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IRS Mines Real Estate Deeds To Collect Gift Tax

The seamless flow of information between local, state and federal governments is unsettling, especially since it often means tax bills from one or the other. Now, there's a new fear: Local property transfers show up in county recorder or property tax offices, and the IRS is mining them for gift tax compliance. See IRS Scrutinizes Gifts of Real Estate.

Land-transfer records help the IRS catch family gifts of real estate on which gift tax wasn't paid. You may think gifts are never caught, and that the gift tax is the most notoriously uncollected tax. The latter is true, but that's changing.

After all, with the year-end estate tax compromise, estate and gift tax planning in 2011 and 2012 is going great guns. Many families are giving big. You can give up to $5 million with no tax, but any gift to one person more than the $13,000 annual exclusion threshold triggers a filing requirement.

Of course, the lifetime gift tax exemption equivalent was struck at only $1 million from 2002 through 2010. The IRS is well aware that a transfer of real estate, especially during the real estate boom, may easily use up or exceed that exemption. Although transfers to spouses generally qualify for the gift tax marital deduction, gifts to other individuals are subject to tax. Accordingly, the IRS is focusing on property gifted to children, grandchildren, and other beneficiaries.

Not all states are happily swapping data, so that's at least something. In fact, the IRS is trying to obtain a treasure trove of data from California's State Board of Equalization, but California seems reluctant to play ball. The IRS asked a federal judge for a John Doe summons to serve on California's State Board of Equalization, claiming it needs the summons because California law otherwise prohibits disclosure of personal information. The IRS filing refers to an IRS program to ferret out those who haven't filed gift and generation-skipping tax returns. Fortunately, the judge denied the IRS's petition, finding that the government failed to show information it sought was not available from other sources.

Despite the California brouhaha, many states fork over information to the IRS: Connecticut, Florida, Hawaii, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Texas, Virginia, Washington and Wisconsin. The IRS claims noncompliance rates of 60% in Connecticut, 90% in Florida, 60% Nebraska, 100% in Ohio, 90% in Virginia, 80% in Washington, and 50% in Wisconsin.

Gift Tax Returns? The conventional wisdom among tax lawyers is to file those gift tax returns! You want to do so for several reasons. One, it gets the statute of limitations running, which is generally three years after the filing of the return. If you don't file a return, the statute of limitations never begins to run so the IRS can perennially audit. See What Triggers IRS Statute Of Limitations?

Second, if there's anything ***odd*** about the gift—even an annual exclusion gift that hinges on valuation—you should file the return. If you give someone $13,000 worth of real estate, you could argue that there's no need to file, since the gift does not exceed the annual exclusion. But file it anyway. You don't want to later have to fight about the value of the property when the gift was made.

For more, see:

IRS Scrutinizes Gifts of Real Estate

Eight Tips From the IRS to Help You Determine if Your Gift is Taxable

IRS: Gift Tax FAQs

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