Unknown Gift Tax Return Could Be Reasonable Cause for Late Filing

A missing or unknown federal gift tax return could constitute reasonable cause for the late filing of an estate tax return.

To understand the appropriate steps to take after the decedent's death, the executor was in contact with the decedent's tax preparer, a family office service, and an attorney. Several months after the decedent's death, the attorney advised that no estate tax return needed to be filed because the gross estate was below the basic exclusion amount for the year of death. Nearly two years after the decedent's death, the decedent's son, who had not been involved in the estate preparation and administration, indicated that various trusts might have been created. The attorney asked the tax preparer about the trusts and the tax preparer provided a gift tax return reporting gifts to the trusts. The amount of the gifts put the estate over the threshold amount for an estate tax return.

Complaint Established Reasonable Cause

Calling the government's argument circular, the court concluded that it would not dismiss the complaint based on the position that the attorney's advice on whether to file an estate tax return was objectively unreasonable. If the court sided with the government on this point, missing information could never constitute reasonable cause because the advice would never be based on all pertinent facts and circumstances. Relying on the complaint alone, the court could not decide whether the attorney's investigation constituted reasonable due diligence.

The executor is ultimately responsible for providing all of the information available to prepare a tax return. In this case, the question of whether the executor acted reasonably was dependent on the availability of the missing gift tax return. Absent more information from the tax preparer about the gift tax return, the complaint could not be dismissed.