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From:
Sent: Wed 7/30/2008 8:03 AM
To:
Cc:
Subject: RE: Statute of Limitations Inquiries

[redacted],

I believe that the ultimate answer to your question is that in the scenario described it is not possible to extend the SOL by agreement. As [redacted] pointed out the correct procedure would be to issue a Notice of Determination under section 7477. This has the same effect as issuing a statutory notice, except that there is no tax at issue. This must be done within the original SOL.

The basis for arguing that the trustee should be able to extend the SOL is that the liability for the gift tax follows the property. This is prescribed by IRC § 6901. Rev. Rul. 83-41 confirms that the donee of the gifted property can then extend the SOL for any 6901 liabilities. However, 6901 only applies to situations where there is an actual tax liability. In the factual situation you described there is not a tax liability due to the unified credit. Therefore the Trustee is not liable for the donor's valuation misstatement and cannot agree to an extension of the SOL. This seems to be consistent with IRC § 6501(c)(4) which limits extensions of the SOL to any tax other than the estate tax. Because gift tax liability of a deceased individual becomes part of the deceased's estate, the inability to extend the gift tax liability conforms to the inability to extend the estate tax liability. Please let me know if you have any questions or would like to discuss this further.