

[ N(35)000-151 ]

February 27, 1998

Taxpayer Relief Act of 1997 -

**Subject:** Tax Court Jurisdiction **Cancellation Date:** Aug. 26, 1998

The purpose of this Notice is to summarize some of the changes made by the Taxpayer Relief Act of 1997 (TRA 1997), Pub. L. No. 105-34, 111 Stat. 788 (1997), that affect the jurisdiction of the Tax Court. The effective dates of the provisions discussed in this Notice are set forth below. A Notice concerning changes made by TRA 1997 to the TEFRA provisions, including changes made to the jurisdiction of the Tax Court and the district courts over certain matters, will be issued separately.

Clarification of Judicial Review of Eligibility for Extension of Time for Payment of Estate Tax (TRA Sec. 505; I.R.C. § 7459)

TRA 1997 added new section 7459, which authorizes the Tax Court to provide declaratory judgments regarding the initial or continuing eligibility for the deferral of estate tax under section 6166. Prior to this change, there was no prepayment forum for judicial review if the Service denied relief under section 6166 for initial or continuing eligibility for making installment payments.

Effective Date: Decedents dying after August 5, 1997.

Declaratory Judgment Action for Determining Value of Gift (TRA Sec. 506(c); I.R.C. § 7477)

TRA 1997 provides that a gift for which the statute of limitations for gift tax purposes has expired cannot be revalued for purposes of determining the applicable tax bracket and unified credit for estate tax purposes. This change reverses a line of judicial authority that permitted the Service to redetermine, for estate tax purposes, the value of a gift for which the statute of limitations period for assessing a gift tax deficiency had expired. See, e.g., Estate of Smith v. Commissioner, 94 T.C. 872 (1990).

Under TRA 1997, in order to revalue a gift that has been adequately disclosed on a gift tax return, the Service must issue a final notice of redetermination of value ("final notice") within the statute of limitations applicable to the gift for gift tax purposes. This rule is applicable even where the value of the gift, as shown on the return, does not result in any gift tax being owed or where the value of the gift, as redetermined by the Service, does not result in a deficiency in gift tax (e.g., through application of the unified credit). (Of course, if the revaluation of a gift results

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in a gift tax deficiency, a statutory notice of deficiency will be issued.) The statute of limitations will not run on an inadequately disclosed transfer, regardless of whether a gift tax return was filed for other transfers in that same year.

A taxpayer who is mailed a final notice may challenge the redetermined value of the gift by filing a motion for a declaratory judgment with the Tax Court on or before 90 days from the date the final notice was mailed. A declaration of the value of a gift by the Tax Court has the same force and effect as any other decision of the Tax Court and is reviewable as such.

It is noted that there is a pending technical correction to clarify that, in determining the amount of taxable gifts made in preceding calendar periods, the value of prior gifts is the value of such gifts as finally determined, even if no gift tax was assessed or paid on that gift. For this purpose, a final determination would include, for example, the value reported on the gift tax return (if not challenged by the Service prior to the expiration of the statute of limitations), the value determined by the Service (if not challenged by the taxpayer through the declaratory judgment procedure), the value determined by the courts, or the value agreed to by the Service and the taxpayer in a settlement agreement.

Effective date: Gifts made after August 5, 1997.

Overpayment Determinations of Tax Court (TRA Sec. 1451; I.R.C. § 6512)

TRA 1997 modified section 6512(b) to clarify that a Tax Court order to refund an overpayment is appealable in the same manner as a decision of the Tax Court. Section 6512(b) was also modified to clarify that the Tax Court shall not have jurisdiction to restrain or review the validity or merits of credits or offsets under section 6402 that reduce or eliminate a refund to which a taxpayer is otherwise entitled.

Effective Date: August 5, 1997.

Jurisdiction Over Interest Determinations (TRA Sec. 1452; I.R.C. § 7481)

TRA 1997 made two clarifying changes to section 7481(c). First, a taxpayer must file a motion, rather than a petition, to seek a redetermination of interest in the Tax Court. Second, the Tax Court's jurisdiction to redetermine the amount of interest includes both underpayment interest and overpayment interest.

Effective date: August 5, 1997.

Jurisdiction Over Determination of Employment Status (TRA Sec. 1454; I.R.C. § 7436)

TRA 1997 confers jurisdiction on the Tax Court to determine, in connection with the audit of any person, the correctness of IRS determinations that (1) one or more individuals performing services

