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From: [REDACTED]
Sent: Friday, February 08, 2019 10:46:38 AM
To: [REDACTED]
Cc: [REDACTED]
Bcc:
Subject: RE: Protective Refund Claim - Gift Tax

You asked whether protective refund claims can be made with respect to gift taxes. Exam recently denied such a claim because it stemmed from the gift tax. We conclude that protective refund claims can be made with respect to gift taxes.

You found some materials that involve gift tax and protective refund claims. Similarly, we found a CCA that involves gift tax and protective refund claims. See CCA 200938021. There are IRM provisions that address protective refund claims, see e.g., IRM 21.5.3.4.7.3.1, and case law that goes beyond what's in the IRM, see CCA 201411021. In addition, the requirements for a protective refund claim were set out long ago in United States v. Kales, 314 U.S. 186 (1941). We have not found anything that specifically considers whether protective refund claims can be used for gift taxes and certainly nothing that excludes gift taxes from protective refund claims.

You note that Exam has not denied or allowed the protective estate tax refund claim, but denied the gift tax claim for no reason other than that it relates to gift tax. We don't see that there was a basis for having done so.

If you would like to discuss this further, please contact me.