The Ricky Ricardo Tax: Taxation of Marital Transfers to Non-Citizen Spouses

Tax Section

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"I Love Lucy," running originally from 1957 to 1960, exists in the collective memory of multiple generations of Americans as one of our most iconic television programs. In fact, in 2012 (52 years after its end-date) it was voted as the "Best TV Show of All Time" in a survey conducted by ABC News and People magazine. But Lucy's zany antics would not have been nearly as entertaining without her foil character, Ricky Ricardo. Ricky, Lucy's Cuban singer/bandleader husband, constantly loses his patience at his wife's ceaseless attempts to get into showbiz and exorbitant spending on clothes or furniture. Lucy and Ricky as a married couple share everything, but the gift tax does not treat them the same way as most other married couples because Ricky is a U.S. resident, but a Cuban citizen.

Today, our increasingly international world makes the marriage between a U.S. citizen and a U.S. resident more prevalent. Most U.S. married couples do not consider the tax consequences of transferring assets between themselves because there are none. Gifts to individuals greater than $15,000 (for 2019) are generally subject to the federal gift tax regime. Section 2023(a), however, provides that gifts between spouses are exempt. But, unfortunately for Ricky and Lucy, Section 2023(i)(1) provides the exemption for spouses does not apply if the spouse who receives this gift is not a citizen of the U.S. Does this mean Lucy can spend only $15,000 per year on gifts for Ricky without having to file a gift tax return? No, the U.S. legislators realized that limitation would be impractical and in Section 2023(i)(2) increased the amount a U.S. citizen may gift to a non-U.S. citizen spouse to $155,000 (for 2019).

Though $155,000 is a large enough annual sum to prevent most couples from ever dealing with this issue, it places Ricky and Lucy at a huge tax planning disadvantage compared to the unlimited marital deduction provided to married U.S. citizens. This limitation becomes even more troublesome when spouses use joint bank and brokerage accounts. Such accounts create the very real possibility of spouses like Ricky and Lucy accidentally giving one another taxable gifts.

One spouse's placing funds into a joint account is not considered a gift. However, if the other spouse later withdraws the funds from the account, the law treats it as a gift from one spouse to the other. Thus, if Lucy were to make it in show business and deposit a big check in her and Ricky's joint account, any withdrawal by Ricky of those funds would be treated as a gift from Lucy to Ricky using up some of the $155,000 limit. Many married couples have one spouse who works outside the home while the other raises the children and lives off the other spouse's income using a joint bank account. But very few realize every withdrawal from the joint account constitutes a gift that (if the non-working spouse is a non-U.S. citizen) results in a reduction in the $155,000 marital gift limitation. For high-net worth couples, accidentally going over this limit is a very real possibility that could result in unintended tax consequences.

Given the increasingly international nature of the world, it may be time for Congress to revise Section 2023(i)(2). Otherwise, Ricky may be home with some bad news about the Ricardo family taxes.

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