Wednesday, May 11, 2011

Federal Government Targets Gift Tax Evaders

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On Dec. 27, 2010, Internal Revenue Service filed a federal court petition to obtain from the California Board of Equalization names and property information relating to real property transfers from parents to children and grandparents to grandchildren. See *In Re the Tax Liabilities of John Does*, E.D. Cal., No. 2:10-mc-00130-MCE-EFB, Dec. 27, 2011. This information will be used to identify people who transferred property without reporting the gift on a federal gift tax return (IRS Form 709). The IRS estimates that between 60 to 90 percent of taxpayers who transfer real estate as gifts fail to report the transfers.

Taxpayers have long known that banks and other institutions did not report gifts of $10,000 or more to the IRS; nor was any county reporting gratuitous transfers of real estate to the IRS. Taxpayers, therefore, assumed that gifts were simply not being reported. On April 2, 2000, *The New York Times* reported that IRS studies reflected a staggering 80 percent error rate in the value of gifts reported to the IRS; and that each audit, on average, yielded $167,000 in additional gift taxes. In November 2007, the U.S. Department of Treasury's Office of Tax Policy issued a report (*"The Federal Gift Tax: History, Law, and Economics"*; OTA Paper 100) that estimated the average gift tax generated during the IRS' 2005 fiscal year was $316,000 per audit. Since only 1 percent of gift tax returns are audited, the report concluded that potential revenue could be far more than the nearly three quarters of one billion dollars in additional gift taxes assessed by the IRS from audits.

Interestingly, these monumental figures were computed only from gifts *declared* on gift tax returns. The IRS must have known that *undeclared gifts* were causing an even greater revenue loss than undervalued, but reported, gifts.

In tracking unreported gifts, the IRS has an advantage in going after California gift tax evaders. That advantage is due to our property tax system, in which the real property's assessed value (for property tax purposes) remains unchanged if the transfer is made to the child from the parent (or grandparent if the parent of the recipient is dead). Property taxes generally increase upon sale or transfer of a property. However, in transfers to children, to keep the assessed value unchanged, the transferor must declare, *under penalty of perjury*, that the transfer is between parents and children (or grandparents and grandchildren if the parent is deceased). Also, to avoid the imposition of city and county documentary transfer taxes, the transferor must also, *under penalty of perjury*, declare that the property is transferred as a "bona fide gift" and that he or she "has received nothing in return."

With both statements made under penalty of perjury, in publicly available records, and in relation to property that can be readily valued based upon sales of comparable properties, the IRS is easily able to locate the transfers with the most gift tax potential.

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Are the Dodgers' financial problems a case of delayed retribution for how Dodger Stadium came about? By Gideon Kanner of Loyola Law School

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Leon Snaid writes in response to "Death of Osama bin Laden: Could There Have Been a Trial?"

Criminal
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A committee of federal judges is considering whether to create a new "alternate" public defender's office in the Central District of California that would be independent of the existing institution.

Judge Bars Gang Injunction Enforcement
A federal judge has approved an unusual permanent injunction against the Orange County district attorney, barring him from enforcing a gang injunction won in state court against 48 people.

Revenue Service] has an advantage in going after California gift tax evaders.

In the income tax realm, intentional avoidance of known tax liabilities can result in criminal tax prosecution. This is because most everyone's common experience is that income is taxable. But it may be far more difficult for the government to convict a gift tax evader than an income tax evader. While lack of knowledge of the law is no excuse, common experience is so devoid of knowledge about the gift tax, that a jury may be hard pressed to find that a donor willfully sought to evade the imposition of the gift tax upon a substantial gift made to an adult child. Of course, the government might, under the right circumstances, charge a taxpayer with gift tax evasion.

If, for instance, the transfer was done by an escrow company, a paralegal, a deed service company, or with the help of a tax preparer or certified public accountant, any of these individuals may be contacted by the IRS and then subpoenaed to testify in court against their client. If any of these professionals state that they advised the taxpayer about gift taxes or advised the taxpayer to report the gift to the IRS, the government would have a much stronger case. Further, if the motive for the gift was to qualify the parent for government benefits, such as county welfare and Medi-Cal, the case would have even more jury appeal.

In these cases, however, the IRS will likely not need to use jail time to deter future gift tax evasion. When the gift tax initiative is fully implemented and taxes, penalties and interest begin to flow, word will spread among the tax practitioner and taxpayer community that the gift tax audit gamble of yesteryear, has become simply too costly.

The IRS' new initiative is, in some respects, an example of "a day late and a dollar short." The gift tax exclusion, at least for 2011 and 2012, is $5 million per person. That means a very small percentage of transfers made in 2011 and 2012, without a gift tax return will result in a gift tax liability, which means that taxpayers may - at that level of gift tax exclusion - revert to their old ways.

Judicial Profile
Making Her Mark
A framed reproduction of Botticelli's Calumny of Apelles hangs in U.S. Magistrate Judge Jennifer L. Thurston's chambers. The colorful painting, rich in allegory, depicts Slander dragging Innocence - the victim of false accusations by Envy,

Intellectual Property
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