

SMITH CARMICHAEL ASSOCIÉS

Re: Reporting for Foreign Gifts

A foreign gift is any amount received from a person other than a U.S. person that you treat as a gift or bequest. If you received more than a certain threshold amount you must furnish certain information to the IRS.

The threshold amount varies with the type of donor. If the gift is from a nonresident alien or a foreign estate, reporting is only required if the total amount of gifts from the nonresident alien or foreign estate is more than \$100,000 (plus an inflation adjustment) for the tax year. However, if the gift is from a foreign corporation or foreign partnership, the threshold is much lower - \$14,375 for gifts made during a tax year beginning in 2011.

Although reporting is only required if you know or have reason to know that the donor is a foreign person, the penalty is severe if the IRS determines that you should have filed a report but did not - 5 percent of the gift per month or part of a month, up to a maximum of 25 percent. The penalty doesn't apply to any failure to report a foreign gift if the failure is due to reasonable cause and not willful neglect.

In order to comply with these rules and not be subject to a penalty, Form 3520 must be filed as an attachment to your income tax return by the due date, including extensions. In addition, a copy of the Form 3520 must be sent to the Philadelphia Service Center by the same date.

In 2008, Congress added some special tax rules for higher income U.S. citizens who expatriate. They are individuals who voluntarily relinquish their U.S. citizenship for tax purposes. The special rules apply to individuals who expatriate on or after June 16, 2008 and who have, among other things:

1. Net worth is \$2 million or more; and
2. Failed to certify that they complied with all U.S. federal tax obligations for the five years before the date of expatriation.

If you have received, or expect to receive a gift, from an individual who has voluntarily relinquished his or her U.S. citizenship, please contact our office. The special tax rules impose a transfer tax on certain gifts from an expatriate.

There are some planning techniques, such as gift-splitting, which I may be able to advise you on to avoid the reporting requirements. Since the penalty for not reporting can be so severe, it is important that you be certain whether or not the reporting requirements apply to you.

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