163(b)

(1).

Subsec. (m). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated subsec. (p) as (m). Former subsec. (m) redesignated (k).

Subsec. (n). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), added subsec. (n). Former subsec. (n) redesignated (l).

Subsec. (n)(3). Pub. L. 98–369, §314(a)(3), substituted "section 4942(g)(2)(B)(ii)" for "section 4942 (g)(2)(B)(i)(II)" in subsec. (n)(3), which was redesignated subsec. (l)(3) by Pub. L. 98–369, §163(b) (1).

Subsec. (o). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), struck out subsec. (o) which read "For extension of period in the case of partnership items (as defined in section 6231(a)(3), see section 6229."

Subsec. (p). Pub. L. 98–369, §163(b)(1), as amended by Pub. L. 99–514, §1847(b)(12), redesignated subsec. (p) as (m).

Pub. L. 98–369, §474(r)(39), redesignated subsec. (q) as (p). Former subsec. (p), which related to deficiencies attributable to an election under section 44B, was struck out.

Subsec. (q). Pub. L. 98–369, §474(r)(39), redesignated subsec. (q) as (p).

Subsec. (q)(3). Pub. L. 98–369, §714(p)(2)(F), amended par. (3) generally. Prior to amendment par. (3) related to partnership items of federally registered partnerships and provided that under regulations prescribed by the Secretary, rules similar to the rules of subsection (o) shall apply to the tax imposed by section 4986.

1982-Subsec. (o). Pub. L. 97–248 substituted "Special rules for partnership items" for "Special rules for partnership items of federally registered partnerships" in heading and, in text, substituted cross reference to section 6229 for extension of period in case of partnership items (as defined in section 6231(a)(3)), for provisions that (1) in the case of any tax imposed by subtitle A with respect to any person, the period for assessing a deficiency attributable to any partnership item of a federally registered partnership would not expire before the later of (A) the date which was 4 years after the date on which the partnership return of the federally registered partnership for the partnership taxable year in which the item arose was filed (or, later, if the date prescribed for filing the return), or (B) if the name or address of such person did not appear on the partnership return, the date which was 1 year after the date on which such information was furnished to the Secretary in such manner and at such place as he might prescribe by regulations, (2) for purposes of this subsec., the term "partnership item" meant (A) any item required to be taken into account for the partnership taxable year under any provision of subchapter K of chapter 1 to the extent that regulations prescribed by the Secretary provided that for purposes of this subtitle such item was more appropriately determined at the partnership level than at the partner level, and (B) any other item to the extent affected by an item described in subpar. (A), (3) the extensions referred to in subsec. (c)(4), insofar as they related to partnership items, could, with respect to any person, be consented to (A) except to the extent the Secretary was otherwise notified by the partnership, by a general partner of the partnership, or (B) by any person authorized to do so by the partnership in writing, and (4) for purposes of this subsec., the term "federally registered partnership" meant, with respect to any partnership taxable year, any partnership (A) interests in which had been offered for sale at any time during such taxable year or a prior taxable year in any offering required to be registered with the Securities and Exchange Commission, or (B) which, at any time during such taxable year or a prior taxable year, had been subject to the annual reporting requirements of the Securities and Exchange Commission which related to the protection of investors in the partnership.

1980-Subsec. (o). Pub. L. 96–222, §102(a)(2)(A), redesignated subsec. (q), as added by section 212(a) of Pub. L. 95–600, relating to special rules for partnership items of Federally registered partnerships, as (o). Former subsec. (o), relating to work incentive program credit carrybacks, was repealed by Pub. L. 95–628.

Subsec. (p). Pub. L. 96–222, §103(a)(6)(G)(X), redesignated subsec. (q), as added by section 321 (b)(2) of Pub. L. 95–600, relating to deficiency attributable to election under section 44B, as (p). Former subsec. (p), relating to new employee credit carrybacks, was repealed by Pub. L. 95–628.

Subsec. (q). Pub. L. 96–223 added subsec. (q). Former subsec. (q), as added by section 212(a) of Pub. L. 95–600, redesignated (o). Former subsec. (q), as added by section 321(b)(2) of Pub. L. 95–600, redesignated (p).

1978-Subsec. (e)(3). Pub. L. 95–600, §701(t)(3)(A), substituted "43, or 44" for "or 43", which

required no change in text in view of the identical amendment by section 4(d)(4) of Pub. L. 95–227.

Pub. L. 95–227, §4(d)(4), substituted "43, or 44" for "or 43".

Subsec. (h). Pub. L. 95–600, §703(n), (p)(2), substituted "section 6213(b)(3)" for "section 6213(b)(2)" and struck out provisions relating to the assessment of a deficiency attributable to the application of a net operating loss carryback.

Subsec. (j). Pub. L. 95–628, §8(c)(1)(A), substituted in heading "Certain credit carrybacks" for "Investment credit carrybacks", designated existing provision as par. (1), and in par. (1) as so designated, inserted heading "In general" and in text, substituted "credit carryback" for "investment credit carryback" in two places and "unused credit" for "unused investment credit", inserted reference to other credit carryback, and substituted reference to section 6213(b)(3) for 6213(b)(2), and added par. (2).

Pub. L. 95–600, §703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (m). Pub. L. 95–628, §8(c)(1)(B), struck out references to subsecs. (o) and (p) in two places.

Pub. L. 95–600, §504(b)(3), inserted "and refund" after "tentative carryback".

Subsec. (n). Pub. L. 95–227, §4(d)(5), in heading inserted "and similar" after "42", and in par. (1) inserted reference to section 4975 and inserted ", plan, or trust (as the case may be)" after "foundation".

Subsec. (o). Pub. L. 95–628, §8(c)(1)(C), struck out subsec. (o) which related to work incentive program credit carrybacks.

Pub. L. 95–600, §703(n), substituted "section 6213(b)(3)" for "section 6213(b)(2)".

Subsec. (p). Pub. L. 95–628, §8(c)(1)(C), struck out subsec. (p) which related to new employee credit carrybacks.

Subsec. (q). Pub. L. 95–600, §212(a), added subsec. (q) relating to special rules for partnership items of Federally registered partnerships.

Pub. L. 95–600, §321(b)(2), added subsec. (q) relating to deficiency attributable to election under section 44B.

1977-Subsec. (m). Pub. L. 95–30, §202(d)(5)(B), inserted references to new employee credit carrybacks and to subsec. (p).

Subsec. (p). Pub. L. 95–30, §202(d)(4)(A), added subsec. (p).

1976-Subsecs. (b)(3), (c)(4), (d), (e)(1)(A)(ii), (2). Pub. L. 94–455, §1906(b)(13)(A), struck out "or his delegate" after "Secretary" wherever appearing.

Subsec. (e)(3). Pub. L. 94–455, §1307(d)(2)(F)(vi), substituted "chapter 41, 42, or 43" for "chapter 42 or 43".

Subsec. (i). Pub. L. 94–455, §§1031(b)(5), 1035(d)(3), substituted "section 904(c)" for Section 904 (d)" wherever appearing and inserted "or under section 907(f) (relating to carryback and carryover of disallowed oil and gas extraction taxes)" after "excess foreign taxes)" and "or 907(f)" before "which results in such carryback".

Subsec. (n)(3). Pub. L. 94–455, §1302(b), added par. (3).

Subsec. (o). Pub. L. 94–455, §2107(g)(2)(A), inserted ", an investment credit carryback," after "net operating loss carryback".

1974-Subsec. (e)(3). Pub. L. 93–406 inserted reference to chapter 43.

1971-Subsec. (g)(3). Pub. L. 92–178, §504(c), added par. (3).

Subsec. (m). Pub. L. 92–178, §601(e)(2), substituted "an investment credit carryback, or a work incentive program carryback" for "or an investment credit carryback" and inserted reference to subsec. (o) in two places, respectively.

Subsec. (o). Pub. L. 92–178, §601(d)(1), added subsec. (o).

1970-Subsec. (e)(2). Pub. L. 91–614 substituted "during the period for which the return was filed" for "during the year".

1969-Subsec. (c)(7). Pub. L. 91–172, §101(g)(2), added par. (7).

Subsec. (e)(3). Pub. L. 91–172, §101(g)(3), inserted provision excluding, in specified cases, chapter 42 taxes from these considered in determining the amount of taxes omitted from a return.

Subsec. (h). Pub. L. 91–172, §512(e)(1)(A)–(D), substituted "loss or capital loss carrybacks" for "loss carrybacks" in heading, "loss carryback or a capital loss carryback" for "loss carryback," "operating loss or net capital loss which" for "operating loss which," "assessed. In the case of a deficiency attributable to the application of a net operating loss carryback, such deficiency may be

assessed" for "assessed, or" and "if later than the date prescribed by the preceding sentence" for "whichever is later".

Subsec. (j). Pub. L. 91–172, §512(e)(1)(E), substituted "loss carryback or a capital loss carryback" for "loss carryback".

Subsec. (m). Pub. L. 91–172, §512(e)(1)(F), substituted "net operating loss carryback, a capital loss carryback, or an investment credit carryback" for "net operating loss carryback or an investment credit carryback".

Subsec. (n). Pub. L. 91–172, §101(g)(1), added subsec. (n).

1967-Subsec. (j). Pub. L. 90–225 inserted ", or, with respect to any portion of an investment credit carryback from a taxable year attributable to a net operating loss carryback from a subsequent taxable year, at any time before the expiration of the period within which a deficiency for such subsequent taxable year may be assessed" after "the unused investment credit which results in such carryback may be assessed."

1966-Subsec. (b). Pub. L. 89–809 substituted "chapter 3, 21, or 24" for "chapter 21 or 24" in text of pars. (1) and (2) and inserted "and tax imposed by chapter 3" after "taxes" in par. (2) heading.

Subsec. (j). Pub. L. 89–721, §2(f), substituted "investment credit carryback (including deficiencies which may be assessed pursuant to the provisions of section 6213(b)(2))" for "investment credit carryback".

Subsec. (m). Pub. L. 89–721, §3(a), added subsec. (m).

1965-Subsec. (b)(4). Pub. L. 89–44, §810(a), added par. (4).

Subsec. (e). Pub. L. 89–44, §810(b)(2), substituted "Substantial omission of items" for "Omission from gross income" in heading.

Subsec. (e)(3). Pub. L. 89–44, §810(b)(1), added par. (3).

1964-Subsec. (f). Pub. L. 88–272 substituted "gross income and adjusted ordinary gross income, described in section 543" for "gross income, described in section 543(a)".

Subsecs. (k), (l). Pub. L. 88–571 added subsec. (k) and redesignated former subsec. (k) as (l).

1962-Subsec. (c)(6). Pub. L. 87–858 substituted "802(a)" for "802(a)(1)".

Subsec. (h). Pub. L. 87–794 authorized assessment of a deficiency within 18 months after the date on which the taxpayer files in accordance with section 172(b)(3) a copy of the certification issued under section 317 of the Trade Expansion Act of 1962, whichever is later.

Subsecs. (j), (k). Pub. L. 87–834 added subsec. (j) and redesignated former subsec. (j) as (k).

1960-Subsecs. (i), (j). Pub. L. 86–780 added subsec. (i) and redesignated former subsec. (i) as (j).

1959-Subsec. (c)(6). Pub. L. 86–69 added par. (6).

1958-Subsec. (a). Pub. L. 85–859 substituted "at any time after such tax became due and before the expiration of 3 years after the date on which any part of such tax was paid" for "within 3 years after such tax became due".

Subsec. (d). Pub. L. 85–866, §80(a), (b), substituted in first sentence "subsection (c), (e), or (f)" for "subsection (c)", designated existing clauses (1) to (3) of second sentence as clause (1) and added clauses (2) and (3).

Subsec. (g)(2). Pub. L. 85–866, §81(a), substituted "organization" for "corporation" wherever appearing.

Subsecs. (h), (i). Pub. L. 85–866, §81(b), added subsec. (h) and redesignated former subsec. (h) as (i).

EFFECTIVE DATE OF 2015 AMENDMENT

Amendment by Pub. L. 114–74 applicable to returns filed for partnership taxable years beginning after Dec. 31, 2017, with certain exceptions, see section 1101(g) of Pub. L. 114–74, set out as a note under section 6221 of this title.

Pub. L. 114–41, title II, §2005(b), July 31, 2015, 129 Stat. 457 , provided that: "The amendments made by this section [amending this section] shall apply to-

"(1) returns filed after the date of the enactment of this Act [July 31, 2015], and

"(2) returns filed on or before such date if the period specified in section 6501 of the Internal Revenue Code of 1986 (determined without regard to such amendments) for assessment of the taxes with respect to which such return relates has not expired as of such date."

Amendment by Pub. L. 114–27 applicable to coverage months in taxable years beginning after Dec. 31, 2013, see section 407(f) of Pub. L. 114–27, set out as a note under section 35 of this title.

Effective Date of 2014 Amendment

Amendment by Pub. L. 113–295 effective Dec. 19, 2014, subject to a savings provision, see section 221(b) of Pub. L. 113–295, set out as a note under section 1 of this title.

Effective Date of 2010 Amendment

Amendment by Pub. L. 111–237 applicable to restitution ordered after Aug. 16, 2010, see section 3(c) of Pub. L. 111–237, set out as a note under section 6201 of this title.

Pub. L. 111–226, title II, §218(b), Aug. 10, 2010, 124 Stat. 2403 , provided that: "The amendments made by this section [amending this section] shall take effect as if included in section 513 of the Hiring Incentives to Restore Employment Act [Pub. L. 111–147]."

Amendment by section 501(c)(2), (3) of Pub. L. 111–147 applicable to payments made after Dec. 31, 2012, with certain exceptions, see section 501(d)(1), (2) of Pub. L. 111–147, set out as a note under section 1471 of this title.

Amendment by section 513(a)(1), (2)(A), (b), (c) of Pub. L. 111–147 applicable to returns filed after Mar. 18, 2010, and to certain returns filed on or before Mar. 18, 2010, see section 513(d) of Pub. L. 111–147, set out as a note under section 6229 of this title.

Effective Date of 2009 Amendment

Amendment by section 1141(b)(4) of Pub. L. 111–5 applicable to vehicles acquired after Dec. 31, 2009, see section 1141(c) of Pub. L. 111–5, set out as a note under section 30B of this title.

Amendment by section 1142(b)(7) of Pub. L. 111–5 applicable to vehicles acquired after Feb. 17, 2009, see section 1142(c) of Pub. L. 111–5, set out as an Effective and Termination Dates of 2009 Amendment note under section 24 of this title.

Effective Date of 2008 Amendment

Amendment by section 205(d)(3) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 205(e) of Pub. L. 110–343, set out as an Effective and Termination Dates of 2008 Amendment note under section 24 of this title.

Amendment by section 402(d) of Pub. L. 110–343 applicable to taxable years beginning after Dec. 31, 2008, see section 402(e) of Pub. L. 110–343, set out as a note under section 907 of this title.

Effective Date of 2007 Amendment

Amendment by Pub. L. 110–172 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 7(e) of Pub. L. 110–172, set out as a note under section 1092 of this title.

Effective Date of 2005 Amendments

Amendment by Pub. L. 109–135 effective as if included in the provision of the American Jobs Creation Act of 2004, Pub. L. 108–357, to which such amendment relates, see section 403(nn) of Pub. L. 109–135, set out as a note under section 26 of this title.

Amendment by section 1341(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1341(c) of Pub. L. 109–58, set out as an Effective Date note under section 30B of this title.

Amendment by section 1342(b)(4) of Pub. L. 109–58 applicable to property placed in service after Dec. 31, 2005, in taxable years ending after such date, see section 1342(c) of Pub. L. 109–58, set out as an Effective Date note under section 30C of this title.

Effective Date of 2004 Amendment

Amendment by section 413(c)(28) of Pub. L. 108–357 applicable to taxable years of foreign corporations beginning after Dec. 31, 2004, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end, see section 413(d)(1) of Pub. L. 108–357, set out as an Effective and Termination Dates of 2004 Amendments note under section 1 of this title.

Pub. L. 108–357, title VIII, §814(b), Oct. 22, 2004, 118 Stat. 1581 , provided that: "The amendment made by this section [amending this section] shall apply to taxable years with respect to which the period for assessing a deficiency did not expire before the date of the enactment of this Act [Oct. 22,

2004]."

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105–206, title III, §3461(c), July 22, 1998, 112 Stat. 764 , provided that:

"(1) In general.-The amendments made by this section [amending this section and section 6502 of this title] shall apply to requests to extend the period of limitations made after December 31, 1999.

"(2) Prior request.-If, in any request to extend the period of limitations made on or before December 31, 1999, a taxpayer agreed to extend such period beyond the 10-year period referred to in section 6502(a) of the Internal Revenue Code of 1986, such extension shall expire on the latest of-

"(A) the last day of such 10-year period;

"(B) December 31, 2002; or

"(C) in the case of an extension in connection with an installment agreement, the 90th day after the end of the period of such extension."

Amendment by section 6023(27) of Pub. L. 105–206 effective July 22, 1998, see section 6023(32) of Pub. L. 105–206, set out as a note under section 34 of this title.

Amendment by section 6007(e)(2)(A) of Pub. L. 105–206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105–34, to which such amendment relates, see section 6024 of Pub. L. 105–206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Pub. L. 105–34, title V, §506(e)(2), Aug. 5, 1997, 111 Stat. 856 , provided that: "The amendment made by subsection (b) [amending this section] shall apply to gifts made in calendar years ending after the date of the enactment of this Act [Aug. 5, 1997]."

Pub. L. 105–34, title XI, §1145(b), Aug. 5, 1997, 111 Stat. 985 , provided that: "The amendment made by subsection (a) [amending this section] shall apply to information the due date for the reporting of which is after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1239(e)(2) of Pub. L. 105–34 applicable to partnership taxable years ending after Aug. 5, 1997, see section 1239(f) of Pub. L. 105–34, set out as a note under section 6225 of this title.

Pub. L. 105–34, title XII, §1284(b), Aug. 5, 1997, 111 Stat. 1038 , provided that: "The amendment made by this section [amending this section] shall apply to taxable years beginning after the date of the enactment of this Act [Aug. 5, 1997]."

Amendment by section 1601(g)(2) of Pub. L. 105–34 effective as if included in the provisions of the Small Business Job Protection Act of 1996, Pub. L. 104–188, to which it relates, see section 1601(j) of Pub. L. 105–34, set out as a note under section 23 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by section 1702(e)(3) of Pub. L. 104–188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101–508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104–188, set out as a note under section 38 of this title.

Amendment by section 1703(n)(8) of Pub. L. 104–188 effective as if included in the provision of the Revenue Reconciliation Act of 1993, Pub. L. 103–66, §§13001–13444, to which such amendment relates, see section 1703(o) of Pub. L. 104–188, set out as a note under section 39 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101–508, title XI, §11602(e)(2), Nov. 5, 1990, 104 Stat. 1388–501 , provided that: "The amendment made by subsection (b) [amending this section] shall apply to gifts after October 8, 1990."

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101–239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100–647, to which such amendment relates, see section 7817 of Pub. L. 101–239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENTS

Amendment by section 1008(j)(1) of Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

Amendment by section 4008(c)(2) of Pub. L. 100–647 applicable to taxable years beginning after Dec. 31, 1988, see section 4008(d) of Pub. L. 100–647, set out as a note under section 41 of this title.

Amendment by Pub. L. 100–418 applicable to crude oil removed from premises on or after Aug. 23, 1988, see section 1941(c) of Pub. L. 100–418, set out as a note under section 164 of this title.

EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by section 10712(c)(2) of Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10712(d) of Pub. L. 100–203, set out as an Effective Date note under section 4955 of this title.

Amendment by section 10714(c) of Pub. L. 100–203 applicable to taxable years beginning after Dec. 22, 1987, see section 10714(e) of Pub. L. 100–203, set out as an Effective Date note under section 4912 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99–514 effective, except as otherwise provided, as if included in the provisions of the Tax Reform Act of 1984, Pub. L. 98–369, div. A, to which such amendment relates, see section 1881 of Pub. L. 99–514, set out as a note under section 48 of this title.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 131(d)(2) of Pub. L. 98–369 applicable to transfers or exchanges after Dec. 31, 1984, in taxable years ending after such date, with special rules for certain transfers and ruling requests before Mar. 1, 1984, see section 131(g) of Pub. L. 98–369, set out as a note under section 367 of this title.

Amendment by section 163(b)(1) of Pub. L. 98–369 applicable to expenditures with respect to which the second taxable year described in section 118(b)(2)(B) of this title ends after Dec. 31, 1984, see section 163(c) of Pub. L. 98–369, set out as a note under section 118 of this title.

Amendment by section 211(b)(24) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, see section 215 of Pub. L. 98–369, set out as an Effective Date note under section 801 of this title.

Amendment by section 314(a)(3) of Pub. L. 98–369 effective July 18, 1984, see section 314(a)(4) of Pub. L. 98–369, set out as a note under section 4942 of this title.

Pub. L. 98–369, div. A, title IV, §447(b), July 18, 1984, 98 Stat. 817 , provided that: "The amendment made by subsection (a) [amending this section] shall apply with respect to documents received by the Secretary of the Treasury (or his delegate) after the date of the enactment of this Act [July 18, 1984]."

Amendment by section 474(r)(39) of Pub. L. 98–369 applicable to taxable years beginning after Dec. 31, 1983, and to carrybacks from such years, see section 475(a) of Pub. L. 98–369, set out as a note under section 21 of this title.

Amendment by section 714(p)(2)(F) of Pub. L. 98–369 effective as if included in the provision of the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97–248, to which such amendment relates, see section 715 of Pub. L. 98–369, set out as a note under section 31 of this title.

Amendment by section 801(d)(14) of Pub. L. 98–369 applicable to transactions after Dec. 31, 1984, in taxable years ending after such date, see section 805(a)(1) of Pub. L. 98–369, as amended, set out as a note under section 245 of this title.

EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97–248 applicable to partnership taxable years beginning after Sept. 3, 1982, with provision for applicability of amendment to any partnership taxable year ending after Sept. 3, 1982, if partnership, each partner, and each indirect partner requests such application and the Secretary of the Treasury or his delegate consents to such application, see section 407(a)(1), (3) of Pub. L. 97–248, set out as an Effective Date note under section 6221 of this title.

EFFECTIVE DATE OF 1980 AMENDMENTS

Amendment by Pub. L. 96–223 applicable to periods after Feb. 29, 1980, see section 101(i) of

Pub. L. 96–223, set out as a note under section 6161 of this title.

Amendment by Pub. L. 96–222 effective, except as otherwise provided, as if it had been included in the provisions of the Revenue Act of 1978, Pub. L. 95–600, to which such amendment relates, see section 201 of Pub. L. 96–222, set out as a note under section 32 of this title.

Effective Date of 1978 Amendments

Amendment by Pub. L. 95–628 applicable to carrybacks arising in taxable years beginning after Nov. 10, 1978, see section 8(d) of Pub. L. 95–628, set out as a note under section 6511 of this title.

Pub. L. 95–600, title II, §212(c), Nov. 6, 1978, 92 Stat. 2819 , provided that: "The amendments made by this section [amending this section and sections 6511 and 6512 of this title] shall apply to partnership items arising in partnership taxable years beginning after December 31, 1978."

Pub. L. 95–600, title III, §321(d)(5), as added by Pub. L. 96–222, title I, §103(a)(6)(B), Apr. 1, 1980, 94 Stat. 209 , provided that: "The amendments made by subsection (b) [amending this section and section 44B of this title] shall apply to taxable years beginning after December 31, 1976."

Amendment by section 504(b)(3) of Pub. L. 95–600 applicable to tentative refund claims filed on and after Nov. 6, 1978, see section 504(c) of Pub. L. 95–600, set out as a note under section 6411 of this title.

Amendment by section 701(t)(3)(A) of Pub. L. 95–600 effective Oct. 4, 1976, see section 701(t)(5) of Pub. L. 95–600, set out as a note under section 859 of this title.

Amendment by section 703(n) of Pub. L. 95–600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95–600, set out as a note under section 46 of this title.

Amendment by section 703(p)(2) of Pub. L. 95–600 applicable with respect to losses sustained in taxable years ending after Nov. 6, 1978, see section 703(p)(4) of Pub. L. 95–600, set out as a note under section 172 of this title.

Amendment by Pub. L. 95–227 applicable with respect to contributions, acts, and expenditures made after Dec. 31, 1977, in and for taxable years beginning after such date, see section 4(f) of Pub. L. 95–227, set out as an Effective Date note under section 192 of this title.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95–30 applicable to taxable years beginning after Dec. 31, 1976, and to credit carrybacks from such years, see section 202(e) of Pub. L. 95–30, set out as an Effective Date note under section 51 of this title.

Effective Date of 1976 Amendment

Amendment by section 1031(b)(5) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1975, with specific exceptions, see section 1031(c) of Pub. L. 94–455, set out as a note under section 904 of this title.

Amendment by section 1035(d)(3) of Pub. L. 94–455 applicable to taxes paid or accrued during taxable years ending after Oct. 4, 1976, see section 1035(e) of Pub. L. 94–455, set out as a note under section 907 of this title.

Amendment by section 1302(b) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1974, see section 1302(c) of Pub. L. 94–455, set out as a note under section 4942 of this title.

Amendment by section 1307(d)(2)(F)(vi) of Pub. L. 94–455 applicable to taxable years beginning after Dec. 31, 1976, see section 1307(e)(5) of Pub. L. 94–455, set out as a note under section 501 of this title.

Effective Date of 1974 Amendment

Amendment by Pub. L. 93–406 applicable, except as otherwise provided in section 1017(c) through (i) of Pub. L. 93–406, for plan years beginning after Sept. 2, 1974, but, in the case of plans in existence on Jan. 1, 1974, amendment by Pub. L. 93–406 applicable for plan years beginning after Dec. 31, 1975, see section 1017 of Pub. L. 93–406, set out an an Effective Date; Transitional Rules note under section 410 of this title.

Effective Date of 1971 Amendment

Amendment by section 504(c) of Pub. L. 92–178 applicable with respect to taxable years ending after Dec. 31, 1971, except that a corporation may not be a DISC for any taxable year beginning before Jan. 1, 1972, see section 507 of Pub. L. 92–178, set out as an Effective Date note under

section 991 of this title.

Amendment by section 601(d)(1), (e)(2) of Pub. L. 92–178 applicable to taxable years beginning after Dec. 31, 1971, see section 601(f) of Pub. L. 92–178, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91–614, set out as a note under section 2501 of this title.

EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 101(g)(1)–(3) of Pub. L. 91–172 effective Jan. 1, 1970, see section 101(k)(1) of Pub. L. 91–172, set out as an Effective Date note under section 4940 of this title.

Amendment by section 512(e)(1) of Pub. L. 91–172 applicable with respect to net capital losses sustained in taxable years beginning after Dec. 31, 1969, see section 512(g) of Pub. L. 91–172, set out as a note under section 1212 of this title.

EFFECTIVE DATE OF 1967 AMENDMENT

Amendment by Pub. L. 90–225 applicable with respect to investment credit carrybacks attributable to net operating loss carrybacks from taxable years ending after July 31, 1967, see section 2(g) of Pub. L. 90–225, set out as a note under section 46 of this title.

EFFECTIVE DATE OF 1966 AMENDMENTS

Pub. L. 89–809, title I, §105(f)(4), Nov. 13, 1966, 80 Stat. 1568 , provided that: "The amendments made by this subsection [amending this section and section 6513 of this title] shall take effect on the date of the enactment of this Act [Nov. 13, 1966]."

Amendment by section 2(f) of Pub. L. 89–721 applicable with respect to taxable years ending after Dec. 31, 1961, but only in the case of applications filed after Nov. 2, 1966, see section 2(g) of Pub. L. 89–721, set out as a note under section 6411 of this title.

Pub. L. 89–721, §3(b), Nov. 2, 1966, 80 Stat. 1151 , provided that: "The amendment made by subsection (a) [amending this section] shall apply in any case where the application under section 6411 of the Internal Revenue Code of 1954 is filed after the date of the enactment of this Act [Nov. 2, 1966]."

EFFECTIVE DATE OF 1965 AMENDMENT

Pub. L. 89–44, title VIII, §810(c), June 21, 1965, 79 Stat. 169 , provided that: "The amendments made by subsections (a) and (b) [amending this section] shall apply with respect to returns filed on or after July 1, 1965."

EFFECTIVE DATE OF 1964 AMENDMENTS

Pub. L. 88–571, §3(f), Sept. 2, 1964, 78 Stat. 859 , as amended by Pub. L. 99–514, §2, Oct. 22, 1986, 100 Stat. 2095 , provided that: "The amendments made by this section [amending this section and sections 815, 6511, 6601, and 6611 of this title] shall apply with respect to amounts added to policyholders surplus accounts (within the meaning of section 815(c) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) for taxable years beginning after December 31, 1958."

Amendment by Pub. L. 88–272 applicable to taxable years beginning after Dec. 31, 1963, see section 225(l) of Pub. L. 88–272, set out as a note under section 316 of this title.

EFFECTIVE DATE OF 1962 AMENDMENTS

Pub. L. 87–858, §3(f), Oct. 23, 1962, 76 Stat. 1138 , provided that the amendment made by that section is applicable with respect to taxable years beginning after Dec. 31, 1961.

Amendment by Pub. L. 87–834 applicable with respect to taxable years ending after Dec. 31, 1961, see section 2(h) of Pub. L. 87–834, set out as an Effective Date note under section 46 of this title.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86–780 applicable to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–780, set out as a note under section 904 of this title.

EFFECTIVE DATE OF 1959 AMENDMENT

Amendment by Pub. L. 86–69 applicable only with respect to taxable years beginning after Dec. 31, 1957, see section 4 of Pub. L. 86–69, set out as a note under section 381 of this title.

EFFECTIVE DATE OF 1958 AMENDMENTS

Amendment by Pub. L. 85–866 effective Aug. 17, 1954, see section 1(c)(2) of Pub. L. 85–866, set out as a note under section 165 of this title.

Amendment by Pub. L. 85–859 effective on first day of first calendar quarter which begins more than 60 days after Sept. 2, 1958, see section 1(c) of Pub. L. 85–859, Sept. 2, 1958, 72 Stat. 1275 .

PLAN AMENDMENTS NOT REQUIRED UNTIL JANUARY 1, 1989

For provisions directing that if any amendments made by subtitle A or subtitle C of title XI [§§1101–1147 and 1171–1177] or title XVIII [§§1800–1899A] of Pub. L. 99–514 require an amendment to any plan, such plan amendment shall not be required to be made before the first plan year beginning on or after Jan. 1, 1989, see section 1140 of Pub. L. 99–514, as amended, set out as a note under section 401 of this title.

[1] *So in original. Probably should be followed by "section".*

Exhibit B

Treas. Reg. §301.6501(c)-1

Title 26: Internal Revenue
PART 301—PROCEDURE AND ADMINISTRATION
Limitations

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§301.6501(c)-1 Exceptions to general period of limitations on assessment and collection.

(a) *False return.* In the case of a false or fraudulent return with intent to evade any tax, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after such false or fraudulent return is filed.

(b) *Willful attempt to evade tax.* In the case of a willful attempt in any manner to defeat or evade any tax imposed by the Code (other than a tax imposed by subtitle A or B, relating to income, estate, or gift taxes), the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time.

(c) *No return.* In the case of a failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be begun without assessment, at any time after the date prescribed for filing the return. For special rules relating to filing a return for chapter 42 and similar taxes, see §§301.6501(n)-1, 301.6501(n)-2, and 301.6501 (n)-3.

(d) *Extension by agreement.* The time prescribed by section 6501 for the assessment of any tax (other than the estate tax imposed by chapter 11 of the Code) may, prior to the expiration of such time, be extended for any period of time agreed upon in writing by the taxpayer and the district director or an assistant regional commissioner. The extension shall become effective when the agreement has been executed by both parties. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

(e) *Gifts subject to chapter 14 of the Internal Revenue Code not adequately disclosed on the return.* If any transfer of property subject to the special valuation rules of section 2701 or section 2702, or if the occurrence of any taxable event described in section §25.2701-4 of this chapter, is not adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Internal Revenue Code (without regard to section 2503(b)), any tax imposed by chapter 12 of subtitle B of the Code on the transfer or resulting from the taxable event may be assessed, or a proceeding in court for the collection of the appropriate tax may be begun without assessment, at any time.

(2) *Adequately shown.* A transfer of property valued under the rules of section 2701 or section 2702 or any taxable event described in §25.2701-4 of this chapter will be considered adequately shown on a return of tax imposed by chapter 12 of subtitle B of the Internal Revenue Code only if, with respect to the entire transaction or series of transactions (including any transaction that affected the transferred interest) of which the transfer (or taxable event) was a part, the return provides:

(i) A description of the transactions, including a description of transferred and retained interests and the method (or methods) used to value each;

(ii) The identity of, and relationship between, the transferor, transferee, all other persons participating in the transactions, and all parties related to the transferor holding an equity interest in any entity involved in the transaction; and

(iii) A detailed description (including all actuarial factors and discount rates used) of the method used to determine the amount of the gift arising from the transfer (or taxable event), including, in the case of an equity interest that is not actively traded, the financial and other data used in determining value. Financial data should generally include balance sheets and statements of net earnings, operating results, and dividends paid for each of the 5 years immediately before the valuation date.

(3) *Effective date.* The provisions of this paragraph (e) are effective as of January 28, 1992. In determining whether a transfer or taxable event is adequately shown on a gift tax return filed prior to that date, taxpayers may rely on any

reasonable interpretation of the statutory provisions. For these purposes, the provisions of the proposed regulations and the final regulations are considered a reasonable interpretation of the statutory provisions.

(f) *Gifts made after December 31, 1996, not adequately disclosed on the return*—(1) *In general.* If a transfer of property, other than a transfer described in paragraph (e) of this section, is not adequately disclosed on a gift tax return (Form 709, "United States Gift (and Generation-Skipping Transfer) Tax Return"), or in a statement attached to the return, filed for the calendar period in which the transfer occurs, then any gift tax imposed by chapter 12 of subtitle B of the Internal Revenue Code on the transfer may be assessed, or a proceeding in court for the collection of the appropriate tax may be begun without assessment, at any time.

(2) *Adequate disclosure of transfers of property reported as gifts.* A transfer will be adequately disclosed on the return only if it is reported in a manner adequate to apprise the Internal Revenue Service of the nature of the gift and the basis for the value so reported. Transfers reported on the gift tax return as transfers of property by gift will be considered adequately disclosed under this paragraph (f)(2) if the return (or a statement attached to the return) provides the following information—

(i) A description of the transferred property and any consideration received by the transferor;

(ii) The identity of, and relationship between, the transferor and each transferee;

(iii) If the property is transferred in trust, the trust's tax identification number and a brief description of the terms of the trust, or in lieu of a brief description of the trust terms, a copy of the trust instrument;

(iv) Except as provided in §301.6501-1(f)(3), a detailed description of the method used to determine the fair market value of property transferred, including any financial data (for example, balance sheets, etc. with explanations of any adjustments) that were utilized in determining the value of the interest, any restrictions on the transferred property that were considered in determining the fair market value of the property, and a description of any discounts, such as discounts for blockage, minority or fractional interests, and lack of marketability, claimed in valuing the property. In the case of a transfer of an interest that is actively traded on an established exchange, such as the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market, or a regional exchange in which quotations are published on a daily basis, including recognized foreign exchanges, recitation of the exchange where the interest is listed, the CUSIP number of the security, and the mean between the highest and lowest quoted selling prices on the applicable valuation date will satisfy all of the requirements of this paragraph (f)(2)(iv). In the case of the transfer of an interest in an entity (for example, a corporation or partnership) that is not actively traded, a description must be provided of any discount claimed in valuing the interests in the entity or any assets owned by such entity. In addition, if the value of the entity or of the interests in the entity is properly determined based on the net value of the assets held by the entity, a statement must be provided regarding the fair market value of 100 percent of the entity (determined without regard to any discounts in valuing the entity or any assets owned by the entity), the pro rata portion of the entity subject to the transfer, and the fair market value of the transferred interest as reported on the return. If 100 percent of the value of the entity is not disclosed, the taxpayer bears the burden of demonstrating that the fair market value of the entity is properly determined by a method other than a method based on the net value of the assets held by the entity. If the entity that is the subject of the transfer owns an interest in another non-actively traded entity (either directly or through ownership of an entity), the information required in this paragraph (f)(2)(iv) must be provided for each entity if the information is relevant and material in determining the value of the interest; and

(v) A statement describing any position taken that is contrary to any proposed, temporary or final Treasury regulations or revenue rulings published at the time of the transfer (see §601.601(d)(2) of this chapter).

(3) *Submission of appraisals in lieu of the information required under paragraph (f)(2)(iv) of this section.* The requirements of paragraph (f)(2)(iv) of this section will be satisfied if the donor submits an appraisal of the transferred property that meets the following requirements—

(i) The appraisal is prepared by an appraiser who satisfies all of the following requirements:

(A) The appraiser is an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis.

(B) Because of the appraiser's qualifications, as described in the appraisal that details the appraiser's background, experience, education, and membership, if any, in professional appraisal associations, the appraiser is qualified to make appraisals of the type of property being valued.

(C) The appraiser is not the donor or the donee of the property or a member of the family of the donor or donee, as defined in section 2032A(e)(2), or any person employed by the donor, the donee, or a member of the family of either; and

(ii) The appraisal contains all of the following:

(A) The date of the transfer, the date on which the transferred property was appraised, and the purpose of the appraisal.

(B) A description of the property.

(C) A description of the appraisal process employed.

(D) A description of the assumptions, hypothetical conditions, and any limiting conditions and restrictions on the transferred property that affect the analyses, opinions, and conclusions.

(E) The information considered in determining the appraised value, including in the case of an ownership interest in a business, all financial data that was used in determining the value of the interest that is sufficiently detailed so that another person can replicate the process and arrive at the appraised value.

(F) The appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions.

(G) The valuation method utilized, the rationale for the valuation method, and the procedure used in determining the fair market value of the asset transferred.

(H) The specific basis for the valuation, such as specific comparable sales or transactions, sales of similar interests, asset-based approaches, merger-acquisition transactions, etc.

(4) *Adequate disclosure of non-gift completed transfers or transactions.* Completed transfers to members of the transferor's family, as defined in section 2032A(e)(2), that are made in the ordinary course of operating a business are deemed to be adequately disclosed under paragraph (f)(2) of this section, even if the transfer is not reported on a gift tax return, provided the transfer is properly reported by all parties for income tax purposes. For example, in the case of salary paid to a family member employed in a family owned business, the transfer will be treated as adequately disclosed for gift tax purposes if the item is properly reported by the business and the family member on their income tax returns. For purposes of this paragraph (f)(4), any other completed transfer that is reported, in its entirety, as not constituting a transfer by gift will be considered adequately disclosed under paragraph (f)(2) of this section only if the following information is provided on, or attached to, the return—

(i) The information required for adequate disclosure under paragraphs (f)(2)(i), (ii), (iii) and (v) of this section; and

(ii) An explanation as to why the transfer is not a transfer by gift under chapter 12 of the Internal Revenue Code.

(5) *Adequate disclosure of incomplete transfers.* Adequate disclosure of a transfer that is reported as a completed gift on the gift tax return will commence the running of the period of limitations for assessment of gift tax on the transfer, even if the transfer is ultimately determined to be an incomplete gift for purposes of §25.2511-2 of this chapter. For example, if an incomplete gift is reported as a completed gift on the gift tax return and is adequately disclosed, the period for assessment of the gift tax will begin to run when the return is filed, as determined under section 6501(b). Further, once the period of assessment for gift tax expires, the transfer will be subject to inclusion in the donor's gross estate for estate tax purposes only to the extent that a completed gift would be so included. On the other hand, if the transfer is reported as an incomplete gift whether or not adequately disclosed, the period for assessing a gift tax with respect to the transfer will not commence to run even if the transfer is ultimately determined to be a completed gift. In that situation, the gift tax with respect to the transfer may be assessed at any time, up until three years after the donor files a return reporting the transfer as a completed gift with adequate disclosure.

(6) *Treatment of split gifts.* If a husband and wife elect under section 2513 to treat a gift made to a third party as made one-half by each spouse, the requirements of this paragraph (f) will be satisfied with respect to the gift deemed made by the consenting spouse if the return filed by the donor spouse (the spouse that transferred the property) satisfies the requirements of this paragraph (f) with respect to that gift.

(7) *Examples.* The following examples illustrate the rules of this paragraph (f):

Example 1. (i) *Facts.* In 2001, A transfers 100 shares of common stock of XYZ Corporation to A's child. The common stock of XYZ Corporation is actively traded on a major stock exchange. For gift tax purposes, the fair market value of one share of XYZ common stock on the date of the transfer, determined in accordance with §25.2512-2(b) of this chapter (based on the mean between the highest and lowest quoted selling prices), is $150.00. On A's Federal gift tax return, Form 709, for the 2001 calendar year, A reports the gift to A's child of 100 shares of common stock of XYZ Corporation with a value for gift tax purposes of $15,000. A specifies the date of the transfer, recites that the stock is publicly traded, identifies the stock exchange on which the stock is traded, lists the stock's CUSIP number, and lists the mean between the highest and lowest quoted selling prices for the date of transfer.

(ii) *Application of the adequate disclosure standard.* A has adequately disclosed the transfer. Therefore, the period of assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b)).

Example 2. (i) *Facts.* On December 30, 2001, A transfers closely-held stock to B, A's child. A determined that the value of the transferred stock, on December 30, 2001, was $9,000. A made no other transfers to B, or any other donee, during 2001. On A's Federal gift tax return, Form 709, for the 2001 calendar year, A provides the information required under paragraph (f)(2) of this section such that the transfer is adequately disclosed. A claims an annual exclusion under section 2503(b) for the transfer.

(ii) *Application of the adequate disclosure standard.* Because the transfer is adequately disclosed under paragraph (f)(2) of this section, the period of assessment for the transfer will expire as prescribed by section 6501(b), notwithstanding that if A's valuation of the closely-held stock was correct, A was not required to file a gift tax return reporting the transfer under section 6019. After the period of assessment has expired on the transfer, the Internal Revenue Service is precluded from redetermining the amount of the gift for purposes of assessing gift tax or for purposes of determining the estate tax liability. Therefore, the amount of the gift as reported on A's 2001 Federal gift tax return may not be redetermined for purposes of determining A's prior taxable gifts (for gift tax purposes) or A's adjusted taxable gifts (for estate tax purposes).

Example 3. (i) *Facts.* A owns 100 percent of the common stock of X, a closely-held corporation. X does not hold an interest in any other entity that is not actively traded. In 2001, A transfers 20 percent of the X stock to B and C, A's children, in a transfer that is not subject to the special valuation rules of section 2701. The transfer is made outright with no restrictions on ownership rights, including voting rights and the right to transfer the stock. Based on generally applicable valuation principles, the value of X would be determined based on the net value of the assets owned by X. The reported value of the transferred stock incorporates the use of minority discounts and lack of marketability discounts. No other discounts were used in arriving at the fair market value of the transferred stock or any assets owned by X. On A's Federal gift tax return, Form 709, for the 2001 calendar year, A provides the information required under paragraph (f)(2) of this section including a statement reporting the fair market value of 100 percent of X (before taking into account any discounts), the pro rata portion of X subject to the transfer, and the reported value of the transfer. A also attaches a statement regarding the determination of value that includes a discussion of the discounts claimed and how the discounts were determined.

(ii) *Application of the adequate disclosure standard.* A has provided sufficient information such that the transfer will be considered adequately disclosed and the period of assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b)).

Example 4. (i) *Facts.* A owns a 70 percent limited partnership interest in PS. PS owns 40 percent of the stock in X, a closely-held corporation. The assets of X include a 50 percent general partnership interest in PB. PB owns an interest in commercial real property. None of the entities (PS, X, or PB) is actively traded and, based on generally applicable valuation principles, the value of each entity would be determined based on the net value of the assets owned by each entity. In 2001, A transfers a 25 percent limited partnership interest in PS to B, A's child. On the Federal gift tax return, Form 709, for the 2001 calendar year, A reports the transfer of the 25 percent limited partnership interest in PS and that the fair market value of 100 percent of PS is $y and that the value of 25 percent of PS is $z, reflecting marketability and minority discounts with respect to the 25 percent interest. However, A does not disclose that PS owns 40 percent of X, and that X owns 50 percent of PB and that, in arriving at the $y fair market value of 100 percent of PS, discounts were claimed in valuing PS's interest in X, X's interest in PB, and PB's interest in the commercial real property.

(ii) *Application of the adequate disclosure standard.* The information on the lower tiered entities is relevant and material in determining the value of the transferred interest in PS. Accordingly, because A has failed to comply with requirements of paragraph (f)(2)(iv) of this section regarding PS's interest in X, X's interest in PB, and PB's interest in the commercial real property, the transfer will not be considered adequately disclosed and the period of assessment for the transfer under section 6501 will remain open indefinitely.

Example 5. The facts are the same as in *Example 4* except that A submits, with the Federal tax return, an appraisal of the 25 percent limited partnership interest in PS that satisfies the requirements of paragraph (f)(3) of this section in lieu of the information required in paragraph (f)(2)(iv) of this section. Assuming the other requirements of paragraph (f)(2) of this section are satisfied, the transfer is considered adequately disclosed and the period for assessment for the transfer under section 6501 will run from the time the return is filed (as determined under section 6501(b) of this chapter).

Example 6. A owns 100 percent of the stock of X Corporation, a company actively engaged in a manufacturing business. B, A's child, is an employee of X and receives an annual salary paid in the ordinary course of operating X Corporation. B reports the annual salary as income on B's income tax returns. In 2001, A transfers property to family members and files a Federal gift tax return reporting the transfers. However, A does not disclose the 2001 salary payments made to B. Because the salary payments were reported as income on B's income tax return, the salary payments are deemed to be adequately disclosed. The transfer of property to family members, other than the salary payments to B, reported on the gift tax return must satisfy the adequate disclosure requirements under paragraph (f)(2) of this section in order for the period of assessment under section 6501 to commence to run with respect to those transfers.

(8) *Effective date.* This paragraph (f) is applicable to gifts made after December 31, 1996, for which the gift tax return for such calendar year is filed after December 3, 1999.

(g) *Listed transactions*—(1) *In general.* If a taxpayer is required to disclose a listed transaction under section 6011 and the regulations thereunder and does not do so in the time and manner required, then the time to assess any tax attributable to that listed transaction for the taxable year(s) to which the failure to disclose relates (as defined in paragraph (g)(3)(iii) of this section) will not expire before the earlier of one year after the date on which the taxpayer makes the disclosure described in paragraph (g)(5) of this section or one year after the date on which a material advisor makes a disclosure described in paragraph (g)(6) of this section. In no case will the operation of this paragraph (g) cause the period

of limitations on assessment to expire any earlier than the period that would have otherwise applied under this section determined without regard to this paragraph (g)(1).

(2) *Limitations period if paragraph (g)(5) or (g)(6) is satisfied.* If one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section is satisfied, then the tax attributable to the listed transaction may be assessed at any time before the expiration of the limitations period that would have otherwise applied under this section (determined without regard to paragraph (g)(1) of this section) or the period ending one year after the date that one of the disclosure provisions described in paragraphs (g)(5) or (6) of this section was satisfied, whichever is later. If both disclosure provisions are satisfied, the one-year period will begin on the earlier of the dates on which the provisions were satisfied. Paragraph (g)(1) of this section does not apply to any period of limitations on assessment that expired before the date on which the failure to disclose the listed transaction under section 6011 occurred.

(3) *Definitions*—(i) *Listed transaction.* The term *listed transaction* means a transaction described in section 6707A(c)(2) of the Code and §1.6011-4(b)(2) of this chapter.

(ii) *Material advisor.* The term *material advisor* means a person described in section 6111(b)(1) of the Code and §301.6111-3(b) of this chapter.

(iii) *Taxable year(s) to which the failure to disclose relates.* The *taxable year(s) to which the failure to disclose relates* are each taxable year that the taxpayer participated (as defined under section 6011 and the regulations thereunder) in a transaction that was identified as a listed transaction and the taxpayer failed to disclose the listed transaction as required under section 6011. If the taxable year in which the taxpayer participated in the listed transaction is different from the taxable year in which the taxpayer is required to disclose the listed transaction under section 6011, the taxable year(s) to which the failure to disclose relates are each taxable year that the taxpayer participated in the transaction.

(4) *Application of paragraph with respect to pass-through entities.* In the case of taxpayers who are partners in partnerships, shareholders in S corporations, or beneficiaries of trusts and are required to disclose a listed transaction under section 6011 and the regulations thereunder, paragraph (g)(1) of this section will apply to a particular partner, shareholder, or beneficiary if that particular partner, shareholder, or beneficiary does not disclose within the time and in the form and manner provided by section 6011 and §1.6011-4(d) and (e), regardless of whether the partnership, S corporation, or trust or another partner, shareholder, or beneficiary discloses in accordance with section 6011 and the regulations thereunder. Similarly, because paragraph (g)(1) of this section applies on a taxpayer-by-taxpayer basis, the failure of a partnership, S corporation, or trust that has a disclosure obligation under section 6011 and that does not disclose within the time or in the form and manner provided by §1.6011-4(d) and (e) will not cause paragraph (g)(1) of this section to apply to a partner, shareholder or beneficiary of the entity. Instead, the application of paragraph (g)(1) of this section to a partner, shareholder, or beneficiary will be determined based on whether the particular partner, shareholder, or beneficiary satisfied their disclosure obligation under section 6011 and the regulations thereunder.

(5) *Taxpayer's disclosure of a listed transaction that the taxpayer did not properly disclose under section 6011*—(i) *In general*—(A) *Method of disclosure.* The taxpayer must complete the most current version of Form 8886, "Reportable Transaction Disclosure Statement" (or successor form), available on the date the taxpayer attempts to satisfy this paragraph (g)(5) in accordance with §1.6011-4(d) and the instructions to the Form in effect on that date. The taxpayer must indicate on the Form 8886 that the form is being submitted for purposes of section 6501(c)(10) and the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. Disclosure under this paragraph (g)(5) will only be effective for the tax return(s) and taxable year(s) that the taxpayer specifies on the Form 8886 that he or she is attempting to disclose for purposes of section 6501(c)(10). If the Form 8886 contains a line for this purpose, then the taxpayer must complete the line in accordance with the instructions to that form. Otherwise, the taxpayer must include on the top of Page 1 of the Form 8886, and each copy of the form, the following statement: "*Section 6501(c)(10) Disclosure*" followed by the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure. For example, if the taxpayer did not properly disclose its participation in a listed transaction the tax consequences of which were reflected on the taxpayer's Form 1040 for the 2005 taxable year, the taxpayer must include the following statement: "*Section 6501(c)(10) Disclosure; 2005 Form 1040*" on the form. The taxpayer must submit the properly completed Form 8886 and a cover letter, which must be completed in accordance with the requirements set forth in paragraph (g)(5)(i)(B) of this section, to the Office of Tax Shelter Analysis (OTSA). The taxpayer is permitted, but not required, to file an amended return with the Form 8886 and cover letter. Separate Forms 8886 and separate cover letters must be submitted for each listed transaction the taxpayer did not properly disclose under section 6011. If the taxpayer participated in one listed transaction over multiple years, the taxpayer may submit one Form 8886 (or successor form) and cover letter and indicate on that form all of the tax returns and taxable years for which the taxpayer is making a section 6501(c)(10) disclosure. If a taxpayer participated in more than one listed transaction, then the taxpayer must submit separate Forms 8886 (or successor form) for each listed transaction, unless the listed transactions are the same or substantially similar, in which case all the listed transactions may be reported on one Form 8886.

(B) *Cover letter.* (*1*) A cover letter to which a Form 8886 is to be attached must identify the tax return(s) and taxable year(s) for which the taxpayer is making a section 6501(c)(10) disclosure and include the following statement signed under penalties of perjury by the taxpayer:

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete.

(2) If the Form 8886 is prepared by a paid preparer, in addition to the statement under penalties of perjury signed by the taxpayer, the Form 8886 must also include the following statement signed under penalties of perjury by the paid preparer.

Under penalties of perjury, I declare that I have examined this reportable transaction disclosure statement and, to the best of my knowledge and belief, this reportable transaction disclosure statement is true, correct, and complete. This declaration is based on all information of which I, as paid preparer, have any knowledge.

(C) *Taxpayer under examination or Appeals consideration.* A taxpayer making a disclosure under paragraph (g)(5) of this section with respect to a taxable year under examination or Appeals consideration by the IRS must satisfy the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and also submit a copy of the submission to the IRS examiner or Appeals officer examining or considering the taxable year(s) to which the disclosure under this paragraph (g) relates.

(D) *Date the one-year period will begin to run if paragraph (g)(5) satisfied.* Unless an earlier expiration is provided for in paragraph (g)(6) of this section, the time to assess tax under this paragraph (g) will not expire before one year after the date on which the Secretary is furnished the information from the taxpayer that satisfies all of the requirements of paragraphs (g)(5)(i)(A) and (B) of this section and, if applicable, paragraph (g)(5)(i)(C) of this section. If the taxpayer does not satisfy all of the requirements on the same date, the one-year period will begin on the date that the IRS is furnished the information that, together with prior disclosures of information, satisfies the requirements of this paragraph (g)(5). For purposes of this paragraph (g)(5), the information is deemed furnished on the date the IRS receives the information.

(ii) *Exception for returns other than annual returns.* The IRS may prescribe alternative procedures to satisfy the requirements of this paragraph (g)(5) in a revenue procedure, notice, or other guidance published in the Internal Revenue Bulletin for circumstances involving returns other than annual returns.

(6) *Material advisor's disclosure of a listed transaction not properly disclosed by a taxpayer under section 6011*—(i) *In general.* In response to a written request of the IRS under section 6112, a material advisor with respect to a listed transaction must furnish to the IRS the information described in section 6112 and §301.6112-1(b) in the form and manner prescribed by section 6112 and §301.6112-1(e). If the information the material advisor furnishes identifies the taxpayer as a person who entered into the listed transaction, regardless of whether the material advisor provides the information before or after the taxpayer's failure to disclose the listed transaction under section 6011, then the requirements of this paragraph (g)(6) will be satisfied for that taxpayer. The requirements of this paragraph (g)(6) will be considered satisfied even if the material advisor furnishes the information required under section 6112 to the IRS after the date prescribed in section 6708 or published guidance relating to section 6708.

(ii) *Paragraph (g)(6) not satisfied*—(A) *Information not furnished by a material advisor or a person permitted to act on behalf of the material advisor.* The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information is furnished by—

(*1*) A person who is a material advisor (as defined in paragraph (g)(3)(ii) of this section) with respect to the taxpayer,

(*2*) A person who is providing the information pursuant to §301.6112-1(d) on behalf of a dissolved or liquidated material advisor with respect to the taxpayer, or

(*3*) a person who is providing the information on behalf of a material advisor with respect to the taxpayer under a designation agreement in accordance with §301.6112-1(f).

(B) *No written request by IRS.* The requirements of this paragraph (g)(6) are not satisfied unless the information is furnished in response to a written request made by the IRS to the material advisor under section 6112 (except as provided in §301.6112-1(d) with respect to a list furnished to OTSA within 60 days after dissolution or liquidation of a material advisor).

(C) *Information furnished does not identify the taxpayer.* The requirements of this paragraph (g)(6) are not satisfied for a taxpayer unless the information furnished identifies the taxpayer as a person who entered into the listed transaction.

(iii) *Date the one-year period will begin if paragraph (g)(6) is satisfied.* Unless an earlier expiration is provided for in paragraph (g)(5) of this section, the time to assess tax under this paragraph (g) will expire one year after the date on which the material advisor satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer. For purposes of this paragraph (g)(6), information is deemed to be furnished on the date that, in response to a request under section 6112, the IRS receives the information from a material advisor that satisfies the requirements of paragraph (g)(6)(i) of this section with respect to the taxpayer.

(7) *Tax assessable under this section.* If the period of limitations on assessment for a taxable year remains open under this section, the Secretary has authority to assess any tax with respect to the listed transaction in that year. This includes, but is not limited to, adjustments made to the tax consequences claimed on the return plus interest, additions to tax, additional amounts, and penalties that are related to the listed transaction or adjustments made to the tax consequences. This also includes any item to the extent the item is affected by the listed transaction even if it is unrelated to the listed transaction. An example of an item affected by, but unrelated to, a listed transaction is the threshold for the medical expense deduction under section 213 that varies if there is a change in an individual's adjusted gross income. An example of a penalty related to the listed transaction is the penalty under section 6707A for failure to file the disclosure statement reporting the taxpayer's participation in the listed transaction. Examples of penalties related to the adjustments made to the tax consequences are the accuracy-related penalties under sections 6662 and 6662A.

(8) *Examples.* The rules of this paragraph (g) are illustrated by the following examples:

Example 1. No requirement to disclose under section 6011. P, an individual, is a partner in a partnership that entered into a transaction in 2001 that was the same as or substantially similar to the transaction identified as a listed transaction in Notice 2000-44 (2000-2 CB 255). P claimed a loss from the transaction on his Form 1040 for the tax year 2001. P filed the Form 1040 prior to June 14, 2002. P did not disclose his participation in the listed transaction because P was not required to disclose the transaction under the applicable section 6011 regulations (TD 8961), which were effective for any transaction entered into before January 1, 2001 and any transaction entered into on or after January 1, 2001 that was reported on a return of the taxpayer filed on or before June 14, 2002. Although the transaction was a listed transaction and P did not disclose the transaction, P had no obligation to include on any return or statement any information with respect to a listed transaction within the meaning of section 6501(c)(10) because TD 8961 only applied to corporations, not individuals. Accordingly, section 6501(c)(10) does not apply.

Example 2. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after first year of participation and the transaction must be disclosed with the return next filed. (i) On December 30, 2003, Y, a corporation, enters into a transaction that at the time is not a reportable transaction. On March 15, 2004, Y timely files its 2003 Form 1120, reporting the tax consequences from the transaction. On April 1, 2004, the IRS issues Notice 2004-31 that identifies the transaction as a listed transaction. Y also reports tax consequences from the transaction on its 2004 Form 1120, which it timely filed on March 15, 2005. Y did not attach a completed Form 8886 to its 2004 Form 1120 and did not send a copy of the form to OTSA. The general three-year period of limitations on assessment for Y's 2003 and 2004 taxable years would expire on March 15, 2007, and March 17, 2008, respectively.

(ii) The period of limitations on assessment for Y's 2003 taxable year was open on the date the transaction was identified as a listed transaction. Under the applicable section 6011 regulations (TD 9108), which were effective for transactions entered into before August 3, 2007, Y should have disclosed its participation in the transaction with its next filed return, which was its 2004 Form 1120, but Y did not disclose its participation. Y's failure to disclose with the 2004 Form 1120 relates to taxable years 2003 and 2004. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2003 and 2004 taxable years with respect to the listed transaction until at least one year after the date Y satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to Y.

Example 3. Taxable year to which the failure to disclose relates when transaction is identified as a listed transaction after the first year of participation and the transaction must be disclosed 90 days after the transaction became a listed transaction. (i) In January 2015, A, a calendar year taxpayer, enters into a transaction that at the time is not a listed transaction. A reports the tax consequences from the transaction on its individual income tax return for 2015 timely filed on April 15, 2016. The time for the IRS to assess tax against A under the general three-year period of limitations for A's 2015 taxable year would expire on April 15, 2019. A only participated in the transaction in 2015. On March 7, 2017, the IRS identifies the transaction as a listed transaction. A does not file the Form 8886 with OTSA by June 5, 2017.

(ii) The period of limitations on assessment for A's 2015 taxable year was open on the date the transaction was identified as a listed transaction. Under the current section 6011 regulations (TD 9350) which are effective for transactions entered into on or after August 3, 2007, A must disclose its participation in the transaction by filing a completed Form 8886 with OTSA on or before June 5, 2017, which is 90 days after the date the transaction became a listed transaction. A did not disclose the transaction as required. A's failure to disclose relates to taxable year 2015 even though the obligation to disclose did not arise until 2017. Section 6501(c)(10) operates to keep the period of limitations on assessment open for the 2015 taxable year with respect to the listed transaction until at least one year after the date A satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to A.

Example 4. Requirements of paragraph (g)(6) satisfied. Same facts as *Example 3,* except that on April 5, 2019, the IRS hand delivers to Advisor J, who is a material advisor, a section 6112 request related to the listed transaction. Advisor J furnishes the required list with all the information required by section 6112 and §301.6112-1, including all the information required with respect to A, to the IRS on May 8, 2019. The submission satisfies the requirements of paragraph (g)(6) even though Advisor J furnishes the information outside of the 20-business-day period provided in section 6708. Accordingly, under section 6501(c)(10), the period of limitations with respect to A's taxable year 2015 will end on May 8, 2020, one year after the IRS received the required information, unless the period of limitations remains open under another exception. Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example 5. Requirements of paragraph (g)(5) also satisfied. Same facts as *Examples 3 and 4,* except that on May 23, 2019, A files a properly completed Form 8886 and signed cover letter with OTSA both identifying that the section 6501(c)(10) disclosure relates to A's Form 1040 for 2015. A satisfied the requirements of paragraph (g)(5) of this section as of May 23, 2019. Because the

requirements of paragraph (g)(6) were satisfied first as described in *Example 4,* under section 6501(c)(10) the period of limitations will end on May 8, 2020 (one year after the requirements of paragraph (g)(6) were satisfied) instead of May 23, 2020 (one year after the requirements of paragraph (g)(5) were satisfied). Any tax for the 2015 taxable year not attributable to the listed transaction must be assessed by April 15, 2019.

Example 6. Period to assess tax remains open under another exception. Same facts as *Examples 3, 4, and 5,* except that on April 1, 2019, A signed Form 872, consenting to extend, without restriction, its period of limitations on assessment for taxable year 2015 under section 6501(c)(4) until July 15, 2020. In that case, although under section 6501(c)(10) the period of limitations would otherwise expire on May 8, 2020, the IRS may assess tax with respect to the listed transaction (as well as any other item on the return covered by the Form 872 extension) at any time up to and including July 15, 2020, pursuant to section 6501(c)(4). Section 6501(c)(10) operates to extend the assessment period but not to shorten any other applicable assessment period.

Example 7. Requirements of (g)(5) not satisfied. In 2015, X, a corporation, enters into a listed transaction. On March 15, 2016, X timely files its 2015 Form 1120, reporting the tax consequences from the transaction. X does not disclose the transaction as required under section 6011 when it files its 2015 return. The failure to disclose relates to taxable year 2015. On February 13, 2017, X completes and files a Form 8886 with respect to the listed transaction with OTSA but does not submit a cover letter, as required. The requirements of paragraph (g)(5) of this section have not been satisfied. Therefore, the time to assess tax against X with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 8. Section 6501(c)(10) applies to keep one partner's period of limitations on assessment open. T and S are partners in a partnership, TS, that enters into a listed transaction in 2015. T and S each receive a Schedule K-1 from TS on April 11, 2016. On April 15, 2016, TS, T and S each file their 2015 returns. Under the applicable section 6011 regulations, TS, T, and S each are required to disclose the transaction. TS attaches a completed Form 8886 to its 2015 Form 1065 and sends a copy of Form 8886 to OTSA. Neither T nor S files a disclosure statement with their respective returns nor sends a copy to OTSA on April 15, 2016. On May 17, 2016, T timely files a completed Form 8886 with OTSA pursuant to §1.6011-4(e)(1). T's disclosure is timely because T received the Schedule K-1 within 10 calendar days before the due date of the return and, thus, T had 60 calendar days to file Form 8886 with OTSA. TS and T properly disclosed the transaction in accordance with the applicable regulations under section 6011, but S did not. S's failure to disclose relates to taxable year 2015. The time to assess tax with respect to the transaction against S for 2015 remains open under section 6501(c)(10) even though TS and T disclosed the transaction.

Example 9. Section 6501(c)(10) satisfied before expiration of three-year period of limitations under section 6501(a). Same facts as *Example 8,* except that on August 26, 2016, S satisfies the requirements of paragraph (g)(5) of this section. No material advisor satisfied the requirements of paragraph (g)(6) of this section with respect to S on a date earlier than August 26, 2016. Under section 6501(c)(10), the period of time in which the IRS may assess tax against S with respect to the listed transaction would expire no earlier than August 26, 2017, one year after the date S satisfied the requirements of paragraph (g)(5). As the general three-year period of limitations on assessment under section 6501(a) does not expire until April 15, 2019, the IRS will have until that date to assess any tax with respect to the listed transaction.

Example 10. No section 6112 request. B, a calendar year taxpayer, entered into a listed transaction in 2015. B did not comply with the applicable disclosure requirements under section 6011 for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after B satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to B. In June 2016, the IRS conducts a section 6700 investigation of Advisor K, who is a material advisor to B with respect to the listed transaction. During the course of the investigation, the IRS obtains the name, address, and TIN of all of Advisor K's clients who engaged in the transaction, including B. The information provided does not satisfy the requirements of paragraph (g)(6) with respect to B because the information was not provided pursuant to a section 6112 request. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 11. Section 6112 request but the requirements of paragraph (g)(6) are not satisfied with respect to B. Same facts as *Example 10,* except that on January 9, 2017, the IRS sends by certified mail a section 6112 request to Advisor L, who is another material advisor to B with respect to the listed transaction. Advisor L furnishes some of the information required under section 6112 and §301.6112-1 to the IRS for inspection on January 17, 2017. The list includes information with respect to many clients of Advisor L, but it does not include any information with respect to B. The submission does not satisfy the requirements of paragraph (g)(6) of this section with respect to B. Therefore, the time to assess tax against B with respect to the transaction for taxable year 2015 remains open under section 6501(c)(10).

Example 12. Section 6112 submission made before taxpayer failed to disclose a listed transaction. Advisor M, who is a material advisor, advises C, an individual, in 2015 with respect to a transaction that is not a reportable transaction at that time. C files its return claiming the tax consequences of the transaction on April 15, 2016. The time for the IRS to assess tax against C under the general three-year period of limitations for C's 2015 taxable year would expire on April 15, 2019. The IRS identifies the transaction as a listed transaction on November 3, 2017. On December 7, 2017, the IRS hand delivers to Advisor M a section 6112 request related to the transaction. Advisor M furnishes the information to the IRS on December 29, 2017. The information contains all the required information with respect to Advisor M's clients, including C. C does not disclose the transaction on or before February 1, 2018, as required under section 6011 and the regulations under section 6011. Advisor M's submission under section 6112 satisfies the requirements of paragraph (g)(6) of this section even though it occurred prior to C's failure to disclose the listed transaction. Thus, under section 6501(c)(10), the period of limitations to assess tax against C with respect to the listed transaction will end on December 29, 2018 (one year after the requirements of paragraph (g)(6) of this section were satisfied), unless the period of limitations remains open under another exception.

Example 13. Transaction removed from the category of listed transactions after taxpayer failed to disclose. D, a calendar year taxpayer, entered into a listed transaction in 2015. D did not comply with the applicable disclosure requirements under section 6011

for taxable year 2015; therefore, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the transaction until at least one year after D satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to D. In 2017, the IRS removes the transaction from the category of listed transactions because of a change in law. Section 6501(c)(10) continues to apply to keep the period of limitations on assessment open for D's taxable year 2015.

Example 14. Taxes assessed with respect to the listed transaction. (i) F, an individual, enters into a listed transaction in 2015. F files its 2015 Form 1040 on April 15, 2016, but does not disclose his participation in the listed transaction in accordance with section 6011 and the regulations under section 6011. F's failure to disclose relates to taxable year 2015. Thus, section 6501(c)(10) applies to keep the period of limitations on assessment open with respect to the tax related to the listed transaction for taxable year 2015 until at least one year after the date F satisfies the requirements of paragraph (g)(5) of this section or a material advisor satisfies the requirements of paragraph (g)(6) of this section with respect to F.

(ii) On July 2, 2020, the IRS completes an examination of F's 2015 taxable year and disallows the tax consequences claimed as a result of the listed transaction. The disallowance of a loss increased F's adjusted gross income. Due to the increase of F's adjusted gross income, certain credits, such as the child tax credit, and exemption deductions were disallowed or reduced because of limitations based on adjusted gross income. In addition, F now is liable for the alternative minimum tax. The examination also uncovered that F claimed two deductions on Schedule C to which F was not entitled. Under section 6501(c)(10), the IRS can timely issue a statutory notice of deficiency (and assess in due course) against F for the deficiency resulting from (1) disallowing the loss, (2) disallowing the credits and exemptions to which F was not entitled based on F's increased adjusted gross income, and (3) being liable for the alternative minimum tax. In addition, the IRS can assess any interest and applicable penalties related to those adjustments, such as the accuracy-related penalty under sections 6662 and 6662A and the penalty under section 6707A for F's failure to disclose the transaction as required under section 6011 and the regulations under section 6011. The IRS cannot, however, pursuant to section 6501(c)(10), assess the increase in tax that would result from disallowing the two deductions on F's Schedule C because those deductions are not related to, or affected by, the adjustments concerning the listed transaction.

(9) *Effective/applicability date.* The rules of this paragraph (g) apply to taxable years with respect to which the period of limitations on assessment under section 6501 (including subsection (c)(10)) did not expire before March 31, 2015.

[32 FR 15241, Nov. 3, 1967, as amended by T.D. 7838, 47 FR 44250, Oct. 7, 1982; T.D. 8395, 57 FR 4277, Feb. 4, 1992; T.D. 8845, 64 FR 67771, Dec. 3, 1999; 65 FR 1059, Jan. 7, 2000; T.D. 9718, 80 FR 16976, Mar. 31, 2015; T.D. 9718, 80 FR 23444, Apr. 28, 2015]

Exhibit C

Treas. Reg. §20.2001-1

Title 26: Internal Revenue
PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

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§20.2001-1 Valuation of adjusted taxable gifts and section 2701(d) taxable events.

(a) *Adjusted taxable gifts made prior to August 6, 1997.* For purposes of determining the value of adjusted taxable gifts as defined in section 2001(b), if the gift was made prior to August 6, 1997, the value of the gift may be adjusted at any time, even if the time within which a gift tax may be assessed has expired under section 6501. This paragraph (a) also applies to adjustments involving issues other than valuation for gifts made prior to August 6, 1997.

(b) *Adjusted taxable gifts and section 2701(d) taxable events occurring after August 5, 1997.* For purposes of determining the amount of adjusted taxable gifts as defined in section 2001(b), if, under section 6501, the time has expired within which a gift tax may be assessed under chapter 12 of the Internal Revenue Code (or under corresponding provisions of prior laws) with respect to a gift made after August 5, 1997, or with respect to an increase in taxable gifts required under section 2701(d) and §25.2701-4 of this chapter, then the amount of the taxable gift will be the amount as finally determined for gift tax purposes under chapter 12 of the Internal Revenue Code and the amount of the taxable gift may not thereafter be adjusted. The rule of this paragraph (b) applies to adjustments involving all issues relating to the gift, including valuation issues and legal issues involving the interpretation of the gift tax law.

(c) *Finally determined.* For purposes of paragraph (b) of this section, the amount of a taxable gift as finally determined for gift tax purposes is—

(1) The amount of the taxable gift as shown on a gift tax return, or on a statement attached to the return, if the Internal Revenue Service does not contest such amount before the time has expired under section 6501 within which gift taxes may be assessed;

(2) The amount as specified by the Internal Revenue Service before the time has expired under section 6501 within which gift taxes may be assessed on the gift, if such specified amount is not timely contested by the taxpayer;

(3) The amount as finally determined by a court of competent jurisdiction; or

(4) The amount as determined pursuant to a settlement agreement entered into between the taxpayer and the Internal Revenue Service.

(d) *Definitions.* For purposes of paragraph (b) of this section, the amount is finally determined by a court of competent jurisdiction when the court enters a final decision, judgment, decree or other order with respect to the amount of the taxable gift that is not subject to appeal. See, for example, section 7481 regarding the finality of a decision by the U.S. Tax Court. Also, for purposes of paragraph (b) of this section, a settlement agreement means any agreement entered into by the Internal Revenue Service and the taxpayer that is binding on both. The term includes a closing agreement under section 7121, a compromise under section 7122, and an agreement entered into in settlement of litigation involving the amount of the taxable gift.

(e) *Expiration of period of assessment.* For purposes of determining if the time has expired within which a tax may be assessed under chapter 12 of the Internal Revenue Code, see §301.6501(c)-1(e) and (f) of this chapter.

(f) *Effective dates.* Paragraph (a) of this section applies to transfers of property by gift made prior to August 6, 1997, if the estate tax return for the donor/decedent's estate is filed after December 3, 1999. Paragraphs (b) through (e) of this section apply to transfers of property by gift made after August 5, 1997, if the gift tax return for the calendar period in which the gift is made is filed after December 3, 1999.

[T.D. 8845, 64 FR 67769, Dec. 3, 1999]

Exhibit D

IRC §2632

26 USC 2632: Special rules for allocation of GST exemption
Text contains those laws in effect on October 29, 2017

From Title 26-INTERNAL REVENUE CODE
Subtitle B-Estate and Gift Taxes
CHAPTER 13-TAX ON GENERATION-SKIPPING TRANSFERS
Subchapter D-GST Exemption

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§2632. Special rules for allocation of GST exemption

(a) Time and manner of allocation

(1) Time

Any allocation by an individual of his GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

(2) Manner

The Secretary shall prescribe by forms or regulations the manner in which any allocation referred to in paragraph (1) is to be made.

(b) Deemed allocation to certain lifetime direct skips

(1) In general

If any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

(2) Unused portion

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under paragraph (1) or subsection (c)(1)).

(3) Subsection not to apply in certain cases

An individual may elect to have this subsection not apply to a transfer.

(c) Deemed allocation to certain lifetime transfers to GST trusts

(1) In general

If any individual makes an indirect skip during such individual's lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

(2) Unused portion

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been-

(A) allocated by such individual,

(B) treated as allocated under subsection (b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or

(C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

(3) Definitions

(A) Indirect skip

For purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

(B) GST trust

The term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless-

(i) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons-

(I) before the date that the individual attains age 46,

(II) on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or

(III) upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46,

(ii) the trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals,

(iii) the trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals,

(iv) the trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer,

(v) the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)), or

(vi) the trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate.

For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

(4) Automatic allocations to certain GST trusts

For purposes of this subsection, an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

(5) Applicability and effect

(A) In general

An individual-

(i) may elect to have this subsection not apply to-

(I) an indirect skip, or

(II) any or all transfers made by such individual to a particular trust, and

(ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

(B) Elections

(i) Elections with respect to indirect skips

An election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to paragraph (4) or on such later date or dates as may be prescribed by the Secretary.

(ii) Other elections

An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

(d) Retroactive allocations

(1) In general

If-

(A) a non-skip person has an interest or a future interest in a trust to which any transfer has been made,

(B) such person-

(i) is a lineal descendant of a grandparent of the transferor or of a grandparent of the transferor's spouse or former spouse, and

(ii) is assigned to a generation below the generation assignment of the transferor, and

(C) such person predeceases the transferor,

then the transferor may make an allocation of any of such transferor's unused GST exemption to any previous transfer or transfers to the trust on a chronological basis.

(2) Special rules

If the allocation under paragraph (1) by the transferor is made on a gift tax return filed on or before the date prescribed by section 6075(b) for gifts made within the calendar year within which the non-skip person's death occurred-

(A) the value of such transfer or transfers for purposes of section 2642(a) shall be determined as if such allocation had been made on a timely filed gift tax return for each calendar year within which each transfer was made,

(B) such allocation shall be effective immediately before such death, and

(C) the amount of the transferor's unused GST exemption available to be allocated shall be determined immediately before such death.

(3) Future interest

For purposes of this subsection, a person has a future interest in a trust if the trust may permit income or corpus to be paid to such person on a date or dates in the future.

(e) Allocation of unused GST exemption

(1) In general

Any portion of an individual's GST exemption which has not been allocated within the time prescribed by subsection (a) shall be deemed to be allocated as follows-

(A) first, to property which is the subject of a direct skip occurring at such individual's death, and

(B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

(2) Allocation within categories

(A) In general

The allocation under paragraph (1) shall be made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

(B) Nonexempt portion

For purposes of subparagraph (A), the term "nonexempt portion" means the value (at the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

(Added Pub. L. 99–514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2721 ; amended Pub. L. 100–647, title I, §1014(g)(16), Nov. 10, 1988, 102 Stat. 3566 ; Pub. L. 107–16, title V, §561(a), (b), June 7, 2001, 115 Stat. 86 , 89.)

AMENDMENTS

2001-Subsec. (b)(2). Pub. L. 107–16, §561(b), substituted "or subsection (c)(1)" for "with respect to a prior direct skip".

Subsecs. (c) to (e). Pub. L. 107–16, §561(a), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1988-Subsec. (b)(2). Pub. L. 100–647 substituted "paragraph (1) with respect to a prior direct skip)" for "paragraph (1)) with respect to a prior direct skip".

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107–16, title V, §561(c), June 7, 2001, 115 Stat. 89 , provided that:

"(1) Deemed allocation.-Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b) [amending this section], shall apply to transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000.

"(2) Retroactive allocations.-Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 2000."

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100–647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99–514, to which such amendment relates, see

section 1019(a) of Pub. L. 100–647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99–514, set out as a note under section 2601 of this title.

Exhibit E

Sample "Schedule A" Descriptions for Various Complex Gifts

1. REPORTING GST AT CLOSE OF ETIP

THIS RETURN IS BEING FILED ONLY FOR THE PURPOSE OF ALLOCATING GST EXEMPTION AT THE CLOSE OF AN ETIP. SEE THE ATTACHED NOTICE OF ALLOCATION.

Form of Notice of Allocation

Attached to and made part of
20__ United States Gift (and Generation-Skipping Transfer)
Tax Return (Form 709)
[TAXPAYER SSN: XXX-XX-XXXX]

NOTICE OF ALLOCATION

[NAME OF TRUST]
[_____, Trustee]
[EIN: XX-XXXXXXX
[ADDRESS OF TRUST]

DESCRIPTION OF TRUST ASSET:

[DESCRIBE ASSET CONTRIBUTED TO TRUST]

VALUE FOR PURPOSES OF ALLOCATION: $_____*

AMOUNT OF GST EXEMPTION ALLOCATED:

THE TAXPAYER ALLOCATES TO THE TRUST LISTED ABOVE THE SMALLEST AMOUNT OF THE TAXPAYER'S GST EXEMPTION NECESSARY TO PRODUCE AN INCLUSION RATIO (AS DEFINED IN INTERNAL REVENUE CODE §2642(A)) FOR THE TRUST THAT IS THE CLOSEST TO OR, IF POSSIBLE, EQUAL TO ZERO. THIS IS A FORMULA ELECTION WHICH WILL CHANGE IF VALUES ARE CHANGED ON AUDIT.

BASED ON THE VALUES AS RETURNED, AS TO THE TRUST DESCRIBED ABOVE, THIS FORMULA ALLOCATION WILL RESULT IN $_____ OF GST EXEMPTION ALLOCATED AND AN INCLUSION RATIO OF 0.000.

*THIS GIFT DOES NOT APPEAR ON SCHEDULE A BECAUSE IT WAS MADE TO THIS TRUST IN 20___ AND REPORTED ON THE TAXPAYER'S 20___ GIFT TAX RETURN. PURSUANT TO §2642(F)(2)(B), THE VALUE FOR PURPOSES OF ALLOCATION IS THE VALUE ON THE DATE OF THE CLOSE OF THE ESTATE TAX INCLUSION PERIOD, WHICH, IN THIS CASE, IS _____, 20____. A COPY OF AN INDEPENDENT APPRAISAL OF THE ASSET IN THIS TRUST IS ANNEXED HERETO AS "EXHIBIT A."

2. GIFT OF LLC INTEREST TO GRAT

DONOR CONTRIBUTED A THIRTY-THREE (33%) PERCENT INTEREST IN THE [NAME OF LLC] TO THE [NAME OF GRAT] DATED _____, 20__, EIN: _____, C/O _____, TRUSTEE, [ADDRESS OF TRUSTEE], (A COPY OF SAID TRUST IS ANNEXED HERETO AS "EXHIBIT A").

THE UNDISCOUNTED VALUE OF ONE HUNDRED (100%) PERCENT OF THE LLC INTEREST IS $13,316,576. THE VALUE OF THE GIFT WAS OBTAINED BY A PROFESSIONAL VALUATION (A COPY OF SAID VALUATION IS ANNEXED HERETO AS EXHIBIT B) THAT VALUES A THIRTY-THREE (33%) PERCENT INTEREST IN THE LLC AT $3,200,000.

SAID PROFESSIONAL VALUATION ALONG WITH THIS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(c)-1(f).

THE GRANTOR RETAINED THE RIGHT TO RECEIVE AN ANNUITY OF 11.6% OF THE FAIR MARKET VALUE OF THE TRUST VALUED AS OF ITS INCEPTION. THE DONOR'S DATE OF BIRTH IS _____. THE TRUST'S DURATION IS TWELVE (12) YEARS. THE VALUATION RATE UNDER SECTION 7520 OF THE CODE FOR _____, 20__, THE MONTH OF THE TRANSFER, WAS 5.6%. THE VALUE OF THE RETAINED ANNUITY INTEREST IS $3,181,481; THEREFORE, THE VALUE OF THE REMAINDER INTEREST IS $18,519.

3. SALE OF LLC TO SINGLE MEMBER LLC OWNED BY TRUST

SALE OF A FORTY-NINE (49%) PERCENT INTEREST IN THE [NAME OF LLC I] TO THE [NAME OF LLC II], EIN _____, C/O _____, MANAGER, [ADDRESS OF MANAGER]. THE [NAME OF LLC II] IS WHOLLY OWNED BY THE _____ FAMILY TRUST DATED _____, 20___, EIN _____, C/O _____, TRUSTEE, [ADDRESS OF TRUSTEE].

A PROFESSIONAL VALUATION (A COPY OF SAID VALUATION IS ANNEXED HERETO AS EXHIBIT A) VALUES A ONE (1%) PERCENT INTEREST IN THE [NAME OF LLC I] AT $132,000. THE VALUE OF THE TRANSFER WAS BASED ON A SALE VALUE OF $132,000 FOR A ONE (1%) PERCENT INTEREST IN THE LLC. AS SUCH, THE VALUE OF THE INTEREST CONVEYED IS $6,468,000. SINCE SUCH INTEREST WAS SOLD FOR THE APPRAISED FAIR MARKET VALUE, THERE IS NO GIFT AND THUS A ZERO (0) GIFT HAS BEEN REPORTED HEREIN.

SAID PROFESSIONAL VALUATION ALONG WITH THIS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(c)-1(f).

4. GIFT OF LLC INTEREST TO TRUST CONTAINING CRUMMEY WITHDRAWAL RIGHTS

GIFT OF A 29.6116505% INTEREST IN THE [NAME OF LLC] TO THE _____ TRUST DATED _____, 20__, EIN _____, C/O _____, TRUSTEE, [ADDRESS OF TRUSTEE (A COPY OF SAID TRUST IS ANNEXED TO THE GRANTOR'S RETURN AS EXHIBIT A).

THE UNDISCOUNTED VALUE OF ONE HUNDRED (100%) PERCENT OF THE LLC INTEREST IS $4,699,000. THE VALUE OF THE ENTIRE LLC INTEREST AND THE GIFT WAS OBTAINED BY A PROFESSIONAL VALUATION (A COPY OF WHICH IS ANNEXED TO THE GRANTOR'S RETURN AS EXHIBIT B) THAT VALUES A ONE (1%) PERCENT INTEREST IN THE LLC AT $30,900.

SAID PROFESSIONAL VALUATION ALONG WITH THIS FORM 709 AND THE OTHER ATTACHMENT TO THE GRANTOR'S RETURN ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(c)-1(f).

AS SUCH, THE VALUE OF THE GIFT IS $915,000. UNDER THE TERMS OF THE TRUST, THE INDIVIDUALS NAMED BELOW HAD THE RIGHT TO WITHDRAW A PORTION OF THE CONTRIBUTION.

5. GIFT TO QPRT

GIFT OF A REMAINDER INTEREST IN RESIDENTIAL REAL ESTATE TO THE _____ QUALIFIED PERSONAL RESIDENCE TRUST DATED _____, 20__ (A COPY OF SAID TRUST IS ANNEXED HERETO AS EXHIBIT A). THE VALUE OF THE GIFT WAS OBTAINED BY USING THE [MONTH] OF 200__ IRC SECTION 7520 RATE OF 3.60%. THE DONOR'S DATE OF BIRTH IS _____, 19__. PURSUANT TO IRC SECTIONS 7520 AND 2702, THE VALUE OF A THIRTY (30) YEAR RETAINED INTEREST WOULD BE 72.932% OF THE FAIR MARKET VALUE OF THE PROPERTY TRANSFERRED TO THE TRUST. THUS, THE VALUE OF THE REMAINDER INTEREST IS 27.068%. THE UNDISCOUNTED VALUE OF THE REAL PROPERTY IS $995,000, AS DETERMINED BY PROFESSINAL APPRAISAL (A COPY OF WHICH IS ANNEXED HERETO AS EXHIBIT B). NINETY-EIGHT (98%) PERCENT OF THE PROPERTY WAS TRANSFERRED TO THE TRUST. THUS, THE UNDISCOUNTED VALUE OF THE PROPERTY TRANSFERRED TO THE TRUST WAS $975,100. A TWENTY-FIVE (25%) PERCENT DISCOUNT FOR A FRACTIONAL INTEREST IN REAL ESTATE WAS THEN APPLIED TO ARRIVE AT A $731,325 VALUE PRIOR TO CALCULATING THE VALUE OF THE REMAINDER INTEREST. USING THE ABOVE-STATED RATES AND VALUES, THE REMAINDER INTEREST WAS CALCULATED TO BE $197,955.

SAID PROFESSIONAL VALUATION ALONG WITH THIS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(c)-1(f).

6. CASH GIFT TO TRUST CONTAINING CRUMMEY WITHDRAWAL RIGHTS

PRESENT INTEREST IN CASH GIFT OF $101,000 CONTRIBUTED TO THE _____ FAMILY TRUST DATED _____, 20__, EIN _____, C/O _____, TRUSTEE, [ADDRESS OF TRUSTEE]. A COPY OF THE TRUST IS ATTACHED HERETO AS "EXHIBIT A". UNDER THE TERMS OF THE TRUST, THE INDIVIDUALS NAMED BELOW HAD THE RIGHT TO WITHDRAW A PORTION OF THE CONTRIBUTION.

7. REPORTING SALE FOR FAIR MARKET VALUE TO A TRUST OF DISCOUNTED INTERESTS TO BEGIN RUNNING OF STATUTE OF LIMITATIONS

On the Form 709, the recipient trust should be listed as the donee of a gift of zero dollars on the date of the sale. In the description for the gift, which should be contained in schedule A, Part 1 of the 709, the following example language can be used:

SALE ON [DATE] OF A FORTY-NINE AND EIGHTY-FIVE HUNDREDTHS (49.85%) PERCENT INTEREST IN [NAME OF LLC] TO THE _____ TRUST, _____, EIN: _____, _____, TRUSTEE, [ADDRESS OF TRUSTEE], (A COPY OF THE 1989 TRUST IS ATTACHED HERETO AS EXHIBIT A).

A PROFESSIONAL VALUATION VALUES A FORTY-NINE AND EIGHTY-FIVE HUNDREDTHS (49.85%) PERCENT INTEREST IN [NAME OF LLC] AT $30,782,000 (A COPY OF SAID VALUATION IS ATTACHED HERETO AS EXHIBIT B). AS SUCH, THE VALUE OF THE INTEREST CONVEYED IS $30,782,000. SINCE SUCH INTEREST WAS SOLD FOR THE APPRAISED FAIR MARKET VALUE, THERE IS NO GIFT AND THUS A ZERO (0) GIFT HAS BEEN REPORTED HEREIN.

SAID PROFESSIONAL VALUATION ALONG WITH THIS IRS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS OF AND COMPLY WITH THE PROVISIONS OF REGULATION SECTION 301.6501(C)-1(F).

8. CASH GIFT TO A SECTION 529 PLAN MAKING USE OF FUTURE ANNUAL EXCLUSION GIFTS

CASH GIFT OF $65,000 TO A SECTION 529 PLAN ACCOUNT FOR THE BENEFIT OF [NAME OF 529 ACCOUNT BENEFICIARY]. SAID GIFT SHALL BE TREATED AS BEING MADE RATABLY OVER A FIVE YEAR PERIOD. AS SUCH, $13,000 SHALL BE TREATED AS GIFTED THIS TAXABLE YEAR.

Exhibit F

Actual Schedule A From IRS Form 709

SCHEDULE A **Computation of Taxable Gifts** (Including transfers in trust) (see instructions)

A Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation. . . . . Yes [X] No [ ]

B [ ] ◀ Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

Part 1 - Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	See Attached						
	Total From Continuation Schedule						10,667

Gifts made by spouse - *complete **only** if you are splitting gifts with your spouse and he/she also made gifts.*

	None						

Total of Part 1. Add amounts from Part 1, column H . . . . . ▶ 10,667

Part 2 - Direct Skips. Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	See Attached						
	Total From Continuation Schedule						25,000

Gifts made by spouse - *complete **only** if you are splitting gifts with your spouse and he/she also made gifts.*

	None						

Total of Part 2. Add amounts from Part 2, column H . . . . . ▶ 25,000

Part 3 - Indirect Skips. Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	See Attached						
	Total From Continuation Schedule						119,140

Gifts made by spouse - *complete **only** if you are splitting gifts with your spouse and he/she also made gifts.*

	None						

Total of Part 3. Add amounts from Part 3, column H . . . . . ▶ 119,140

(If more space is needed, attach additional statements.)

Donor: _____ _____

Schedule A part 1

SSN: - -

A Item No.	B Description	D Adjusted Basis	E Date of Gift	F Value of Gift	G Split Gift	H Net Transfer
1	_____ _____ Relationship: Son OUTRIGHT CASH GIFT IN THE AMOUNT OF $6,000. SUCH GIFT IS MADE IN EQUAL AMOUNTS OF $500 ON THE 18TH DAY OF EACH MONTH.	6,000	01/18/2016	6,000	0	6,000
2	_____ _____ Relationship: Son OUTRIGHT CASH GIFT IN THE AMOUNT OF $1,667.	1,667	08/15/2016	1,667	0	1,667
3	_____ _____ Relationship: Son OUTRIGHT CASH GIFT IN THE AMOUNT OF $3,000.	3,000	12/25/2016	3,000	0	3,000

Page Total	10,667
Schedule A Part 1 Total	10,667

Donor: _____ _____

Schedule A part 2

SSN: - -

A Item No.	B Description	C 2632(b) Election out	D Adjusted Basis	E Date of Gift	F Value of Gift	G Split Gift	H Net Transfer
1	_____ _____ Relationship: Granddaughter CASH GIFT OF $40,000 TO A SECTION 529 PLAN MADE IN 2015 FOR THE BENEFIT OF _____. SAID GIFT WAS REPORTED TO BE MADE RATABLY OVER A FIVE YEAR PERIOD. AS SUCH, $8,000 SHALL BE TREATED AS GIFT IN 2016.		8,000	01/01/2016	8,000	0	8,000
2	_____ _____ Relationship: Granddaughter CASH GIFT OF $40,000 TO A SECTION 529 PLAN MADE IN 2015 FOR THE BENEFIT OF _____. SAID GIFT WAS REPORTED TO BE MADE RATABLY OVER A FIVE YEAR PERIOD. AS SUCH, $8,000 SHALL BE TREATED AS GIFT IN 2016.		8,000	01/01/2016	8,000	0	8,000

Page Total 16,000

Donor: _____ _____

Schedule A part 2

SSN: - -

A Item No.	B Description	C 2632(b) Election out	D Adjusted Basis	E Date of Gift	F Value of Gift	G Split Gift	H Net Transfer
3	_____ _____ Relationship: Granddaughter OUTRIGHT CASH GIFT IN THE AMOUNT OF $3,000. SUCH GIFT IS MADE IN EQUAL AMOUNTS OF $250 ON THE 18TH DAY OF EACH MONTH.		3,000	01/18/2016	3,000	0	3,000
4	_____ _____ Relationship: Granddaughter OUTRIGHT CASH GIFT IN THE AMOUNT OF $3,000. SUCH GIFT IS MADE IN EQUAL AMOUNTS OF $250 ON THE 18TH DAY OF EACH MONTH.		3,000	01/18/2016	3,000	0	3,000
5	_____ _____ Relationship: Granddaughter OUTRIGHT CASH GIFT IN THE AMOUNT OF $3,000. SUCH GIFT IS MADE IN EQUAL AMOUNTS OF $250 ON THE 18TH DAY OF EACH MONTH.		3,000	01/18/2016	3,000	0	3,000

Page Total	9,000
Schedule A Part 2 Total	25,000

Donor: _____ _____

Schedule A part 3

SSN: - -

A Item No.	B Description	C 2632(c) Election	D Adjusted Basis	E Date of Gift	F Value of Gift	G Split Gift	H Net Transfer
1	_____ 2016 GRANTOR RETAINED ANNUITY TRUST F/B/O _____. DONOR CONTRIBUTED A THIRTY-THREE (33%) PERCENT INTEREST IN THE _____ INVESTMENT LLC TO THE _____ DATED NOVEMBER 1, 2016, C/O _____, TRUSTEE, _____. (A COPY OF SAID TRUST AGREEMENT IS ANNEXED HERETO AS EXHIBIT A). THE UNDISCOUNTED VALUE OF ONE HUNDRED (100%) PERCENT OF THE LLC INTEREST IS $13,316,576. THE VALUE OF THE GIFT WAS OBTAINED BY A PROFESSIONAL VALUATION (A COPY OF SAID VALUATION IS ANNEXED HERETO AS EXHIBIT B) THAT VALUES A THIRTY-THREE PERCENT INTEREST IN THE LLC AT $3,200,000. SAID PROFESSIONAL VALUATION ALONG WITH THIS FORM 709 AND THE OTHER ATTACHMENTS HERETO ARE INTENDED TO MEET THE REQUIREMENTS AND COMPLY WITH THE PROVISIONS OF REGULATIONS SECTION 301.6501(c)-1(f).						

Page Total 0

Donor: _____ _____

Schedule A part 3

SSN: - -

A Item No.	B Description	C 2632(c) Election	D Adjusted Basis	E Date of Gift	F Value of Gift	G Split Gift	H Net Transfer
1	THE GRANTOR RETAINED THE RIGHT TO RECEIVE AN ANNUITY OF 9.17% OF THE FAIR MARKET VALUE OF THE TRUST VALUED AS OF ITS INCEPTION. THE DONOR'S DATE OF BIRTH IS FEBRUARY 8, 1954. THE TRUST'S DURATION IS TWELVE (12) YEARS. THE VALUATION RATE UNDER SECTION 7250 OF THE CODE FOR NOVEMBER 2016, THE MONTH OF THE TRANSFER, WAS 1.6%. THE VALUE OF THE RETAINED ANNUITY INTEREST IS $3,180,860; THEREFORE, THE VALUE OF THE REMAINDER INTEREST IS $19,140.		869,487	11/01/2016	19,140	0	19,140

Page Total 19,140

Donor: _____ _____

Schedule A part 3

SSN: - -

A Item No.	B Description	C 2632(c) Election	D Adjusted Basis	E Date of Gift	F Value of Gift	G Split Gift	H Net Transfer
2	_____ FAMILY TRUST C/O _____, TRUSTEE _____ PRESENT INTEREST IN CASH GIFT OF $100,000 CONTRIBUTED IN TO THE _____ FAMILY TRUST DATED OCTOBER 2, 2016, C/O _____, TRUSTEE, _____. (A COPY OF THE TRUST AGREEMENT IS ANNEXED HERETO AS EXHIBIT C). UNDER THE TERMS OF THE TRUST, THE FOLLOWING INDIVIDUALS HAD THE RIGHT TO WITHDRAW A PORTION OF THE CONTRIBUTION. Beneficiary / Present Interest _____ _____ / 14,000 Relationship: Son		14,286	12/15/2016	14,286	0	14,286
	_____ _____ / 14,000 Relationship: Granddaughter		14,286	12/15/2016	14,286	0	14,286
					Page Total		28,572

Donor: _____ _____

Schedule A part 3

SSN: - -

A Item No.	B Description	C 2632(c) Election	D Adjusted Basis	E Date of Gift	F Value of Gift	G Split Gift	H Net Transfer
	Beneficiary / Present Interest						
	_____ _____ / 14,000						
	Relationship: Daughter		14,286	12/15/2016	14,286	0	14,286
	_____ _____ / 14,000						
	Relationship: Granddaughter		14,286	12/15/2016	14,286	0	14,286
	_____ _____ / 14,000						
	Relationship: Granddaughter		14,286	12/15/2016	14,286	0	14,286
	_____ _____ / 14,000						
	Relationship: Son		14,286	12/15/2016	14,286	0	14,286
	_____ _____ / 14,000						
	Relationship: Grandson		14,284	12/15/2016	14,284	0	14,284
	Trust/Entity Total for Item 2		100,000		100,000	0	100,000

Page Total 71,428

Schedule A Part 3 Total 119,140

Exhibit G

Rev. Proc. 2000-34

Part III. Administrative, Procedural, and Miscellaneous

26 CFR 601.105: Examination of returns and claims for refund, credit or abatement; determination of correct tax liability. (Also Part I, §§ 2001, 2504, 6501; 20.2001–1, 25.2504–2, 301.6501(c)–1.)

Rev. Proc. 2000–34

SECTION 1. PURPOSE

This revenue procedure provides guidance for submitting the information required under § 6501(c)(9) of the Internal Revenue Code and § 301.6501(c)–1(f) of the Procedure and Administration Regulations to adequately disclose a gift if the information was not initially submitted with a gift tax return filed for the calendar year in which the gift was made. The period of limitations on assessment under § 6501(a) will commence to run with respect to such a gift when the taxpayer adequately discloses the gift on an amended gift tax return filed pursuant to this revenue procedure. The period of assessment will generally expire 3 years after the date such amended return is filed.

SECTION 2. BACKGROUND

Under § 6501(c)(9), as amended by the Taxpayer Relief Act of 1997, 1997–4 (Vol. 1) C.B. 1, 69, and the Internal Revenue Restructuring and Reform Act of 1998, P.L. 105-206, 112 Stat. 685, if the value of a gift is required to be shown on a gift tax return but is not disclosed on the return, or on a statement attached to the return, in a manner adequate to apprise the Internal Revenue Service of the nature of the transfer, the period of limitations on assessment of gift tax with respect to the gift will not begin to run. If the transfer is adequately disclosed on the gift tax return and the period of limitations on assessment of gift tax has expired, then, under § 2504(c), the value of the gift cannot be adjusted for purposes of determining "prior taxable gifts" and the current gift tax liability and, under § 2001(f), the value of the gift cannot be adjusted for purposes of determining "adjusted taxable gifts" and the estate tax liability.

Section 301.6501(c)–1(f)(2) provides that a transfer is adequately disclosed on a return only if it is reported in a manner adequate to apprise the Service of the nature of the gift and the basis for the value reported. Section 301.6501(c)–1(f)(2)(i) through (v) sets forth the information that must be disclosed on the gift tax return, or on a statement attached to the return, to adequately apprise the Service of the nature of the gift and its value.

The period of limitations on assessment of gift tax with respect to a gift will commence to run only if the donor submits the information required under § 301.6501(c)–1(f)(2) to adequately disclose that gift. The general rule under § 6501(a), that gift tax must be assessed within 3 years of the later to occur of the date the gift tax return is filed or due (except as otherwise provided under §§ 6501(c) and(e)), applies from the date the donor submits all the required information for that gift, if that information was not originally submitted with the gift tax return.

SECTION 3. SCOPE

This revenue procedure applies where the donor filed a federal gift tax return (Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return) for the appropriate calendar year but failed to adequately disclose a gift because the gift was not reported on the return or because the information required under § 301.6501(c)–1(f)(2) for the gift was not submitted with the return. This revenue procedure does not apply in any situation where § 6501(c)(1), (c)(2), or (c)(3) applies.

SECTION 4. PROCEDURE

To commence the running of the period of limitations on assessment with respect to a gift that was not adequately disclosed on a federal gift tax return, the donor must file an amended gift tax return for the calendar year in which the gift was made. The amended return must identify the transfer and provide all of the information required under § 301.6501(c)–1(f)(2) that was not previously submitted with the original gift tax return. The amended return must be filed with the same Internal Revenue Service Center where the donor previously filed the gift tax return for the calendar year. The top of the first page of the amended return must have the words "Amended Form 709 for gift(s) made in **[insert the calendar year that the gift was made]** - In accordance with Rev. Proc. 2000–34, 2000–34 I.R.B. 186."

SECTION 5. EFFECTIVE DATE

This revenue procedure is effective with respect to amended returns filed to comply with § 301.6501(c)–1(f)(2) after August 21, 2000. Submissions filed on or before this date to comply with the adequate disclosure requirements under the statute and regulations will be accepted by the Service as effective to commence the running of the period of limitations as of the date filed, provided the submission contains sufficient information to constitute adequate disclosure under § 301.6501(c)–1(f)(2). The taxpayer is not required to conform submissions filed on or before this date to the requirements of this revenue procedure.

SECTION 6. DRAFTING INFORMATION

The principal author of this revenue procedure is William L. Blodgett of the Office of the Associate Chief Counsel (Passthroughs and Special Industries). For further information regarding this revenue procedure contact Mr. Blodgett on (202) 622-3090 (not a toll free call).

Exhibit H

Sample Letter to Accountant Describing Gifts/Transfers in Planning Process

CONNELL FOLEY
A TRADITION OF LEGAL EXCELLENCE SINCE 1938

Connell Foley LLP
56 Livingston Avenue
Roseland, NJ 07068
P 973.535.0500 F 973.535.9217

Anthony F. Vitiello
Partner & Chairman
Tax & Estate Planning Group
avitiello@connellfoley.com

October 30, 2017

VIA FEDEX

_____
_____
_____

Re: Mr. Client and Mrs. Client
Mr. and Mrs. Client's Corporation
Mr. and Mrs. Client's LLC

Dear _____:

I am writing to outline in detail the estate planning that was implemented for Mr. and Mrs. Client during 2016 and to date in 2017 in order to confirm their tax filing and requirements and other ongoing requirements.

TRUST FORMATION

Mr. Client and Mrs. Client Family Trust

On March 5, 2016, Mr. Client and Mrs. Client established the Mr. Client and Mrs. Client Family Trust under New Jersey law (the "Family Trust"). The employer identification number for the Family Trust is xx-xxxxxxxx. Mr. and Mrs. Client's children (the "Children") are the co-trustees of the Family Trust. The Family Trust is a "grantor" type trust. As such, all income will flow through to Mr. Client's and Mrs. Client's personal income tax return.

Mr. Client and Mrs. Client Family Trust II

On March 5, 2016, Mr. Client and Mrs. Client established the Mr. Client and Mrs. Client Family Trust II under New Jersey law (the "Family Trust II"). The employer identification number for the Family Trust II is xx-xxxxxxxx. The Children are the co-trustees of the Family Trust II. The Family Trust II is a "grantor" type trust. As such, all income will flow through to Mr. Client's and Mrs. Client's personal income tax return.

Grantor Retained Annuity Trust (GRATs)

Effective December 31, 2016, Mr. Client and Mrs. Client each established separate grantor retained annuity trusts (GRATs). Each GRAT was formed for the benefit of their Children. The GRATs were formed under New Jersey law and each have a 10 year term. The following are the employer identification numbers for each GRAT:

1. Mr. Client 2016 Grantor Retained Annuity Trust: xx-xxxxxxx; and
2. Mrs. Client 2016 Grantor Retained Annuity Trust: xx-xxxxxxx.

The Children are the co-trustees of each GRAT. The GRATs will be "grantor" type trusts; thus, all income will flow through to Mr. Client's and Mrs. Client's personal income tax return as if no transfers are made for income tax purposes.

ENTITY FORMATION

Mr. and Mrs. Client's LLC II

On January 2, 2017, the Family Trust II formed Mr. and Mrs. Client's LLC II, a Pennsylvania limited liability company. The Family Trust II was the initial member of this LLC.

The employer identification number assigned to the LLC is xx-xxxxxxxx.

RECAPITALIZATION

On April 20, 2016, the shareholders and directors of Mr. and Mrs. Client's Corporation (the "Corporation") approved a Plan of Reclassification of the Corporation which occurred on May 6, 2016.

Prior to the recapitalization, the total number of shares outstanding was 100 and was owned as follows:

Shareholder	Number of Shares	Percentage
Mr. Client	51	51%
Mrs. Client	39	39%
Mr. Client's Son	5	5%
Mr. Client's Daughter	5	5%
Total	100	100%

Pursuant to the Plan of Reclassification, the Corporation was authorized to issue 10,000 shares of stock, with 1,000 shares of Class A Voting common stock and 9,000 shares of Class B Non-voting common stock. Subsequent to the recapitalization on May 6, 2016, the ownership of the outstanding shares was as follows:

Shareholder	Class A Voting Common Stock	Class B Non-Voting Common Stock	Total Number of Shares	Percentage
Mr. Client	510	4,590	5,100	51%
Mrs. Client	390	3,510	3,900	39%
Mr. Client's Son	50	450	500	5%
Mr. Client's Daughter	50	450	500	5%
Total	1,000	9,000	10,000	100%

The recapitalization of the Corporation's stock was a tax-free transaction. As a result, no income should be recognized.

ASSIGNMENTS

Mr. and Mrs. Client's Corporation

Effective December 31, 2016, Mr. Client **gifted** 4,590 shares of Class B Non-voting common stock in the Corporation to the Mr. Client 2016 Grantor Retained Annuity Trust ("Mr. Client's GRAT").

Effective December 31, 2016, Mrs. Client **gifted** 390 shares of Class A Voting common stock and 3,510 shares of Class B Non-voting common stock in the Corporation to the Mrs. Client 2016 Grantor Retained Annuity Trust ("Mrs. Client's GRAT").

Effective December 31, 2016, the Children each **sold** 50 shares of Class A Voting stock and 450 shares of Class B Non-voting common stock in the Corporation to the Family Trust II for $170,000. In order to fund the 10% down payment of the purchase price, Mr. Client **gifted** $34,000 to the Family Trust II. The balance of the purchase price of each sale is memorialized by separate promissory notes from the Family Trust II to the Children. Interest on the outstanding balance accrues annually at 2.85% and must be paid by December 31st of each year, beginning on December 31, 2017. The notes mature on December 31, 2025, at which time the principal balance plus any accrued but unpaid interest will be due. A copy of the interest accrual schedule is enclosed for your convenience. Please note that the Children will be obligated to recognize any gain as well as the interest income in connection with this transaction.

As of the close of business on December 31, 2016, the ownership of the Corporation was, and still is, as follows:

Shareholder	Class A Voting Common Stock	Class B Non-Voting Common Stock	Total Number of Shares	Percentage
Mr. Client	510	0	510	5.1%
Mr. Client 2016 Grantor Retained Annuity Trust	0	4,590	4,590	45.9%

Mrs. Client 2016 Grantor Retained Annuity Trust	390	3,510	3,900	39%
Mr. Client and Mrs. Client Family Trust II	100	900	1,000	10%
Total	1,000	9,000	10,000	100%

Mr. and Mrs. Client's LLC I

Effective December 31, 2016, both Mr. Client and Mrs. Client **gifted** their 20% interests in Mr. and Mrs. Client's LLC I to the Family Trust II. The interests transferred by Mr. Client and Mrs. Client do not include their excess capital contributions nor the cumulative preferred return due on such excess capital contributions. As such, Mr. Client and Mrs. Client continue to own a profits interest in Mr. and Mrs. Client's LLC I.

Effective December 31, 2016, the Children each **sold** their 30% interests in Mr. and Mrs. Client's LLC I to the Family Trust II for $15,000. In order to fund the entire purchase price, Mr. Client **gifted** an additional $30,000 to the Family Trust II. Please note that Children will be obligated to recognize any gain in connection with this transaction.

On January 1, 2017, the Family Trust II assigned a 1% interest in Mr. and Mrs. Client's LLC I to the Family Trust.

As of the close of business on January 1, 2017, the ownership of Mr. and Mrs. Client's LLC I was, and still is, as follows:

Member	Percentage
Mr. Client and Mrs. Client Family Trust II	99%
Mr. Client and Mrs. Client Family Trust	1%
Total	100%

Please note, however, that Mr. Client and Mrs. Client remain entitled to their excess capital contributions and the corresponding cumulative preferred return. Thus, any profits and losses of the Corporation will be attributable to them in accordance with such interests.

Mr. and Mrs. Client's LLC II

On January 15, 2017, the Family Trust II transferred a 1% interest in Mr. and Mrs. Client's LLC II to the Family Trust. As of the close of business on January 15, 2017, ownership of Mr. and Mrs. Client's LLC II was, and still is, as follows:

Member	Percentage
Mr. Client and Mrs. Client Family Trust II	99%
Mr. Client and Mrs. Client Family Trust	1%
Total	100%

GRAT ANNUITY PAYMENTS

Pursuant to the terms of Mr. Client's GRAT, Mr. Client will be entitled to an annuity payment of $181,477.46, beginning on December 31, 2017 and ending on December 31, 2026.

Pursuant to the terms of Mrs. Client's GRAT, Mrs. Client will be entitled to an annuity payment of $154,264.50, beginning on December 31, 2017 and ending on December 31, 2026.

Please note that the annuity payments to Mr. Client and Mrs. Client do not have to be reported as income because such payments are deemed a non-event for income tax purposes as a transaction between the same person. See IRS Rev. Rul. 85-13.

Please also note that if Mr. Client and/or Mrs. Client do not survive the 10-year period, their respective estates must still receive their respective annuity payments for the remaining period on their respective GRATs.

TAX FILINGS TO BE PREPARED AND OTHER ONGOING REQUIREMENTS

Mr. Client and Mrs. Client Family Trust

This Trust is intended to hold the insurance policies on Mr. Client's and Mrs. Client's lives (i.e., single-life term and second-to die). Mr. Client and Mrs. Client could, on an annual basis, contribute the maximum amount allowable under the federal gift tax annual exclusion to this Trust in order to fund the insurance policy premiums and to maximize their tax-free gifting capabilities. Based upon the 2017 gift tax annual exclusion of $14,000, Mr. Client and Mrs. Client can each contribute $112,000 to this Trust ($14,000 for each child and $14,000 for each grandchild) for a total transfer of $224,000 per year. At a minimum, the gift must equal $33,870 (the total insurance premiums due annually on the term policies), but they can choose to gift up to another $190,130 or any amount in between that number and zero.

The Family Trust is a grantor trust. As such, all income will flow through to Mr. Client's and Mrs. Client's personal income tax return as if no transfer was made for income tax purposes.

Nonetheless, in any year in which it earns income, for informational purposes only, the Family Trust must file a federal Form 1041 and New Jersey fiduciary income tax return, attaching a grantor trust statement to each. As a shareholder of the Corporation and an owner of Mr. and Mrs. Client's LLC I and Mr. and Mrs. Client's LLC II, each Pennsylvania entities, the Family Trust will also have to file a Pennsylvania fiduciary income tax return for 2017 and subsequent years. It may be a wise and defensive step to file a federal Form 1041 as well as a New Jersey fiduciary income tax return for 2016 even though no income tax will be due. This will ensure that each year of the Trust's existence there is a corresponding return. ***We ask that you prepare the necessary returns for 2016 and subsequent years.***

Mr. Client and Mrs. Client Family Trust II

The Family Trust II is a grantor trust. As such, all income will flow through to Mr. Client's and Mrs. Client's personal income tax return as if no transfer was made for income tax purposes.

Nonetheless, in any year in which it earns income, for informational purposes only, the Family Trust II must file a federal Form 1041 and New Jersey fiduciary income tax return, attaching a grantor trust statement to each. As a shareholder of the Corporation and an owner of Mr. and Mrs. Client's LLC I and Mr. and Mrs. Client's LLC II, each Pennsylvania entities, the Family Trust II will also have to file a Pennsylvania fiduciary income tax return for 2017 and subsequent years. It may be a wise and defensive step to file a federal Form 1041 as well as a New Jersey fiduciary income tax return for 2016 even though no income tax will be due. This will ensure that each year of the Trust's existence there is a corresponding return. ***We ask that you prepare the necessary returns for 2016 and subsequent years.***

GRATs

Because the GRATs are designed to be grantor trusts, all income earned by the GRATs will flow through to Mr. Client's and Mrs. Client's personal income tax return.

Each GRAT will have to file a federal Form 1041 and New Jersey fiduciary income tax return for tax year 2017 and going forward since it will have taxable income in 2017. As a shareholder of the Corporation, a Pennsylvania entity, each GRAT will also have to file a Pennsylvania fiduciary income tax return for 2017 and subsequent years. It may be a wise and defensive step for each GRAT to file a federal Form 1041 as well as a New Jersey fiduciary income tax return for 2016 even though no income tax will be due. This will ensure that each year of the Trusts' existence there are corresponding returns. ***We ask that you prepare these returns for 2016 and subsequent years.***

Mr. and Mrs. Client's Corporation

The Corporation must continue to file its federal and state income tax returns. ***We assume you will continue to prepare these returns for 2016 and subsequent years.***

Given that the GRATs and the Family Trust II are grantor trusts during the lives of the Settlor(s), no special election needs to be made to preserve the S corporation election. At the death of a Settlor, we will need to revisit this issue to ensure S corporation compliance.

Reporting the Reclassification of the Corporation's Stock

The Treasury Regulations provide that the Corporation must include a statement with its return for the taxable year of the exchange titled "STATEMENT PURSUANT TO §1.368-3(a) BY MR. AND MRS. CLIENT'S CORPORATION, EIN: xx-xxxxxxx, A CORPORATION A PARTY TO A REORGANIZATION." The statement must include the following: (i) the names and employer identification numbers (if any) of all parties; (ii) the date of the reorganization; and (iii) the

aggregate fair market value and basis, determined immediately before the exchange, of the assets, stock or securities of the Corporation. I have enclosed a sample statement to be included with the Corporation's income tax return.

Treasury Regulation Section 1.6043-4 also contains reporting requirements for corporations that undergo substantial changes in capital structure and require the filing of a Form 8806. However, recapitalizations are not identified as a change in capital structure. See Treas. Reg. § 1.6043-4(d)(2). Therefore, the Form 8806 does not have to be filed.

Mr. and Mrs. Client's LLC I

The LLC must continue to file its federal and state income tax returns. ***We assume you will continue to prepare these returns for 2016 and subsequent years.***

Please note that beginning with the 2017 tax year filings, the LLC will be owned by the Family Trust and Family Trust II. Please be sure to allocate the LLC's tax attributes to each Trust in accordance with their respective interests.

Mr. and Mrs. Client's LLC II

Beginning in the tax year 2017, the LLC will be required federal and state income tax returns. ***We ask that you prepare the necessary returns for 2017 and subsequent years.***

Sales by Children

The sales by the Children of their interests in the Corporation and the LLC are reportable by both Children. If there is any gain attributable to these sales, such gains must be reported on their personal income tax returns. Furthermore, any interest paid to the Children must be reported by each of them as interest income.

Gifts by Mr. Client and Mrs. Client

The 2016 transfers by Mr. Client and Mrs. Client of their interests in the Corporation and the LLC to the GRATs and the Family Trust II, respectively, are gifts. The cash transfers made by Mr. Client to the Family Trust II in order to fund the purchases of the Children's interests in the Corporation and the LLC are also gifts. ***We suggest that we prepare the 2016 gift tax returns documenting these transfers and will forward copies to you for your records. After this first filing, you may want to take over the annual gift tax return preparation.***

CONCLUSION

In sum, we request that you prepare the fiduciary income tax returns for the Family Trust, the Family Trust II and the GRATS and the initial tax returns for Mr. and Mrs. Client's LLC II. We also assume that you will continue to prepare the income tax returns for the Corporation and Mr. and Mrs. Client's LLC I. ***We request that you send us drafts of each return you***

prepare <u>prior</u> to filing (at least in the first year) and then copies for our files each subsequent year.

Should you have any questions or require additional information, please do not hesitate to contact me.

Very truly yours,

CONNELL FOLEY LLP

ANTHONY F. VITIELLO

AFV:zc
Enclosures

cc: Mr. and Mrs. Mr. Client (w/enclosures)
Mr. and Mrs. Client's Children (w/enclosures)

Promissory Note from Mr. Client and
Mrs. Client Family Trust II to Mr. and Mrs. Client's son

Interest Accrual Schedule

	Payment Due Date	Beginning Balance	Rate	Interest	Principal	Ending Balance
1	12/31/2017	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
2	12/31/2018	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
3	12/31/2019	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
4	12/31/2020	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
5	12/31/2021	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
6	12/31/2022	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
7	12/31/2023	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
8	12/31/2024	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
9	12/31/2025	$ 153,000.00	2.85%	$ 4,360.50	$153,000.00	$ -
Totals				**$39,244.50**	**$153,000.00**	

Promissory Note From Mr. Client and
Mrs. Client Family Trust II to Mr. and Mrs. Client's daughter

Interest Accrual Schedule

	Payment Due Date	Beginning Balance	Rate	Interest	Principal	Ending Balance
1	12/31/2017	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
2	12/31/2018	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
3	12/31/2019	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
4	12/31/2020	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
5	12/31/2021	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
6	12/31/2022	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
7	12/31/2023	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
8	12/31/2024	$ 153,000.00	2.85%	$ 4,360.50	$ -	$ 153,000.00
9	12/31/2025	$ 153,000.00	2.85%	$ 4,360.50	$153,000.00	$ -
Totals				**$39,244.50**	**$153,000.00**	

STATEMENT PURSUANT TO §1.368-3(a) BY MR. AND MRS. CLIENT'S CORPORATION
EIN: xx-xxxxxxx
A CORPORATION A PARTY TO A REORGANIZATION

1. Name of Party to Reorganization: Mr. and Mrs. Client's Corporation

2. Employer Identification Number: xx-xxxxxxx.

3. Date of Reorganization: May 6, 2016.

4. Aggregate fair market value of stock of Mr. and Mrs. Client's Corporation (determined immediately before the exchange): _____.

5. Aggregate basis of stock of Mr. and Mrs. Client's Corporation (determined immediately before the exchange): _____.

Exhibit I

Notice 2017-15

Notice 2017-15

PURPOSE

This notice provides guidance on the application of the decision in United States v. Windsor, 570 U.S. ___, 133 S. Ct. 2675 (2013), and the holdings of Revenue Ruling 2013-17, 2013-38 I.R.B. 201, to the rules regarding the applicable exclusion amount under §§ 2010(c) and 2505 of the Internal Revenue Code (Code), and the generation-skipping transfer (GST) exemption under § 2631, as they relate to certain gifts, bequests, and generation-skipping transfers by (or to) same-sex spouses. In particular, this notice provides special administrative procedures allowing certain taxpayers and the executors of certain taxpayers' estates to recalculate a taxpayer's remaining applicable exclusion amount and remaining GST exemption to the extent an allocation of that exclusion or exemption was made to certain transfers made while the taxpayer was married to a person of the same sex.

With respect to the applicable exclusion amount applied to a transfer between spouses that did not qualify for the marital deduction for federal estate or gift tax purposes at the time of the transfer, based solely on the application of the Defense of

Marriage Act (DOMA), Public Law 104-199 (110 Stat. 2419), taxpayers will be permitted to establish that transfer's qualification for the marital deduction and to recover the applicable exclusion amount previously applied on a return by reason of such a transfer, even if the limitations period applicable to that return for the assessment of tax or for claiming a credit or refund of tax under §§ 6501 or 6511, respectively, has expired. If, however, qualification for the marital deduction or a reverse qualified terminable interest property (QTIP) election would require a QTIP, qualified domestic trust (QDOT), or reverse QTIP election, such taxpayers will have to request relief pursuant to § 301.9100-3 of the Procedure and Administration Regulations to make such an election.

With respect to a taxpayer's GST exemption that was allocated to transfers made, prior to the recognition of same-sex marriages for federal tax purposes, to or for the benefit of one or more persons in a same-sex marriage and/or any other person(s) whose generation assignment is determined under § 2651 with reference to a same-sex spouse, certain exemption allocations to transfers to persons now recognized to be non-skip persons as defined in § 2613(b) will be deemed void. Accordingly, taxpayers who made such a transfer will be permitted to recalculate the amount of their remaining GST exemption.

BACKGROUND

Prior to the decision of the Supreme Court in Windsor, the Internal Revenue Service (IRS) interpreted section 3 of DOMA as prohibiting it from recognizing same-sex marriages for federal tax purposes. Specifically, section 3 of DOMA provided that:

> In determining the meaning of any Act of Congress, or of any ruling, regulation, or interpretation of the various administrative bureaus and agencies of the United States, the word 'marriage' means only a legal union between one man and one woman as husband and wife, and the word 'spouse' refers only to a person of the opposite sex who is a husband or a wife.

1 U.S.C. § 7.

As a result, taxpayers in a same-sex marriage were not treated as married for purposes of gift, estate, and GST taxes and were not entitled to claim a marital deduction for gifts or bequests to each other. Those taxpayers were required to use their applicable exclusion amount under § 2505 or § 2010(c) to defray any gift or estate tax imposed on the transfer or were required to pay gift or estate taxes, to the extent the taxpayer's exclusion previously had been exhausted. Further, taxpayers in a same-sex marriage were not allowed to determine generation assignments for GST tax purposes based on a familial relationship with the spouse rather than on age.

In Windsor, the Supreme Court held that section 3 of DOMA is unconstitutional because it violates the principles of equal protection. Subsequently, the IRS issued Revenue Ruling 2013-17, which provides that, for federal tax purposes, the terms "spouse," "husband and wife," "husband," and "wife" include an individual married to a person of the same sex if the individuals are lawfully married under state law, and the term "marriage" includes such a marriage between individuals of the same sex. Revenue Ruling 2013-17 also provides a general rule recognizing a marriage of same-sex individuals that was validly entered into in a state whose laws authorize the marriage of two individuals of the same sex even if the married couple is domiciled in a state that does not recognize the validity of same-sex marriages. In addition, the terms

"spouse," "husband and wife," "husband," and "wife" do not include individuals (whether of the opposite sex or the same sex) who have entered into a registered domestic partnership, civil union, or other similar formal relationship recognized under state law that is not denominated as a marriage under the laws of that state, and the term "marriage" does not include such formal relationships.

Revenue Ruling 2013-17 provides that its holdings will be applied prospectively as of September 16, 2013, the date of its publication in the Internal Revenue Bulletin. Taxpayers in a same-sex marriage recognized under state law may rely upon the revenue ruling to file original, amended, or adjusted returns, or claims for credits or refunds for any overpayment of tax resulting from the holdings in the revenue ruling, provided that the applicable limitations period for filing such a claim under § 6511 has not expired.

On September 2, 2016, the Department of the Treasury (Treasury Department) and the IRS published in the Federal Register (81 FR 60609-01) final regulations (T.D. 9785) amending the regulations under § 7701 to provide that, for federal tax purposes, the terms "spouse," "husband," and "wife" mean an individual lawfully married to another individual, and the term "husband and wife" means two individuals lawfully married to each other. See also § 301.7701-18. In addition, the final regulations provide that a marriage of two individuals will be recognized for federal tax purposes if that marriage would be recognized by the state, possession, or territory of the United States in which the marriage is entered into, regardless of the domicile of the parties to the marriage or, for a foreign marriage, if the relationship would be recognized as

marriage by at least one state, possession, or territory of the United States, regardless of the domicile of the parties. Finally, the final regulations clarify that the term "marriage" does not include registered domestic partnerships, civil unions, or other similar relationships recognized under state law that are not denominated as a marriage under that state's law, and the terms "spouse," "husband and wife," "husband," and "wife" do not include individuals who have entered into such a relationship.

SPECIAL ADMINISTRATIVE PROCEDURES

1. Marital Deduction and Applicable Exclusion Amount

Section 2001(a) imposes an estate tax on the transfer of the taxable estate of every decedent who is a citizen or resident of the United States. Section 2010(a) provides that a credit of the applicable credit amount is allowed to the estate of every decedent against the tax imposed by § 2001. Section 2010(c)(1) defines the applicable credit amount as the amount of the tentative tax that would be determined under § 2001(c) if the amount with respect to which such tentative tax is to be computed were equal to the applicable exclusion amount. Section 2010(c)(2) defines the applicable exclusion amount as the sum of the basic exclusion amount of $5,000,000 (as increased for inflation) and the deceased spousal unused exclusion amount. Section 2056(a) provides that, except as limited for certain terminable interests, the value of the decedent's taxable estate is determined by deducting from the value of the gross estate the value of all interests in property passing from the decedent to the surviving spouse (estate tax marital deduction), assuming all requirements for that deduction are satisfied.

Section 2501 imposes a gift tax for each calendar year on the transfer of property by gift during such calendar year by any individual. Section 2502 provides that the tax imposed by § 2501 for each calendar year 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. Under section 2505(a), in the case of a citizen or resident of the United States, a credit is allowed against the tax imposed by § 2501 for each calendar year in an amount equal to (1) the applicable credit amount in effect under § 2010(c) that would apply if the donor died at the end of the calendar year, reduced by (2) the sum of the amounts allowable as a credit to the individual under § 2505 for all preceding calendar periods. Section 2523(a) provides that, when a donor transfers an interest in property by gift to a donee who is then the donor's spouse, the amount of the donor's taxable gifts for that calendar year is reduced by the total value of such gifts to the donor's spouse (gift tax marital deduction), assuming that the other requirements for that deduction are satisfied.

For example, when a married individual (A) makes a gift or bequest to A's spouse (B), A is entitled to claim a gift or estate tax marital deduction for the gift or bequest under § 2523 or § 2056 if the requirements of those sections are satisfied. Because of this marital deduction, A does not have to use any of A's applicable exclusion amount to exclude that spousal transfer from tax, thus preserving A's applicable exclusion amount for other gifts and bequests. Prior to the decision in

Windsor, if A and B were of the same sex, A was not allowed to claim the marital deduction for a transfer to B, and A's applicable exclusion amount (if any) would have been applied automatically to reduce the amount of the gift or estate tax due.

Applicable law provides that, as long as the limitations period for filing claims of credits or refunds under § 6511 has not expired, a taxpayer may file an amended Form 709 (United States Gift (and Generation-Skipping Transfer) Tax Return) or a supplemental Form 706 (United States Estate (and Generation-Skipping Transfer) Tax Return) to claim the marital deduction for a gift or bequest to the taxpayer's same-sex spouse and to restore the applicable exclusion amount allocated to that transfer. If the limitations period has expired, this notice allows the taxpayer to recalculate the taxpayer's remaining applicable exclusion amount as a result of recognizing the taxpayer's marriage to the taxpayer's spouse. However, once the limitations period on assessment of tax has expired, neither the value of the transferred interest nor any position concerning a legal issue (other than the existence of the marriage) related to the transfer can be changed pursuant to this notice. See §§ 2001(f), 2504(c), 6501(c)(9) and the regulations thereunder. Similarly, no credit or refund of the tax paid on that marital gift can be given once the limitations period on claims for credit or refund has expired.

In the interest of providing certainty and to ease the administrative burden on both the taxpayer and IRS, a taxpayer must recalculate the taxpayer's remaining applicable exclusion amount, in accordance with IRS forms and instructions, on a Form 709 (preferably, the first Form 709 required to be filed by the taxpayer after the issuance

of this notice), on an amended Form 709 (if the limitations period under § 6511 has not expired), or on the Form 706 for the taxpayer's estate if not reported on a Form 709. Unless a taxpayer has predeceased this notice, it is not necessary to file an amended or supplemental return solely to report the increase in available applicable exclusion amount as a result of this administrative guidance. The taxpayer should include a statement at the top of the Form 706 or Form 709 that the return is "FILED PURSUANT TO NOTICE 2017-15." Moreover, the taxpayer must attach a statement supporting the claim for the marital deduction and detailing the recalculation of the taxpayer's remaining applicable exclusion amount as directed in forms and instructions issued by the IRS. If a QTIP or QDOT election is required in order to obtain the marital deduction, a separate request for relief pursuant to § 301.9100-3 must be submitted. The IRS will provide on www.irs.gov a worksheet and instructions to the Form 706 and Form 709 to properly compute and report the recalculated applicable exclusion amount.

The provisions of this section 1 apply both to the recalculation of the remaining applicable exclusion amount of a taxpayer (whether living or deceased), as well as to the recalculation of any deceased spousal exclusion amount allowed to be included in the applicable exclusion amount of that taxpayer's surviving spouse.

While this notice allows taxpayers to recalculate their remaining applicable exclusion amount as a result of the allowance of a marital deduction, it does not extend the applicable time limits on electing to split gifts made by a spouse under § 2513. In addition, any claims for credit or refund of gift or estate tax filed after the expiration of the limitations period under § 6511 will be denied. Any unrefunded gift tax paid on a gift

to a same-sex spouse, for which the limitations period under § 6511 has expired, will continue to be recognized as gift tax paid or payable for purposes of the computation of the estate tax under § 2001.

2. GST Exemption and Generation Assignments

Section 2601 imposes a tax on all generation-skipping transfers. Section 2611(a) provides that a "generation-skipping transfer" is a taxable distribution, a taxable termination, or a direct skip, all of which are transfers to or for the benefit of one or more skip persons. Section 2613(a) provides that a skip person is (1) a person assigned to a generation that is two or more generations below the generation assignment of the transferor, or (2) a trust (A) if all interests in such trust are held by skip persons, or (B) if (i) there is no person holding an interest in such trust, and (ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a non-skip person.

A person's generation is determined under § 2651 based on the transferee's familial relationship to the transferor or the transferor's spouse, or if there is no such relationship, then based on the difference in age between the transferor and transferee. For purposes of the GST generation assignment rules, family members of the transferor include the transferor's spouse and each lineal descendant of a grandparent of the transferor or the transferor's spouse. The generation assignment of each family member other than a spouse is determined by comparing the number of generations between the transferee and a grandparent of the transferee (or of the transferee's spouse or former spouse) with the number of generations between that grandparent

and the transferor (or the transferor's spouse or former spouse). Spouses are assigned to the same generation: an individual who has been married at any time to the transferor is assigned to the transferor's generation, and an individual who has been married at any time to a lineal descendant of a grandparent of the transferor (or of the transferor's spouse or former spouse) is assigned to the generation of that lineal descendant. Finally, a relationship by legal adoption or by the half-blood is treated as a relationship by blood.

Section 2651(d) provides that an individual who is not assigned to a generation by reason of the family relationships described in the preceding paragraph shall be assigned to a generation on the basis of the date of such individual's birth. An individual born not more than 12½ years after the date of birth of the transferor is assigned to the transferor's generation. An individual born more than 12½ years but not more than 37½ years after the transferor is assigned to the first generation younger than the transferor. A new generation begins every 25 years thereafter.

Under § 2631, every individual is allowed a GST exemption amount which may be allocated by such individual to any property with respect to which such individual is the transferor.

Section 26.2632-1(b)(4)(i) of the Generation-Skipping Transfer Tax Regulations provides that an allocation of GST exemption to a trust is void to the extent that the amount allocated exceeds the amount necessary to obtain an inclusion ratio of zero with respect to the trust. An allocation also is void if the allocation is made with respect to a trust that, at the time of the allocation, has no GST potential with respect to the

transferor whose exemption was allocated. For this purpose, a trust has GST potential even if the possibility of a GST is so remote as to be negligible. Under this rule, an allocation made to a trust with one or more skip persons as beneficiaries is not void.

Prior to the decision in Windsor, if a married individual (A) made a gift to A's same-sex spouse (B) or to a lineal descendant of B, B and B's descendants would be assigned to a generation for GST tax purposes based upon their ages, because they had no familial relationship to A that was recognized for federal tax purposes. If those generation assignments resulted in B or any of B's descendants being skip persons, A's gift could be subject to GST tax except to the extent A allocated A's GST exemption to the gift (or to the recipient trust). One result of the Windsor decision, however, is that the generation assignments of B and B's lineal descendants instead are established based on their familial relationship with A by reason of A and B's marriage. Accordingly, B is in the same generation as A, so neither B nor any of B's children are skip persons, A's gifts (or transfers on death) to them are not subject to GST tax, and any of A's GST exemption allocated to such transfers (or made to a trust solely for those individuals) is void.

In light of the Windsor decision, the Treasury Department and the IRS conclude that any allocation of GST exemption to a transfer also is void if the transfer is a direct skip not in trust to B or to a lineal descendant of B (or such descendant's spouse) who is not a skip person with regard to transfers from A.

These rules apply to allocations of a taxpayer's GST exemption made on a return filed, or by operation of law as of a date, before the issuance of this notice, whether or

not the limitations period on claims for credits or refunds under § 6511 has expired. This notice also permits a taxpayer to reduce his or her GST exemption allocated to transfers that were made to or for the benefit of transferees whose generation assignment is changed as a result of the Windsor decision. This notice is limited to the recalculation of the taxpayer's GST exemption that was allocated to a transfer to (or to a trust for the sole benefit of) one or more transferees whose generation assignment for purposes of that exemption allocation should have been determined on the basis of a familial relationship as the result of the Windsor decision, and who therefore are non-skip persons.

In the interest of providing certainty and to ease the administrative burden on both the taxpayer and IRS, a taxpayer should recalculate (also taking into account the GST implications of any interim transfers), in accordance with IRS forms and instructions, and report such taxpayer's available GST exemption based upon that recalculation, on a Form 709 (preferably, the first Form 709 required to be filed by the taxpayer after the issuance of this notice), on an amended Form 709 (if the limitations period under § 6511 has not expired), or on the Form 706 for the taxpayer's estate if not reported on a Form 709. Unless a taxpayer has predeceased this notice, it is not necessary to file an amended or supplemental return solely to report the increase in available GST exemption as a result of this notice. Chapter 13 of the Code, and the regulations thereunder, shall apply to the allocation of a taxpayer's newly recalculated GST exemption. A request for relief under § 301.9100-3 is not required. Rather, the taxpayer should include a statement at the top of the Form 706 or Form 709 that the

return is "FILED PURSUANT TO NOTICE 2017-15." Moreover, the taxpayer should attach a statement that the taxpayer's allocation of GST exemption in a prior year is void pursuant to this notice and a copy of the computation of the resulting exemption allocation(s) and the amount of exemption remaining available to that taxpayer. The IRS will provide on www.irs.gov a worksheet and instructions to the Form 706 and Form 709 to be used to properly recalculate the remaining exemption amount.

Notwithstanding the recalculation of GST exemption under this notice, a claim for a credit or refund resulting from this notice will be denied if the claim is not filed within the applicable period of limitations under § 6511.

DRAFTING INFORMATION

The principal authors of this notice are Juli Ro Kim and Mayer Samuels of the Office of Associate Chief Counsel (Passthroughs & Special Industries). For further information regarding this notice, contact Ms. Kim or Mr. Samuels at (202) 317-6859 (not a toll-free call).