
MEMORANDUM

RE: INTERNATIONAL TAX COMPLIANCE
FOREIGN ASSETS (U.S. TAXPAYERS)
#5: FOREIGN GIFTS (U.S. PERSON)

U.S. Persons that receive gifts from foreign individuals or entities must also report such transfers.

Generally, a U.S. Person must report on a Form 3520 (1) any gifts from a non-resident individual or foreign estate that collectively exceed \$ 100,000, (2) any gifts from foreign corporations and foreign partnerships that collectively exceed \$10,000 (adjusted for inflation). §6039F.

In calculating the \$100,000 threshold, the U.S. Person must aggregate gifts from different, foreign nonresident aliens and foreign estates if he or she knows (or has reason to know) that one of those person is acting as the nominee for the other person.

For tax years beginning in 2008, the reporting threshold amount for gifts from foreign corporations or partnerships is \$13,561.

The Form 3520 is due at the same time as the U.S. Person's federal tax return, including extensions. But the Form is filed separately from that tax return.

If the U.S. Person, without reasonable cause, fails to disclose a foreign gift, the IRS has the right to determine the "proper" tax treatment of the gift, and the IRS's determination (although reviewable) is subject to an arbitrary and capricious standard. For each month that the failure continues, the U.S. Person is subject to a penalty of five percent of the gift for each month, up to a 25 percent maximum.

The IRS must issue a notice of deficiency and follow deficiency procedures in making any determination regarding the proper tax treatment of the gift, but it summarily assess the five percent additional penalty.

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