

Avoiding Gift and Estate Audit Triggers: Anticipating Audit Issues, IDRs, and Appeals

THURSDAY, OCTOBER 24, 2019, 1:00-2:50 pm Eastern

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October 24, 2019

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Presentation by Keith Schiller
October 24, 2019

STRAFFORD WEBINARS

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Keith Schiller, Esq., has greater than 44 years of experience with taxation and estate and business succession planning. Keith works with clients and consults with estate planning, trust administration, and tax practitioners throughout California.

Keith is a member of the Advisory Board for Bloomberg BNA's *Estates, Gifts and Trusts Journal* and the Consulting Board for the *Leimberg Information Services, Inc.*® Newsletter. He has taught over 11 courses for the CalCPA Education Foundation and received the 2000 and 2010-2011 awards for Outstanding Course Materials.

From passion, Keith chaired the Yosemite License Plate Campaign, during which he lobbied passage for the law approving the Yosemite License Plate and directed the state-wide marketing and sales campaign. The Yosemite License Plate has raised in excess of \$42 million for the preservation of Yosemite and California conservation.



Keith Schiller, Esq.

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Estate Planning At The Movies® —

Art of the Estate Tax Return

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Alamo, CA

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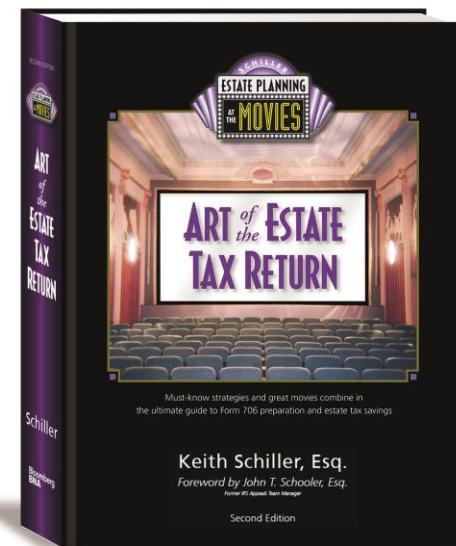
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Webinar Materials

- Powerpoint
- Handout on selected items among topics presented

Additional Resources Available

- *Art of the Estate Tax Return— Estate Planning At The Movies® (“706 Art”)* – award-winning, comprehensive textbook, with annual supplements, for estate tax return preparation (2nd edition)
- Author’s Update Service
- Contact Innovative Estate Planning Productions, Inc. for more information (Address and contact information on first page of these materials)



Don't Forget!



Email your contact information to Andrea Townsend:
atownsend@slg4law.com.

If you do not provide us your name and contact information, we will not have a record of your original purchase of *Art of the Estate Tax Return – Estate Planning At The Movies*®.

CONTEXT FOR ESTATE TAX RETURNS

- Most significant tax return in the life/death of most people
- Integrates state law and contract principles with unique tax law
- Greatest source of professional claims against CPAs
- Higher audit percentage
- Importance of teamwork among professionals

Key Topics for the Day

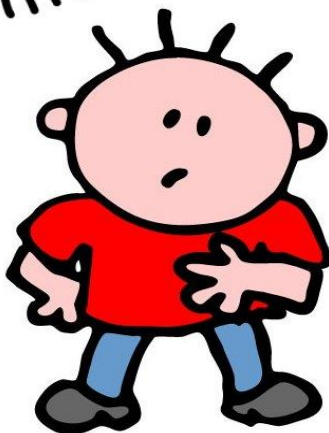
- Lessening the chances of being selected for a gift or estate tax audit
- Practical information to avoid liability claims
- Top IRS audit Hot Issues – target rich environment
- Selection of appraisers and communication for the most effective valuation reports
- Complying with the all-important adequate disclosure requirements with gift tax returns
- When to permit extension of the statute of limitations with gift tax audits
- How to best communicate with the IRS
- Appeals: timing, litigation risks and making the record for effective appeals

1. Lessening the chances of being audited

- Filing the Estate Tax Return
Returns required:
 - Code § 6018(a) - general requirement
 - If portability of the deceased spousal unused exclusion amount (DSUEA) is elected
 - + Point reprised on next slide.
 - 9 months from death, one extension (6 months)
- 2. New Address for filing.
- 3. “Fat return”
- 4. See, Section 2 of your handout (pages 2-5+)
- 5. Practical recommendations to avoid liability claims
 - *See Section 3 of your handout (starting on page 6)

Who Must File (Code § 6018)

who me?



- Gross estate + adjusted taxable gifts exceed the basic estate tax exemption amount
- **Example:** Joe has an \$11.3M gross estate, made \$101K of adjusted taxable gifts and dies in 2019, owing \$20M to creditors. Assume an \$11.4M basic exclusion. Must a return be filed for this estate? YES!!!!
- Other reasons to file: (i) *DSUEA*; (ii) close case; (iii) legal or valuation issues; or, (iv) basis presumption.

2. Practical information to avoid liability claims

Common pitfalls for tax professionals

1. Clarify responsibilities among professionals. Who will prepare the return for filing by the taxpayer?
2. Accepting engagements that would be better not on your desk.
3. Fiduciaries with hidden or conflicted agendas.
4. Late returns.
5. Lost elections
6. Not being aware of the nuances of estate and gift tax law.
7. Classifying powers of appointment.
8. Lack of teamwork.
9. GST law... technicalities run amuck.
10. Integrate 706 with non-tax plan/implications.

3. Hot Issues: Target-Rich Returns

Hot button points from an IRS Group Manager!!!
(Pages 1-2 of the outline)

Also:

- Family limited partnerships and LLCs
- Valuation issues, particularly discounts
- Retained interest issues (IRC Sec. 2036)
- Large deductions
- Loans to family members

4. Working with Appraisers and Valuation

1. Some points from warnings and hot buttons apply here
2. Pages 8-9
3. Fair market value standard
4. Very fact intensive
5. Avoid going “cheap” on hiring
6. Alert appraiser to problems and “hidden” factors
7. Discounts on death of first spouse (Ch. 8, Sec. 8.20 of *706 Art*)

5. All Important Adequate Disclosure on Gift Tax Returns

1. 1997 Tax Act change of law
2. Reg. 301.6501(c)-1(f)
3. Statute of limitations does not commence unless gift tax returns make “adequate disclosure”
4. “Adequate” is financial disclosure rule, not an adjective to be applied in common language
5. Disclosure requirements greater than with estate tax
6. Reporting sales and other completed transactions to commence IRS assessment period
7. Disclose positions contrary to regulations (temporary, proposed or final) and revenue rulings

6. When to Permit Extensions of Assessments Period on Gift Tax Audits

1. With estate tax returns, the 3-year assessment period cannot be extended
2. With gift tax returns, the 3-year assessment period can be extended by agreement of the taxpayer and IRS
3. May also consider fast track settlement (IRM 4.25.13)
Appeals, Mediation, and Settlement Procedures
 - * Fast track settlement: audit, appeals and taxpayer agree
 - * 60-day resolution sought
 - * Does not apply with docketed cases
 - * Best with single issue or very few issues

6. When to Permit Extensions of Assessments Period on Gift Tax Audits (continued)

Note: Professional fees are generally not deductible for income taxes

4. Factors favoring extension of assessment period:

- If the taxpayer wants an appeal (case un-agreed at audit) to be heard before going to Tax Court (360 day receipt of file by Appeals needs to exist on the statute)
- Case is not sufficiently developed for Appeals to resolve (though referral back can be made)
- Reaching acceptable resolution more likely to arise

5. Factors against extension of assessment period:

- Interest on additional gift tax liability increases from delay
- Additional issues may be noted when IRS has file longer
- If sufficient progress is not being made with the IRS attorney in audit and you believe a better result will arise at a higher level in the process (whether Appeals or court)

7. Communication with IRS Attorneys, Audits and IDRs

1. IRS attorneys are more experienced and higher government grade than income tax examiners. They are attorneys.
2. Communicate in a professional manner. Rudeness does not help.
3. Most IRS attorneys (vastly) are fair to work with. Only a few are hard cases and even fewer go off the ranch.
4. Meet with group manager if difficulties arise.
5. Be responsive to requests... *keep the audit moving. Delay is not the taxpayer's friend* (because insufficient time may remain for unresolved case to go to appeals).
6. Anticipating document requests (IDRs) commences in planning stage. ... Make a good early record.
7. Itemize responses to reflect completeness. It may accelerate audit conclusion and support possible shift of burden of proof.

7. Communication with IRS Attorneys, Audits and IDRs (continued)

8. Attorneys engaging appraisers
9. CPA as consultant to attorney (*Kovel* agreements)
10. FOIA requests of audit file
11. Well-briefed examination responses
 - May persuade to favorable resolution if IRS attorney is reasonable
 - Assist with appeals
 - Indirectly serves as Tax Court preparation

8. Appeals

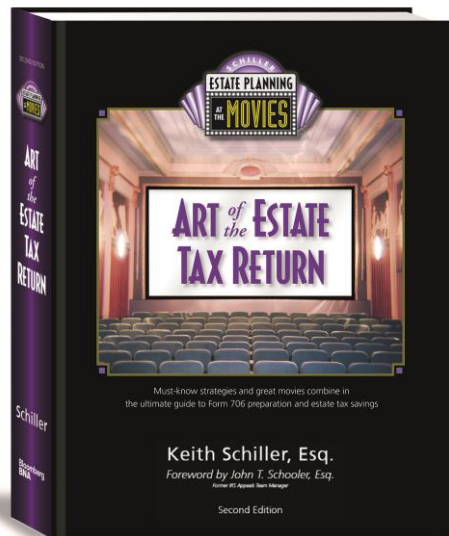
1. Independent branch from audit
2. Limitations on ex-parte communications by IRS attorney
3. Appeals requires 270 days on statute of limitations with estate tax cases and 360 days on statute of limitations with gift tax cases to accept appeal
4. All issues need to be developed for Appeals to accept and consider matter before a Tax Court petition is filed
5. Generally, Appeals receives a case 30 days after the Tax Court case is “at issue.” However, they may not get deeply involved until near trial.

8. Appeals (continued)

6. Risks of litigation can be considered
7. Appeals can identify additional issues, not seen by examination
8. IRS Appeal officers are not well located
 - Some have reduced familiarity with local law
 - Only 14% of the Appeal officers are in the Western U.S., which generates over 25% of the appeals

ART *of the* ESTATE TAX RETURN

Must-know strategies and great movies combine in the ultimate guide to Form 706 preparation and estate tax savings



Art of the Estate Tax Return received the CalCPA Education Foundation's 2010-2011 Award for Outstanding Course Materials

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