

squad is not a part of City M's police or fire departments. The director's vehicle is a sedan which is painted with insignia and words identifying the vehicle as being owned by the City's rescue squad. C, when not on a regular shift, is on call at all times. The City's official policy regarding clearly marked public safety officer vehicles prohibits personal use (other than for commuting) of the vehicle outside of the limits of the public safety officer's obligation to respond to an emergency. When not using the vehicle to respond to emergencies, City M authorizes C to use the vehicle only for commuting, personal errands on the way between work and home, and personal errands within the limits of C's obligation to respond to emergencies. With respect to these authorized uses, the vehicle is not subject to the substantiation requirements of section 274(d) and the value of these uses is not includable in C's gross income.

(l) *Definitions.* For purposes of section 274(d) and this section, the terms *automobile* and *vehicle* have the same meanings as prescribed in §§ 1.61-21(d)(1)(ii) and 1.61-21(e)(2), respectively. Also, for purposes of section 274(d) and this section, the terms *employer*, *employee* and *personal use* have the same meanings as prescribed in § 1.274-6T(e).

(m) * * * However, paragraph (j)(3) of this section applies to expenses paid or incurred after September 30, 2002, and paragraph (k) applies to clearly marked public safety officer vehicles, as defined in 1.274-5(k)(3), only with respect to uses occurring after January 1, 2009.

Par. 4. Section 1.274-5T is revised by amending paragraphs (k) and (l) as follows:

§ 1.274-5T Substantiation requirements (temporary).

* * * * *

(k) and (l) [Reserved]. For further guidance, see §§ 1.274-5(k) and (l).

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Par. 5. Section 1.280F-6 is amended by revising paragraph (b)(2)(ii) to read:

§ 1.280F-6 Special rules and definitions.

* * * * *

(b) * * *

(2) * * *

(ii) *Exception.* The term "listed property" does not include any vehicle that is a qualified nonpersonal use vehicle as defined in section 274(i) and § 1.274-5(k).

* * * * *

Steven Miller,

Acting Deputy Commissioner for Services and Enforcement.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-143716-04]

RIN 1545-BD67

Declaratory Judgments—Gift Tax Determinations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations under section 7477 of the Internal Revenue Code (Code) regarding petitions filed with the United States Tax Court for declaratory judgments as to the valuation of gifts. Changes to the applicable law were made by section 506(c)(1) of the Taxpayer Relief Act of 1997 (TRA). The proposed regulations primarily affect individuals who are donors of gifts. The proposed regulations provide rules for determining whether a donor may petition the Tax Court with respect to the value of a gift, including guidance regarding the definition of "exhaustion of administrative remedies." This document also provides a notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by September 8, 2008. Outlines of topics to be discussed at the public hearing scheduled for October 16, 2008, must be received by September 11, 2008.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG-143716-04), room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to: CC:PA:LPD:PR (REG-143716-04), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit electronic comments via the Federal eRulemaking Portal at <http://www.regulations.gov> (IRS REG-143716-04). The public hearing will be held in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, Juli Ro Kim or George Masnik, (202) 622-3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to

attend the hearing, Kelly Banks at (202) 622-7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Gift tax is computed by determining a tax on the total of the gifts deemed made by the donor in the year for which the return is filed (the current calendar year) plus the total of that donor's gifts in prior years (prior taxable gifts). The tax so computed is then reduced by the tax that would have been payable on the prior taxable gifts, had the tax rate for the current taxable year applied to the prior taxable gifts. The result (after taking into account the applicable credit amount under section 2505) is the gift tax on the gifts in the current calendar year. Similarly, the estate tax is computed by determining a tax on the sum of the value of the decedent's taxable estate and the value of certain taxable gifts (adjusted taxable gifts) made by the decedent prior to death. The tax computed is then reduced by the gift tax that would have been payable on the adjusted taxable gifts, had the estate tax rate applied to the adjusted taxable gifts. The result (after allowing for various credits) is the estate tax on the taxable estate.

The Taxpayer Relief Act of 1997 (TRA) (Pub. L. 105-34, 111 Stat. 855), the Internal Revenue Service Restructuring and Reform Act of 1998 (Pub. L. 105-206, 112 Stat. 685), and the Tax and Trade Relief Extension Act of 1998 (Pub. L. 105-277, 112 Stat. 2681-909), (collectively, the 1998 Acts), enacted or amended sections 2001(f), 2504(c), 6501(c)(9), and 7477, effective in the case of gifts made after August 5, 1997, to provide a degree of finality regarding the valuation of lifetime gifts for gift and estate tax purposes. Congress was concerned that the prior regime resulted in the resolution of controversies based on stale evidence, and necessitated the retention of records for unduly long periods of time. H.R. Rep. No. 105-148 at 359 (1997).

Under sections 6501(a) and (c)(9) as amended by TRA and the 1998 Acts, and the applicable regulations, if a transfer of property is adequately disclosed on a gift tax return, then the period of limitations for assessment of gift tax with regard to that transfer will commence to run on the date the return is filed. Once the time for assessment of gift tax has expired for a transfer made after August 5, 1997, the value of the gift as "finally determined" for gift tax purposes, as defined in section 2001(f), is the value to be used for purposes of determining prior taxable gifts in computing the gift tax liability in subsequent years under section 2504(c),

and for purposes of determining adjusted taxable gifts in computing the estate tax liability under section 2001(f). Under §§ 20.2001-1(b) and 25.2504-2(b), this finality rule applies with respect to all issues that might be raised with respect to the transfer, including valuation issues and legal issues. The amount of a gift is finally determined if: (1) The amount is shown on a gift tax return and the IRS does not contest the amount before the period for assessing gift tax expires; (2) before the period for assessing gift tax expires, the amount is adjusted by the IRS and the taxpayer does not contest the adjusted amount; or, (3) the amount is determined by a court or pursuant to a settlement agreement between the taxpayer and the IRS.

Section 7477 was enacted as part of TRA in conjunction with these other provisions to provide a declaratory judgment procedure pursuant to which taxpayers may contest in the United States Tax Court an IRS determination regarding the value of a gift. See H.R. Conf. Rep. No. 105-220, at 407-408 (1997). In the absence of section 7477, without an actual gift tax deficiency, a taxpayer would be unable to petition the Tax Court to contest the determination or, without an overpayment of tax, file a claim for refund or bring suit for refund in Federal court. This could occur, for example, if an increase in gift tax determined under section 2502 is offset by the taxpayer's applicable credit amount under section 2505(a), so that no additional tax would be assessed as a result of the valuation increase. Thus, without section 7477, such a taxpayer would be left without any way to challenge the IRS determination, even though, upon the expiration of the statute of limitations, that determination would become binding for purposes of calculating the cumulative gift tax on all future gifts of that taxpayer, as well as the taxpayer's estate tax liability.

Explanation of Provisions

Under section 7477(a), the donor may contest an IRS determination of the amount of a gift. Specifically, the donor may petition the Tax Court for a declaratory judgment, provided that certain requirements are met. Section 7477(a) applies in the case of an actual controversy involving a determination by the IRS regarding the value of a gift that is shown on the gift tax return or disclosed on the gift tax return or in a statement attached to that return.

These proposed regulations provide a procedure for pursuing a declaratory judgment in the Tax Court pursuant to section 7477 in situations where, prior to the enactment of that section, the

taxpayer would have had no remedy to challenge the IRS determination. Specifically, the procedure provided by these proposed regulations applies only in those situations where an adjustment by the IRS does not result in a gift tax deficiency or refund. In situations where the IRS adjustment results in a proposed tax deficiency or a potential refund, taxpayers should not follow the procedures in these proposed regulations but should continue to follow the procedures already in place to dispute a deficiency or claim a refund. These procedures more efficiently address and resolve disputes involving a deficiency or refund.

The first requirement for eligibility for relief under section 7477 is that the transfer must be shown or disclosed "on the return of tax imposed by chapter 12," that is, a Federal gift tax return, or on a statement attached to the return. Under the proposed regulations, the return of tax imposed by chapter 12 is defined as the last gift tax return for the calendar year filed on or before the due date of the return, including extensions granted (if any), or if a timely return is not filed, the first gift tax return for the calendar year filed after the due date.

If the transfer is not shown or disclosed on the gift tax return, or on a statement attached to the return, a declaratory judgment under section 7477 is not available. If, however, a transfer is disclosed on the return or on a statement attached to the return, this eligibility requirement for the section 7477 procedure is satisfied, even if the transfer is disclosed in a manner that does not satisfy the requirements of section 6501(c)(9) and § 301.6501(c)-1(e) or (f) pertaining to adequate disclosure sufficient to commence the running of the period of limitations on assessment. There may be no compelling reason for the IRS to examine a transaction that is disclosed on the return but not in a manner sufficient to trigger the running of the statute of limitations, because the time period for adjusting the value of the gift is not limited by the statute of limitations for assessments. The Treasury Department and the IRS, however, recognize that in many cases the IRS may prefer to contemporaneously resolve the transfer tax treatment of that transaction, even though the standards for adequate disclosure with regard to that transaction have not been satisfied by the donor. Thus, the IRS in its discretion may make a determination regarding the transfer and place the transfer in controversy by mailing a notice of determination of value used in unagreed cases (Letter 3569) with regard

to that transfer. The ability to place a transfer that is not adequately disclosed in controversy is consistent with the Congressional purpose in enacting the TRA provisions, noted previously, to promote the early resolution of gift tax controversies based on contemporaneous evidence. The IRS and Treasury Department emphasize that the issuance of a Letter 3569 with regard to such a transfer does not constitute a determination by the IRS that the transfer was adequately disclosed or otherwise cause the period of limitations on assessment to commence to run with respect to that transfer.

Alternatively, the IRS may in its discretion decide not to put a transfer in controversy at that time (whether or not any other transfer reported on a gift tax return is then put into controversy). If the IRS decides not to put the transfer into controversy at that time, the IRS will not issue a Letter 3569 (described in this preamble) (or the Letter 3569 issued will not address that transfer), the declaratory judgment procedure will not be available for that transfer, and the limitations period applicable to that transfer will remain open.

Section 7477 also requires an actual controversy with respect to a determination by the IRS of the value of the disclosed transfer. Thus, the donor is not permitted to bypass the examination process and unilaterally seek a declaratory judgment. Generally, the IRS must propose adjustments with which the donor disagrees. Accordingly, the proposed regulations provide that, in order for the section 7477 declaratory judgment procedure to be available to a donor, the IRS must first make a determination regarding the gift tax treatment of the transfer that results in an actual controversy in a situation where the adjustments do not result in a gift tax deficiency or refund. This IRS determination is deemed to be made by the mailing of a Letter 3569 to notify the taxpayer of the adjustments proposed by the IRS. The mailing of this letter to the donor is the prerequisite for filing a petition with the Tax Court requesting a declaratory judgment under section 7477.

Section 7477 also requires that the donor's pleading seeking a declaratory judgment under section 7477 must be filed with the Tax Court before the 91st day after the mailing of the Letter 3569 by the IRS. The pleading must be in the form of a petition subject to Tax Court Rule 211(d).

Finally, section 7477(b)(2) provides that the Tax Court may not issue a declaratory judgment under section 7477 unless it first determines that the

donor has exhausted all administrative remedies available to the donor within the IRS with respect to the controversy. Tax Court Rule 211(d) requires that the petition in an action under section 7477 must contain a statement that the petitioner has exhausted all administrative remedies within the IRS. See also Tax Court Rule 210(c)(4). Accordingly, the proposed regulations set forth the administrative remedies available to the donor with respect to a determination by the IRS of the amount of a gift, and the circumstances in which the IRS will not contest the donor's allegation that administrative remedies have been exhausted. The administrative remedies are intended to parallel those applicable in the case of an asserted gift tax deficiency.

Specifically, the proposed regulations provide that the IRS will not contest the donor's allegation that the donor's administrative remedies have been exhausted if: (1) The donor requests Appeals consideration in writing within 30 calendar days after the mailing date of a notice of preliminary determination of value (Preliminary Determination Letter) from the IRS, or by such later date for responding to the Preliminary Determination Letter as determined pursuant to IRS procedures; (2) the donor participates fully in the Appeals consideration process, including without limitation timely submitting all additional information related to the amount of the gift that is requested by the IRS in connection with (or as a follow-up to) the Appeals consideration process; and (3) the IRS mails to the donor the Letter 3569, which will notify the donor of the proposed adjustments and of the donor's right to contest the determination by filing a petition for declaratory judgment with the Tax Court before the 91st day after the date of mailing the Letter 3569. The Letter 3569 usually will be issued by the Appeals office. However, because section 7477 requires that the Tax Court, rather than the IRS, determines whether the donor has exhausted all administrative remedies, the donor generally will be sent a Letter 3569 in those situations where the donor does not respond to the Preliminary Determination Letter, or expressly declines to participate in the Appeals process. If a donor does not respond to a Preliminary Determination Letter, or if a donor does not participate in the Appeals process, the IRS will consider the donor to have failed to exhaust administrative remedies. In such cases, the IRS may challenge any allegation in the donor's petition for a section 7477

declaratory judgment that the donor has exhausted all administrative remedies.

The proposed regulations also provide that the IRS will not contest the donor's allegation that all administrative remedies have been exhausted in certain circumstances where the above-described process is not followed by the IRS. (For example, the IRS might mail a Letter 3569 to the donor in the absence of these other preliminary steps where, because of the imminent expiration of the applicable statute of limitations, the IRS believes there is not sufficient time to issue a Preliminary Determination Letter to allow Appeals consideration.) If the IRS's decision not to issue a Preliminary Determination Letter is not due to the donor's actions or failure to act, the IRS will not contend that the donor failed to exhaust all administrative remedies, provided that the donor fully participates in the Appeals consideration process offered by the IRS during the pendency of the Tax Court proceeding. In this regard, the IRS and Treasury Department do not view the reference to section 7477 contained in § 601.106(a)(2)(iv) of the Statement of Procedural Rules as currently in effect and Rev. Proc. 87-24 (1987-1 CB 720) as prohibiting Appeals' jurisdiction to consider docketed cases under current section 7477. The version of section 7477 referenced in those items was repealed prior to the enactment of the current section 7477 as part of the TRA.

The proposed regulations confirm that the donor is not required to consent to an extension of the time within which gift tax with respect to the transfer at issue may be assessed in order to exhaust the donor's administrative remedies, and that the failure to consent to such an extension will not be taken into account for this purpose. See section 7430(b)(1) and *Minahan v. Commissioner*, 88 T.C. 492 (1987), considering this issue in the context of section 7430(b)(1) prior to amendment by Public Law 104-168 (110 Stat. 1452).

Under the proposed regulations, a donor may petition for a declaratory judgment with respect to disputes regarding valuation and/or other related issues. This is consistent with §§ 20.2001-1(b) and 25.2504-2(b) providing that, once the gift tax statute of limitations has expired with respect to a transfer, the IRS is precluded from making any adjustments with respect to that transfer for purposes of determining prior taxable gifts or adjusted taxable gifts, regardless of whether the adjustment involves a valuation issue or a legal issue pertaining to the proper interpretation of the gift tax law. See also § 301.6501(c)-1(f)(5) providing a

similar rule regarding transfers that are incomplete gifts but are reported as completed gifts. Accordingly, even if a gift tax adjustment does not generate any additional gift tax liability, the IRS nevertheless is required to propose the adjustment (and to take all other necessary steps) in order to challenge the return as filed within the statutory limitations period, regardless of the nature of the issue presented. Sections 2001(f), 2504(c), 6501(c)(9) and 7477, as enacted or amended by TRA and the 1998 Acts, provide an integrated statutory regime pursuant to which taxpayers are accorded finality with respect to adequately disclosed transfers (except for transfers that are reported as incomplete gifts), while the IRS is afforded the reasonable opportunity to identify in a timely manner returns that present issues that merit further examination. The section 7477 declaratory judgment procedure is a necessary part of this regime because it provides a mechanism to finally resolve any disputed adjustments in circumstances where there is no tax assessment and thus the donor would otherwise be unable to satisfy the jurisdictional requirements for any judicial resolution. The IRS and Treasury Department believe it is appropriate for the declaratory judgment mechanism under section 7477, when available in circumstances where there is no deficiency or refund, to be available for all adjustments regardless of whether the basis for those adjustments is factual, legal, or both.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this regulation has been submitted to the Small Business Administration for comment on the impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department request

comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for October 16, 2008 at 10 a.m. in the auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble. The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments by September 8, 2008, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by September 8, 2008.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Juli Ro Kim, Office of the Associate Chief Counsel (Passthroughs and Special Industries), IRS. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 301.7477-1 is revised to read as follows:

§ 301.7477-1 Declaratory judgments relating to the value of certain gifts for gift tax purposes.

(a) *In general.* If the requirements contained in paragraph (d) of this section are satisfied, a donor may petition the United States Tax Court under section 7477 for a declaratory judgment regarding the amount of one or more of the donor's gifts during the calendar year for Federal gift tax purposes, if the adjustment(s) proposed by the Internal Revenue Service (IRS) will not result in any deficiency in or refund of the donor's gift tax liability for that calendar year.

(b) *Declaratory judgment procedure—*
(1) *In general.* If a donor does not resolve a dispute with the IRS concerning the value of a transfer for gift tax purposes at the Examination level, the donor will be sent a notice of preliminary determination of value, or such other document as may be utilized by the IRS for this purpose from time to time, but referred to in this section as a Preliminary Determination Letter, inviting the donor to file a formal protest and to request consideration by the appropriate IRS Appeals office. See §§ 601.105 and 601.106 of this chapter. Subsequently, the donor will be sent a notice of determination of value (Letter 3569, or such other document as may be utilized from time to time by the IRS for this purpose in cases where no deficiency or refund would result, but referred to in this section as Letter 3569) if—

(i) The donor requests Appeals consideration in writing within 30 calendar days after the mailing date of the Preliminary Determination Letter, or by such later date as determined pursuant to IRS procedures, and the matter is not resolved by Appeals;

(ii) The donor does not request Appeals consideration within the time provided in paragraph (b)(1)(i) of this section; or

(iii) The IRS does not issue a Preliminary Determination Letter in circumstances described in paragraph (d)(3)(ii) of this section.

(2) *Notice of determination of value.* The Letter 3569 will notify the donor of the adjustment(s) proposed by the IRS, and will advise the donor that the donor may contest the determination made by the IRS by filing a petition with the Tax Court before the 91st day after the date on which the Letter 3569 was mailed to the donor by the IRS.

(3) *Tax Court petition.* If the donor does not file a timely petition with the Tax Court, the IRS determination as set forth in the Letter 3569 will be considered the final determination of value, as defined in sections 2504(c) and

2001(f). If the donor files a timely petition with the Tax Court, the Tax Court will determine whether the donor has exhausted available administrative remedies. Under section 7477, the Tax Court is not authorized to issue a declaratory judgment unless the Tax Court finds that the donor has exhausted all administrative remedies within the IRS. See paragraph (d)(3) of this section regarding the exhaustion of administrative remedies.

(c) *Adjustments subject to declaratory judgment procedure.* The declaratory judgment procedures set forth in this section apply to adjustments involving all issues relating to the transfer, including without limitation valuation issues and legal issues involving the interpretation and application of the gift tax law.

(d) *Requirements for declaratory judgment procedure.* The declaratory judgment procedure provided in this section is available to a donor with respect to a transfer only if the requirements of paragraphs (d)(1) through (4) of this section with regard to that transfer are satisfied.

(1) *Reporting.* The transfer is shown or disclosed on the return of tax imposed by chapter 12 for the calendar year during which the transfer was made or on a statement attached to such return. For purposes of this paragraph, the term return of tax imposed by chapter 12 means the last gift tax return (Form 709, "United States Gift (and Generation-skipping Transfer) Tax Return," or such other form as may be utilized for this purpose from time to time by the IRS) for the calendar year filed on or before the due date of the return, including extensions granted if any, or, if a timely return is not filed, the first gift tax return for that calendar year filed after the due date. For purposes of satisfying this requirement, the transfer need not be reported in a manner that constitutes adequate disclosure within the meaning of § 301.6501(c)-1(e) or (f) (and thus for which, under §§ 20.2001-1(b) and 25.2504-2(b) of this chapter, the period will not expire during which the IRS may adjust the value of the gift). The issuance of a Letter 3569 with regard to a transfer disclosed on a return does not constitute a determination by the IRS that the transfer was adequately disclosed, or otherwise cause the period of limitations on assessment to commence to run with respect to that transfer. In addition, in the case of a transfer that is shown on the return, the IRS may in its discretion choose to defer until a later time making a determination with regard to such transfer. If the IRS exercises its

discretion to defer such determination in that case, the transfer will not be addressed in the Letter 3569 (if any) sent to the donor currently, and the donor is not yet eligible for a declaratory judgment with regard to that transfer under section 7477.

(2) *IRS determination and actual controversy.* The IRS makes a determination regarding the gift tax treatment of the transfer that results in an actual controversy. The IRS makes a determination that results in an actual controversy with respect to a transfer by mailing a Letter 3569 to the donor, thereby notifying the donor of the adjustment(s) proposed by the IRS with regard to that transfer and of the donor's rights under section 7477.

(3) *Exhaustion of administrative remedies—(i) In general—Appeals office consideration.* The Tax Court determines that the donor has exhausted all administrative remedies available within the IRS for resolving the controversy. For purposes of this section, the IRS will consider a donor to have exhausted all administrative remedies if, prior to filing a petition in Tax Court (except as provided in paragraph (d)(3)(ii) of this section), the donor, or a qualified representative of the donor described in § 601.502 of this chapter, timely requests consideration by Appeals and participates fully in the Appeals consideration process, including, without limitation, timely submitting all information related to the transfer that is requested by the IRS in connection with the Appeals consideration. A timely request for consideration by Appeals is a written request from the donor for Appeals consideration made within 30 days after the mailing date of the Preliminary Determination Letter, or by such later date for responding to the Preliminary Determination Letter as is agreed to between the donor and the IRS.

(ii) *No Preliminary Determination Letter issued.* If the IRS does not issue a Preliminary Determination Letter to the donor prior to the issuance of Letter 3569, the IRS nevertheless will consider the donor to have exhausted all administrative remedies within the IRS for purposes of section 7477 upon the issuance of the Letter 3569, provided that—

(A) The IRS decision not to issue the Preliminary Determination Letter was not due to actions or inactions of the donor (such as a failure to supply requested information or a current mailing address to the Area Director having jurisdiction over the tax matter); and

(B) The donor, or a qualified representative of the donor described in

§ 601.502 of this chapter, after the filing of a petition in Tax Court for a declaratory judgment pursuant to section 7477, fully participates (within the meaning of paragraph (d)(3)(i) of this section) in the Appeals office consideration when offered by the IRS while the case is in docketed status.

(iii) *Failure to agree to extension of time for assessment.* The donor has the right to agree (or to decline to agree) to an extension of the time under section 6501 within which gift tax with respect to the transfer at issue may be assessed. For purposes of section 7477, the donor's refusal to agree to such an extension will not be considered by the IRS to constitute a failure by the donor to exhaust all administrative remedies available to the donor within the IRS.

(4) *Timely petition in Tax Court.* The donor files a pleading with the Tax Court requesting a declaratory judgment under section 7477. This pleading must be filed with the Tax Court before the 91st day after the date of mailing of the Letter 3569 by the IRS to the donor. The pleading must be in the form of a petition subject to Tax Court Rule 211(d).

(e) *Examples.* The following examples illustrate the provisions of this section. These examples, however, do not address any other situations that might affect the Tax Court's jurisdiction over the proceeding. The examples read as follows:

Example 1. Exhaustion of administrative remedies. The donor (D) timely files a Form 709, "United States Gift (and Generation-Skipping Transfer) Tax Return," on which D reports D's completed gift of closely held stock. After conducting an examination, the IRS concludes that the value of the stock on the date of the gift is greater than the value reported on the return. Because the amount of D's available applicable credit amount under section 2505 is sufficient to cover any resulting tax liability, no gift tax deficiency will result from the adjustment. D is unable to resolve the matter with the IRS examiner. The IRS sends a notice of preliminary determination of value (Preliminary Determination Letter) to D informing D of the proposed adjustment. D, within 30 calendar days after the mailing date of the letter, submits a written request for Appeals consideration. During the Appeals process, D provides to the Appeals office all additional information (if any) requested by Appeals relevant to the determination of the value of the stock in a timely fashion. The Appeals office and D are unable to reach an agreement regarding the value of the stock as of the date of the gift. The Appeals office sends D a notice of determination of value (Letter 3569). For purposes of section 7477, the IRS will consider D to have exhausted all available administrative remedies within the IRS, and thus will not contest the allegation in D's petition that D has exhausted all such administrative remedies.

Example 2. Exhaustion of administrative remedies. Assume the same facts as in *Example 1*, except that D does not timely request consideration by Appeals after receiving the Preliminary Determination Letter. A Letter 3569 is mailed to D more than 30 days after the mailing of the Preliminary Determination Letter and prior to the expiration of the period of limitations for assessment of gift tax. D timely files a petition in Tax Court pursuant to section 7477. After the case is docketed, D requests Appeals consideration. In this situation, because D did not respond timely to the Preliminary Determination Letter with a written request for Appeals consideration, the IRS will not consider D to have exhausted all administrative remedies available within the IRS for purposes of section 7477 prior to filing the petition in Tax Court, and thus may contest any allegation in D's petition that D has exhausted all such administrative remedies.

Example 3. Exhaustion of administrative remedies. D timely files a Form 709 on which D reports D's completed gifts of interests in a family limited partnership. After conducting an examination, the IRS proposes to adjust the value of the gift as reported on the return. No gift tax deficiency will result from the adjustments, however, because D has a sufficient amount of available applicable credit amount under section 2505. D declines to consent to extend the time for the assessment of gift tax with respect to the gifts at issue. Because of the pending expiration of the period of limitation on assessment with respect to the gifts, the IRS determines that there is not adequate time for Appeals consideration. Accordingly, the IRS mails to D a Letter 3569, even though a Preliminary Determination Letter had not first been issued to D. D timely files a petition in Tax Court pursuant to section 7477. After the case is docketed in Tax Court, D is offered the opportunity for Appeals to consider any dispute regarding the determination and participates fully in the Appeals consideration process. However, the Appeals office and D are unable to resolve the issue. The IRS will consider D to have exhausted all administrative remedies available within the IRS, and thus will not assert that D has not exhausted all such administrative remedies.

Example 4. Legal issue. In 2006, D transfers nonvested stock options to a trust for the benefit of D's child. D timely files a Form 709 reporting the transfer as a completed gift for Federal gift tax purposes and complies with the adequate disclosure requirements for purposes of triggering the commencement of the applicable statute of limitations. Pursuant to § 301.6501(c)-1(f)(5), adequate disclosure of a transfer that is reported as a completed gift on the Form 709 will commence the running of the period of limitations for assessment of gift tax on D, even if the transfer is ultimately determined to be an incomplete gift for purposes of § 25.2511-2 of this chapter. After conducting an examination, the IRS concurs with the reported valuation of the stock options, but concludes that the reported transfer is not a completed gift for Federal gift tax purposes. D is unable to resolve the matter with the IRS

examiner. Assuming that the IRS mails to D a Letter 3569 with regard to this transfer, and that D complies with the administrative procedures set forth in this section, including the exhaustion of all administrative remedies available within the IRS, then D may file a petition for declaratory judgment with the Tax Court pursuant to section 7477.

Example 5. Transfers in controversy. On April 16, 2007, D timely files a Form 709 on which D reports gifts made in 2006 of fractional interests in certain real property and of interests in a family limited partnership (FLP). However, although the gifts are disclosed on the return, the return does not contain information sufficient to constitute adequate disclosure under § 301.6501(c)-1(e) or (f) for purposes of the application of the statute of limitations on assessment of gift tax with respect to the reported gifts. The IRS conducts an examination and concludes that the value of both the interests in the real property and the FLP interests on the date(s) of the transfers are greater than the values reported on the return. No gift tax deficiency will result from the adjustments because D has a sufficient amount of remaining applicable credit amount under section 2505. However, D does not agree with the adjustments. The IRS sends a Preliminary Determination Letter to D informing D of the proposed adjustments in the value of the reported gifts. D, within 30 calendar days after the mailing date of the letter, submits a written request for Appeals consideration. The Appeals office and D are unable to reach an agreement regarding the value of any of the gifts. In the exercise of its discretion, the IRS decides to resolve currently only the value of the real property interests, and to defer the resolution of the value of the FLP interests. On May 28, 2009, the Appeals office sends D a Letter 3569 addressing only the value of the gifts of interests in the real property. Because none of the gifts reported on the return filed on April 16, 2007, were adequately disclosed for purposes of § 301.6501(c)-1(e) or (f), the period of limitations during which the IRS may adjust the value of those gifts has not begun to run. Accordingly, the Letter 3569 is timely mailed. If D timely files a petition in Tax Court pursuant to section 7477 with regard to the value of the interests in the real property, then, assuming the other requirements of section 7477 are satisfied with regard to those interests, the Tax Court's declaratory judgment, once it becomes final, will determine the value of the gifts of the interests in the real property. Because the IRS has not yet put the gift tax value of the interests in the FLP into controversy, the procedure under section 7477 is not available with regard to those gifts.

Par. 3. Section 301.7477-2 is added to read as follows:

§ 301.7477-2 Effective date.

Section 301.7477-1 applies to civil proceedings described in section 7477 filed in the United States Tax Court on or after the date these regulations are

published as final regulations in the **Federal Register**.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[EPA-HQ-OPPT-2006-0898; FRL-8351-4]

RIN 2070-AB27

Proposed Significant New Use Rules on Certain Chemical Substances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for two chemical substances which were the subject of premanufacture notices (PMNs). The two substances are dodecandioic acid, 1, 12-dihydrazide (CAS No. 4080-98-2; PMNs P-01-759 and P-05-555) and thiophene, 2,5-dibromo-3-hexyl- (CAS No. 116971-11-0; PMN P-07-283). This action would require persons who intend to manufacture, import, or process either of these two substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

DATES: Comments must be received on or before July 9, 2008.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA-HQ-OPPT-2006-0898, by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

- *Mail:* Document Control Office (7407M), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460-0001.

- *Hand Delivery:* OPPT Document Control Office (DCO), EPA East Bldg., Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. Attention: Docket ID Number EPA-HQ-OPPT-2006-0898. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal

holidays. The telephone number for the DCO is (202) 564-8930. Such deliveries are only accepted during the DCO's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to docket ID number EPA-HQ-OPPT-2006-0898. EPA's policy is that all comments received will be included in the docket without change and may be made available on-line at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through [regulations.gov](http://www.regulations.gov) or e-mail. The [regulations.gov](http://www.regulations.gov) website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through [regulations.gov](http://www.regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

Docket: All documents in the docket are listed in the docket index available in [regulations.gov](http://www.regulations.gov). To access the electronic docket, go to <http://www.regulations.gov>, select "Advanced Search," then "Docket Search." Insert the docket ID number where indicated and select the "Submit" button. Follow the instructions on the [regulations.gov](http://www.regulations.gov) website to view the docket index or access available documents. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically at <http://www.regulations.gov>, or, if only available in hard copy, at the OPPT