



March 3, 2008

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**RE: AICPA Comments on Foreign Gift Reporting Threshold – AICPA requests that the IRS further consider the issue of indexing for inflation the \$100,000 threshold for gifts to be reported on the Form 3520.**

Dear Ms. Morgan:

The American Institute of Certified Public Accountants offers the attached comments on foreign gift reporting threshold that were developed by the Foreign Trust Task Force and approved by the Trust, Estate, and Gift, Tax Technical Resource Panel and the International Taxation Technical Resource Panel and Tax Executive Committee. We previously commented on foreign trust reporting on January 31, 2007, and on Forms 3520 and 3520-A on June 17, 2003.

The AICPA is the national, professional organization of certified public accountants comprised of approximately 350,000 members. Our members advise clients on federal, state, and international tax matters, and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We are writing in response to your May 25, 2007, follow-up call – stating, among other things, that the IRS response regarding the suggestion of increasing the Form 3520 \$100,000 threshold for gifts and bequests is that it is statutory and would not be indexed.

### **AICPA Position**

We believe that the Treasury Department and IRS do have the regulatory and administrative authority to increase the reporting threshold for U.S. persons receiving gifts from any foreign individual or estate. Currently, gifts received in the aggregate exceeding \$100,000 are subject to reporting. (See Notice 97-34.) We strongly recommend that the \$100,000 threshold be increased to reflect inflation over the last 10 years. This increase would not require a statutory change. The 1997 increase from \$10,000 to \$100,000 was accomplished by Treasury through Notice 97-34.

### **Background**

Over the next decade, there will be significant transfers of wealth to younger generations, which will include transfers from foreign nationals to U.S. residents. Given this trend, the AICPA

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recommends that the IRS and Treasury consider indexing for inflation the reporting threshold for such gifts made from foreign nationals to U.S. persons.

Section 6039F(a) provides that if the value of the aggregate foreign gifts received by a U.S. person in a taxable year exceeds \$10,000, the U.S. person must report the information regarding each foreign gift received in the year. The statute provides for a cost-of-living adjustment to the \$10,000 amount for any taxable year beginning after December 31, 1996. (See section 6039F(d).) Section 6039F(e) grants the Treasury Secretary the authority to prescribe regulations to carry out the purposes of this section.

IRS Notice 97-34 states:

For purposes of determining whether the receipt of a gift from a foreign person is reportable, Treasury and the Service have determined that different reporting thresholds are warranted for gifts received from nonresident alien individuals, foreign estates, foreign partnerships, and foreign corporations. Accordingly, it is expected that Form 3520 will apply the following reporting thresholds and requirements:

1. Gifts from foreign individuals and foreign estates.

*A U.S. person is required to report the receipt of gifts from a nonresident alien or foreign estate only if the aggregate amount of gifts from that nonresident alien or foreign estate exceeds \$100,000 during the taxable year. Once the \$100,000 threshold has been met, it is expected that Form 3520 will require the donee to separately identify each gift in excess of \$5,000, but will not require the identification of the donor. (Emphasis added.)*<sup>1</sup>

### **Analysis for Change**

The IRS and Treasury issued Notice 97-34 to increase the reporting threshold for foreign gifts from \$10,000 to \$100,000. The Notice was issued under the authority granted by section 6039F(d) and (e), allowing the Secretary to increase the reporting threshold by an inflationary index as part of the ability to carryout the purposes of the statute.

Thus, the IRS and Treasury continue to have the regulatory authority to increase the \$100,000 threshold to keep up with inflation.

### **Recommendation**

Based on current trends, the AICPA proposes that the IRS and Treasury exercise their existing statutory authority and increase the \$100,000 reporting threshold taking into account inflation since 1997.

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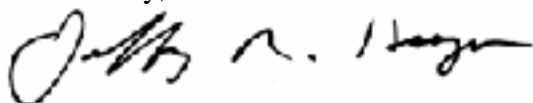
<sup>1</sup> IRB 1997-25, Section VI. U.S. Recipients of Foreign Gifts, B. Reporting Thresholds,

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We thank you for the opportunity to comment on these matters and welcome the opportunity to discuss our comments further with you or others at the IRS. Please feel free to contact me at 212-773-2858 or [jeffrey.hoops@ey.com](mailto:jeffrey.hoops@ey.com); Justin P. Ransome at 202-521-1520 or [Justin.ransome@gt.com](mailto:Justin.ransome@gt.com), Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel; Karen A. Brodsky, Chair, AICPA Foreign Trust Task Force, at 212-436-3025 or [kbrodsky@deloitte.com](mailto:kbrodsky@deloitte.com); or Eileen R. Sherr, AICPA Technical Manager, at 202-434-9256 or [esherr@aicpa.org](mailto:esherr@aicpa.org), to discuss any of the above items or if you require any additional information.

Sincerely,



Jeffrey R. Hoops  
Chair, AICPA Tax Executive Committee

- cc: Eric Solomon, Assistant Secretary for Tax Policy  
Michael Mundaca, , Treasury Department, Deputy Assistant Secretary for Tax Policy – International, Treasury Department  
John Harrington, International Tax Counsel, Treasury Department  
Gretchen Sierra, Attorney Advisor, Office of the International Tax Counsel, Office of Tax Policy, Treasury Department  
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John J. Merrick, IRS Special Counsel to Associate Chief Counsel (International), Room 3052 IR, CC:INTL