

dealing regulations.” is corrected to read “of new global dealing regulations.”.

7. On page 38837, column 1, in the first paragraph heading, the language “*D. Stewardship Expenses—§ 1.861-8*” is corrected to read “*D. Apportionment of Stewardship Expenses—§ 1.861-8*”.

**LaNita Van Dyke,**

Chief, Publications and Regulations Branch,  
Legal Processing Division, Associate Chief  
Counsel (Procedure and Administration).

[FR Doc. E9-21227 Filed 9-8-09; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

#### 26 CFR Part 301

[TD 9460]

RIN 1545-BD67

#### Declaratory Judgments—Gift Tax Determinations

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Final regulations.

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

**DATES:** *Effective date:* These regulations are effective September 9, 2009.

*Applicability date:* For the date of applicability, see § 301.7477-1(f).

**FOR FURTHER INFORMATION CONTACT:** Deborah S. Ryan or George Masnik (202) 622-3090 (not a toll free number).

#### Background

Section 7477, enacted in conjunction with other provisions as part of the Taxpayer Relief Act of 1997 (TRA) (Pub. L. 105-34, 111 Stat. 855), provides 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. Prior law did not provide a judicial remedy in situations where the proposed IRS adjustment would not

result in a gift tax deficiency or a tax overpayment. The new procedure applies, for example, where 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 is assessed as a result of a valuation increase. Because there is no tax deficiency, in the absence of section 7477, the taxpayer would be unable 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. See H.R. Conf. Rep. No. 105-220, at 407-408 (1997).

On June 9, 2008, proposed regulations under section 7477 were published in the *Federal Register* (REG-143716-04, 73 FR 32503, 2008-25 IRB 1170). The IRS received no written or oral comments responding to the notice of proposed rulemaking. No public hearing was requested or held.

The final regulations include a few clarifications. In particular, under section 7477, in order to be eligible for the declaratory judgment procedure, the Tax Court must determine that the donor exhausted all administrative remedies. In general, the proposed regulations provide that the IRS will consider a donor to have exhausted all administrative remedies if an Appeals conference is requested timely and the donor (or an authorized representative) “participates fully” in the Appeals process. The final regulations contain a separate subsection specifying that full participation requires timely submission of requested information and disclosure of all relevant information regarding the controversy. In addition, a provision has been added specifying that, if Appeals does not grant the donor’s request for a conference, the donor will be treated as having exhausted all administrative remedies if, after filing a Tax Court petition for a declaratory judgment, the donor (or authorized representative) participates fully in the Appeals office consideration when offered by the IRS while the case is in docketed status.

#### Special Analyses

It has been determined that this Treasury decision 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 on small

entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding this regulation was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

#### Drafting Information

The principal authors of these final regulations are Deborah Ryan and 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.

#### Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 301 is 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 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 the calendar year, and if the requirements contained in paragraph (d) of this section are satisfied, then the declaratory judgment procedure under section 7477 is available to the donor for determining the amount of one or more of the donor’s gifts during that calendar year for Federal gift tax purposes.

(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 (Letter 950-G 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 Letter 950-G), 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 Letter 950-G, 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 Letter 950-G in circumstances described in paragraph (d)(4)(iv) 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)(4) 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—(1) In general.* The declaratory judgment procedure provided in this section is available to a donor with respect to a transfer only if all the requirements of paragraphs (d)(2) through (5) of this section with regard to that transfer are satisfied.

(2) *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 (d)(2), 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 during which the IRS may adjust the value of the gift will not expire). 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 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.

(3) *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.

(4) *Exhaustion of administrative remedies—(i) In general.* The Tax Court determines whether the donor has exhausted all administrative remedies available within the IRS for resolving the controversy.

(ii) *Appeals office consideration.* 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 paragraphs (d)(4)(iii) and (iv) 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 (within the meaning of paragraph (d)(4)(vi) of this section) in the Appeals consideration process. 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 Letter 950-G, or by such later date for responding to the Letter 950-G as is agreed to between the donor and the IRS.

(iii) *Request for Appeals office consideration not granted.* If the donor, or a qualified representative of the donor described in § 601.502 of this chapter, timely requests consideration by Appeals and Appeals does not grant that request, 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 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, participates fully (within the meaning of paragraph (d)(4)(vi) of this section) in the Appeals office consideration if offered by the IRS while the case is in docketed status.

(iv) *No Letter 950-G issued.* If the IRS does not issue a Letter 950-G 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 Letter 950-G 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, participates fully (within the meaning of paragraph (d)(4)(vi) of this section) in the Appeals office consideration if offered by the IRS while the case is in docketed status.

(v) *Failure to agree to extension of time for assessment.* For purposes of section 7477, the donor's refusal to agree to an extension of the time under section 6501 within which gift tax with

respect to the transfer at issue (if any) may be assessed 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.

(vi) *Participation in Appeals consideration process.* For purposes of this section, the donor or a qualified representative of the donor described in § 601.502 of this chapter participates fully in the Appeals consideration process if the donor or the qualified representative timely submits all information related to the transfer that is requested by the IRS in connection with the Appeals consideration and discloses to the Appeals office all relevant information regarding the controversy to the extent such information and its relevance is known or should be known by the donor or the qualified representative during the time the issue is under consideration by Appeals.

(5) *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, and assume that in each case the Tax Court petition is filed on or after September 9, 2009.

These examples, however, do not address any other situations that might affect the Tax Court's jurisdiction over the proceeding:

*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 Letter 950-G 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 Letter 950-G. A Letter 3569 is mailed to D more than 30 days after the mailing of the Letter 950-G 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 Letter 950-G 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 gifts 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 within which a gift tax, if any, could be assessed, the IRS determines that there is not adequate time for Appeals consideration. Accordingly, the IRS mails to D a Letter 3569, even though a Letter 950-G 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.* 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. The IRS sends a Letter 950-G to D, who timely mails a written request for Appeals consideration. 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 Letter 950-G 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 yet available with regard to those gifts.

(f) *Effective/applicability date.* This section applies to civil proceedings described in section 7477 filed in the

United States Tax Court on or after September 9, 2009.

**Linda E. Stiff,**

*Deputy Commissioner for Services and Enforcement.*

Approved: August 26, 2009.

**Michael Mundaca,**

*Assistant Secretary of the Treasury (Tax Policy).*

[FR Doc. E9-21458 Filed 9-8-09; 8:45 am]

BILLING CODE 4830-01-P

## DEPARTMENT OF LABOR

### Occupational Safety and Health Administration

#### 29 CFR Parts 1910, 1915, 1917, and 1918

[Docket No. OSHA-2007-0044]

RIN 1218-AC08

#### Updating OSHA Standards Based on National Consensus Standards; Personal Protective Equipment

**AGENCY:** Occupational Safety and Health Administration (OSHA), Department of Labor.

**ACTION:** Final rule.

**SUMMARY:** OSHA is issuing this final rule to revise the personal protective equipment (PPE) sections of its general industry, shipyard employment, longshoring, and marine terminals standards regarding requirements for eye- and face-protective devices, head protection, and foot protection. OSHA is updating the references in its regulations to recognize more recent editions of the applicable national consensus standards, and is deleting editions of the national consensus standards that PPE must meet if purchased before a specified date. In addition, OSHA is amending its provision that requires safety shoes to comply with a specific American National Standards Institute (ANSI) standard, and a provision that requires filter lenses and plates in eye-protective equipment to meet a test for transmission of radiant energy specified by another ANSI standard. In amending these paragraphs, OSHA will require this safety equipment to comply with the applicable PPE design provisions. These revisions are a continuation of OSHA's effort to update or remove references to specific consensus and industry standards located throughout its standards.

**DATES:** This final rule will become effective on October 9, 2009.

The incorporation by reference of specific publications listed in this final

rule is approved by the Director of the Federal Register as of October 9, 2009.

**FOR FURTHER INFORMATION CONTACT:**

*General information and press inquiries:* Contact Jennifer Ashley, Director, OSHA Office of Communications, Room N-3647, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-1999.

*Technical inquiries:* Contact Ted Twardowski, Directorate of Standards and Guidance, Room N-3609, OSHA, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693-2070; fax: (202) 693-1663.

*Copies of this Federal Register notice.* Electronic copies of this **Federal Register** notice are available at <http://www.regulations.gov>. This **Federal Register** notice, as well as news releases and other relevant information, are also available at OSHA's Web page at <http://www.osha.gov>.

**SUPPLEMENTARY INFORMATION:**

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**I. Summary and Explanation of the Final Rule**

*A. General Background*

As discussed in a previous **Federal Register** document (69 FR 68283), OSHA is undertaking a series of projects to update its standards to incorporate the latest versions of national consensus and industry standards. These projects include updating or revoking national consensus and industry standards referenced in existing OSHA standards, updating regulatory text of standards adopted directly by OSHA from the language of outdated consensus standards, and, when appropriate, replacing specific references to outdated national consensus and industry standards with performance-oriented requirements.

On May 17, 2007, OSHA published a Notice of Proposed Rulemaking (NPRM) (72 FR 27771) entitled "Updating OSHA Standards Based on National Consensus

Standards; Personal Protective Equipment." The NPRM set July 16, 2007, as a deadline for submitting comments and for requesting an informal public hearing on the proposed rule. The Agency received approximately 25 comments and 4 requests for an informal public hearing. OSHA then published a **Federal Register** notice scheduling an informal public hearing for December 4, 2007 (72 FR 50302). The informal public hearing took place as scheduled, and OSHA received testimony from nine witnesses. Thomas M. Burke, Administrative Law Judge, presided at the hearing. At the end of the hearing, Judge Burke set deadlines of January 3, 2008, for submission of post-hearing comments, and February 4, 2008, for the submission of final summations and briefs. Judge Burke closed and certified the record for this rulemaking on June 23, 2008.

*B. Revisions to the PPE Provisions of the OSHA Standards*

1. Background of OSHA's PPE Standards

Subpart I of OSHA's general industry standards contains design requirements for eye- and face-protective devices, head protection, and foot protection. (See 29 CFR 1910.133, 1910.135, 1910.136.) OSHA has similar requirements in subpart I of part 1915 (Shipyard Employment), subpart E of part 1917 (Marine Terminals), and subpart J of part 1918 (Longshoring). These rules require that the specified PPE comply with national consensus standards incorporated by reference into the OSHA standards, unless the employer demonstrates that a piece of equipment is as effective as equipment that complies with the incorporated national consensus standard. (See, e.g., 29 CFR 1910.133(b)(1).)<sup>1</sup> These design provisions are part of comprehensive requirements to ensure that employees use PPE that will protect them from hazards in the workplace.

The incorporated ANSI standards are over a decade old and, in some instances, are two decades old. Over this period, ANSI updated all of the standards, and, in one instance (*i.e.*, the

<sup>1</sup> The general industry and shipyard employment standards expressly allow employers to use PPE that is as protective as PPE constructed in accordance with the incorporated standards. OSHA uses its de minimis policy to allow employers covered by the longshoring and marine terminals standards to use PPE that is as protective as PPE constructed in accordance with the incorporated standards. (See OSHA Instruction CPL 2.103, "Field Inspection Reference Manual," Chapter III.C.2.g; and memorandum from Richard Fairfax, Director, Directorate of Enforcement Programs to Regional Administrators (June 19, 2006).)