

ESTATE, GIFT, TRUST, AND FIDUCIARY TAX RETURNS

Planning and Preparation

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Research References

West's Key Number Digest

Internal Revenue ⇨4200 to 4219; Taxation ⇨3380 to 3399

A.L.R. Library

A.L.R. Index, Gift Taxes; Inheritance and Estate Taxes

A.L.R. Digest, Gift Taxes §§ 1 to 16; Succession and Estate Taxes §§ 1 to 57

Legal Encyclopedias

Am. Jur. 2d, Gifts §§ 1 to 91; Inheritance §§ 340 to 362

Treatises and Practice Aids

Koren, Estate and Personal Financial Planning, Chapters 8 to 10, 12,

16, 31, 34, 39

Mertens Law of Federal Income Taxation, Chapters 6, 27, 31, 59

Forms

Am. Jur. Pleading and Practice Forms, Inheritance, Estate and Gift Taxes §§ 87 to 92

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§ 1:1 Overview—The purpose of tax planning

The general purpose of estate, gift, and income tax planning, commonly referred to as estate and financial planning, is to avoid as much income tax as possible in building up the client's estate according to his needs and to pass the client's assets on during life, and/or at death, to his chosen beneficiaries, with the least possible shrinkage in value. An estate plan should be viewed as a comprehensive tool that takes into account the lifetime as well as the testamentary objectives of the individual.

§ 1:2 Overview—The sources of tax law

The substantive laws of gift tax, estate tax, and income tax are contained in the Internal Revenue Code, regulations, rulings, and in court decisions. The Internal Revenue Code is an act of Congress and is absolutely binding on all courts and the Internal Revenue Service, except where a particular provision is held unconstitutional. The courts and the Internal Revenue Service will attempt to follow the literal language of the Code, if possible. In situations in which it is difficult to apply the statutory language, the courts and the Service will look to the congressional intent by examining its history, its relationship to other Code sections, and the reports of the House Ways and Means Committee, the Senate Finance Committee, and the Conference Committee. Regulations issued by the Treasury Department do not have the full force and effect of the Code, and on occasion, they have been overruled, but they are often relied on in interpreting statutory language.

There are two types of regulations—the legislative regulation and the interpretative or interpretive regulation. The legislative

regulation has almost the full force and effect of the Code.¹ Revenue Rulings are less binding than the regulations.

The three federal courts which have original jurisdiction over tax cases are the tax courts, the federal district courts, and the U.S. Court of Federal Claims (formerly U.S. Claims Court). In order to get into a federal district court or U.S. Claims Court, the taxpayer must first pay the tax that the government claims is due, file a claim for refund, and, when the claim is denied, bring the case in either of these courts. In the Tax Court, the taxpayer pays only if and when he loses the case. Judges in the tax courts are generally more knowledgeable about the tax laws than judges in the district courts and U.S. Claims Courts, but the taxpayer can get a jury trial only in the district court.

The determination as to which court to bring the suit should be made considering the particular facts of the case. Decisions of the Tax Court and the district courts can be appealed to the Federal Courts of Appeals. A new Federal Court of Appeals was added in 1982 and is known as the U.S. Court of Appeals for the Federal Circuit. It has agreed to be bound by the decisions of its two predecessor courts, the former U.S. Court of Claims and U.S. Court of Customs and Patent Appeals. Decisions of the Federal Courts of Appeals are appealable to the Supreme Court of the United States.

Decisions of the Supreme Court of the United States are binding on all other courts and the IRS. Decisions of the Federal Court of Appeals are binding on all federal district courts within its circuit and the Tax Court in that locale. However, Court of Appeals decisions are not binding on the IRS. The IRS can choose to disregard all court decisions except those of the Supreme Court. The IRS indicates acceptance or rejection of Tax Court decisions in its published bulletins. However, its agreement or disagreement with other court decisions, as well as the Tax Court, are set forth, in detail, in its internal files which are now open to the public. The items in the files are known as Actions on Decision.

[Section 1:2]

¹Legislative regulations are referred to in the Code where the Code states that "the Secretary shall prescribe such regulations as he may deem necessary to carry out the purposes of this section." The regulations that are promulgated under this type of Code section are known as legislative regulations. All the other types of regulations are called interpretative or interpretive regulations.