

Form 709

The Gift Tax Return

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This session will answer...

- What constitutes a gift?
- Are all gifts taxed?
- What's the difference between the exclusion and the exemption?
- What are the filing requirements for Form 709?
- Who is liable for the tax?
- How does the gift tax relate to the estate & GST tax regimes?
- What tax code changes can we expect?
- Can we still pay less?
- How do we prepare Form 709?



Definition of “Gift”

- Any transaction in which interest in property is gratuitously transferred
- Complete when donor relinquishes control & cannot change disposition



Gifts

- Interest-free family loan = conveyance of economic benefit (use of money) without consideration (interest payments)
- Inducement = eager young man offers fiancé \$150K to accept marriage proposal BUT marriage is not consideration
- Family care = home transferred to son in exchange for care provided BUT state law prohibits payments for services to in-home family members

Not gifts

- Oscar swag bag = compensation for services paid to curry favor
- Loan guarantee = incomplete gift since there is no certainty that payment will be required
- Divorce settlement = surrender of marital rights as per divorce decree is not voluntary



Elements of a Gift

1. Delivery

- Actual or implied (e.g. new car in driveway or give car keys)
- Directly or through 3rd party

2. Donative intent [see Officer Peebles]

- Express or inferred
- At time of gift

3. Acceptance

- Donee takes unconditional possession (can disclaim in writing)
- Donor forfeits all rights

Officer Peebles

- Uncovered wife's affair with doctor & blackmailed him
- Doctor delivered cash & said, "This is not blackmail money; I just want to help you out"
- Peebles did not report "gift"
- Doctor's accountant later issued 1099-MISC
- Court held that this was taxable income since it was not given with "disinterested generosity"



Actions speak louder than words!

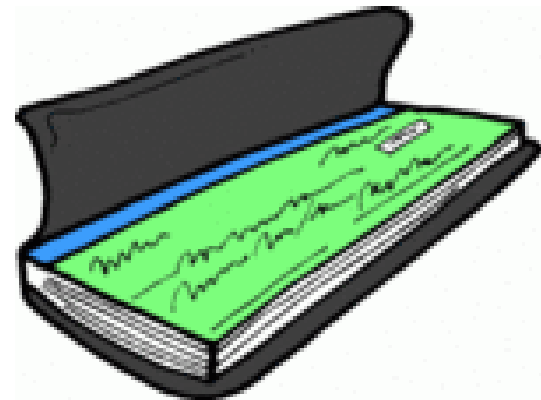
Common Types of Gifts

- **Below-market loan:** Gift = Interest at Applicable Federal Rate
- **Debt forgiveness:** Gift = Unpaid balance
 - Demand loan: treated as made on last day of calendar year
 - Term loan: treated as gift on date funds are loaned
 - De minimus exemption: \$10,000
- **Below-market sale:** Gift = FMV – discounted sales price
- **Transfer to an irrevocable trust:** Gift = Value of assets transferred
- **Joint annuity:** Gift = Premium difference btw. joint & single-life annuity
- **Corporate dissolution:** Gift = Value of distribtn – shareholder's interest

Gifts by Check

Gift is considered complete if:

- donor intended to make gift,
- delivery was unconditional,
- deposit was made in year of gift & within reasonable time after issuance (even if not yet cleared),
- donor's bank did not reject the check, *and*
- donor was alive when the donor's bank paid it



Transfers into Joint Ownership

- State law governs when transfer is deemed complete
- Generally:
 - Real property, mutual funds, stocks & bonds upon re-titling
 - Bank & brokerage accounts when donee makes withdrawal for own benefit

*Mom re-titles condo to avoid probate [Gift # 1] – oops!
Son quit claims property back [Gift # 2] – OOPS!*

INSTEAD, draft written agreement which states:

- *Neither party may sever joint tenancy without mutual consent*
- *Joint tenancy is for estate transfer purposes only, and*
- *Original owner will continue as sole owner until death or severance*

Gift Tax

- Enacted in 1932 (16 years after Estate Tax)
- Imposed on donor
- Cumulative tax – each successive gift is taxed at marginal rate of all gifts made (even if tax on earlier gifts was previously paid)



Exceptions



- Gifts to qualified charities

Jay Z's "donation" ≠ CHARITY since settling a bet with de la Hoya

- Support payments (if legally required)

Pymts for living xpns of 25-year old son away from home = GIFT

But if son is only 17 ≠ GIFT since legal obligation to support minor

- Direct payments for another's medical expenses (incl. insurance premiums)

Exceptions (cont'd)

- Direct payments for another's tuition
 - If paid directly to school
 - NO books, room & board, or supplies
- Qualified Tuition Programs (529 Plans) = GIFT
 - But eligible for aggregate of 5 years of annual exclusion
 - Elect on Form 709, Schedule A



Report §529 Plan Contributions

Form 709 (2011) BARACK H. OBAMA

SCHEDULE A, PART I CONTINUATION SHEET

Part 1 - Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	DAUGHTER DONOR ELECTED UNDER SECTION 529(C)(2)(B) OF THE CODE TO TREAT A 2007 GIFT AS HAVING BEEN MADE RATABLY OVER A 5-YEAR PERIOD BEGINNING IN 2007. SEE ELECTION MADE WITH TAXPAYER'S 2007 GIFT TAX RETURN.		12,000.	01/01/11	12,000.	6,000.	6,000.
2	NATASHA M. OBAMA CHICAGO, IL DAUGHTER DONOR ELECTED UNDER SECTION 529(C)(2)(B) OF THE CODE TO TREAT A 2007 GIFT AS HAVING BEEN MADE RATABLY OVER A 5-YEAR PERIOD BEGINNING IN 2007. SEE ELECTION MADE WITH TAXPAYER'S 2007 GIFT TAX RETURN.		12,000.	01/01/11	12,000.	6,000.	6,000.



Annual Exclusion

- \$16K/year to each donee (in 2022)

Exclusion Amount (\$)	Applicable Years
10,000	1998 – 2001
11,000	2002 – 2005
12,000	2006 – 2008
13,000	2009 – 2012
14,000	2013 – 2017
15,000	2018 – 2021
16,000	2022 –

- Must be present interest → grant donee immediate right to use & possession

Grandpa sends

- *\$40K to University for grandson's tuition (EXEMPT)*
- *\$16K to grandson for books & supplies (EXCLUDED)*

Crummey Power

- Converts gift that is ineligible for annual exclusion to one that is eligible
- Must make gift to an irrevocable trust (often to buy insurance)
- Must notify trust beneficiaries of right to withdraw contributed amount for minimum of 30 days
 - giving unrestricted right to immediate use, possession, or enjoyment of gift satisfies present interest rule
- Assets not withdrawn qualify for annual gift tax exclusion



Present Interest

- UTMA okay if:
 - Funds immediately available for minor's benefit,
 - minor will receive property by age 21, and
 - property will pass to the minor's estate
- ILIT okay if:
 - Gifts of future interest converted using Crummey power
 - Grant bene the right to withdraw funds for limited time



Gift-splitting



- Spouses may elect to jointly give \$32K (in 2022)
 - both spouses must be U.S. citizens / residents
 - married at time of gift, and
 - remain unmarried at year-end if separated after gift
- Elect on Form 709, Part I
 - Donor spouse must file Form 709 (NO joint return)
 - Other spouse must sign consent on Line 18
 - Both spouses must submit 709s (mail in 1 envelope) UNLESS only donor spouse made other gifts & consenting spouse made no reportable gifts other than the split-gift

Example of Gift-splitting

- H & W agree to split all gifts
 - H gave nephew \$21K
 - W gave niece \$18K
- Each gift is treated as $\frac{1}{2}$ from H and $\frac{1}{2}$ from W
 - H & W then viewed separately to determine if gifts > annual exclusion
 - Each donor must file gift tax return to report gift-splitting (even if no taxable gift)

Report Gift-splitting Election

Form 709	United States Gift (and Generation-Skipping Transfer) Tax Return		OMB No. 1545-0020		
Department of the Treasury Internal Revenue Service	(For gifts made during calendar year 2011)		2011		
			▶ See instructions.		
1 Donor's first name and middle initial BARACK H.		2 Donor's last name OBAMA		3 Donor's social security number	
4 Address (number, street, and apartment number) 1600 PENNSYLVANIA AVENUE, NW		5 Legal residence (domicile) ILLINOIS			
6 City, state, and ZIP code WASHINGTON, DC 20500		7 Citizenship (see instructions) UNITED STATES			
Part 1 - General Information	8 If the donor died during the year, check here <input type="checkbox"/> and enter date of death _____			Yes	No
	9 If you extended the time to file this Form 709, check here <input type="checkbox"/>				
	10 Enter the total number of donees listed on Schedule A. Count each person only once. ▶ 2				
	11a Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b			<input checked="" type="checkbox"/>	
	b If the answer to line 11a is "Yes," has your address changed since you last filed Form 709 (or 709-A)?				<input checked="" type="checkbox"/>
	12 Gifts by husband or wife to third parties. Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (See Instr.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. If the answer is "No," skip lines 13-18 and go to Sch. A.)			<input checked="" type="checkbox"/>	
	13 Name of consenting spouse MICHELLE L. OBAMA		14 SSN		
15 Were you married to one another during the entire calendar year? (see instructions)			<input checked="" type="checkbox"/>		
16 If 15 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/deceased, and give date ▶					
17 Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)			<input checked="" type="checkbox"/>		
18 Consent of Spouse. I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.					
Consenting spouse's signature ▶ <i>Michelle Obama</i>			Date ▶ <i>07-09-12</i>		



Lifetime Exemption

- \$12.06 million (in 2022)

Applicable Year	Exemption (\$)	Applicable Credit (\$)
2017	5.49 M	2,141,800
2018	11.18 M	4,417, 800
2019	11.4 M	4,505,800
2020	11.58 M	4,577,800
2021	11.7 M	4,625,800
2022	12.06M	4,769,800

- Form 709 calculation does not exempt assets INSTEAD tax is calculated first, then credit is applied
- Applicable credit applies to gifts & estates (a.k.a. Uniform Credit)
 - Only *one* lifetime exemption
 - Deceased spouse unused exemption (DSUE) may be used by survivor
 - Apply 1st to taxable gifts during lifetime
 - Remainder of credit available at death

No gift tax due unless cumulative gifts > lifetime exemption

Apply in Sequence

Taxpayer gifted:

- *\$8K car to son*
- *\$26K cash to daughter for down-payment on house*
- *\$16K paid college tuition of nephew*

1. *Apply educational (medical or charitable) exemption*
→ *gift to nephew is exempt*

2. *Apply annual exclusion*
→ *entire gift to son & first \$16K of gift to daughter are excluded*

3. *Apply lifetime exemption*
→ *remaining \$10K of gift to daughter is taxable*
→ *tax totals \$4,000 which reduces avail. Unified Credit*

STEP 1

STEP 2

STEP 3

**Taxpayer does not owe gift tax but must file Form 709
(even if he does not anticipate exceeding exemption during lifetime)**

Non-Residents Aliens

- Subject to gift tax only on US-sited real or tangible personal property

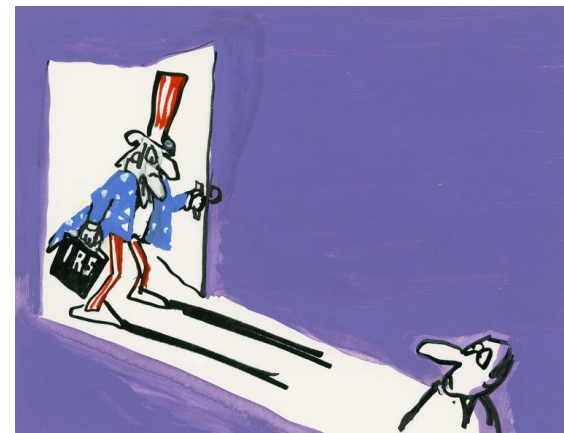
Mexican citizen gifts Arizona property to Mexican son → taxable

US citizen gifts Mexican property to daughter → taxable (regardless of daughter's nationality)

TIP: *Gift intangible assets or transfer US-sited property to business entity; then transfer shares*

- Eligible for annual exclusion; lifetime exemption of only \$60K
- Marital deduction is not unlimited (\$164K in 2022)
- US bene of foreign gifts > \$100K generally must file Form 3520

Expatriates



- Donee (rather than donor) liable for gift tax
 - If received from covered expatriate
 - For gifts after June 17, 2008
 - 40% rate (in 2022)
- Covered expatriate = US citizen or long-term resident
 - average annual income tax liability > \$178,000 (in 2022) for 5 years before relinquishing citizenship, OR
 - net worth \geq \$2,000,000 on date of expatriation, OR
 - failed to comply with US tax obligations for 5 years prior to expatriation.

Form 709 – Filing Requirement

- Must file if:
 - Gift > annual exclusion
 - Don't report political contributions, medical/tuition pymts or gifts where donee aggregate is below exclusion amt
 - Gift of future interest
 - Gift-splitting elected
 - Gift of jointly-held or community property by one spouse only
 - Executor on behalf of deceased donor
 - Individual is beneficiary, partner, shareholder of donor entity
- Filing required even if no tax due
- Form 709 is an individual return
 - Spouses must file separately

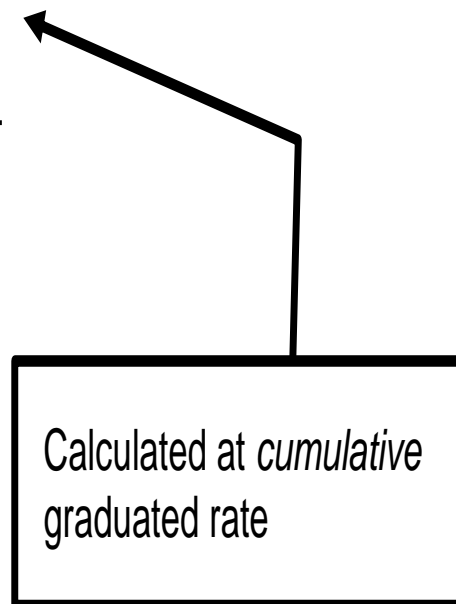


Form 709 – Due Date

- Due April 15th of year following gift (or with Form 706 if donor has died since making gift)
- Automatic 6-month extension if Form 4868 filed to extend income tax return
- Use Form 8892 to extend 6 months if no income tax return due
- Extension does not extend time for payment

Tax Calculation

- (Taxable Gifts during lifetime * Applicable Tax Rate)
- (Taxable Gifts in prior years * Applicable Tax Rate)
- = Tentative Tax
- Applicable Credit Amount
- = Tax Due



Tax Rates (2022)

Taxable Amt (\$)	Tax Rate (%)	Tax Due (\$)
0 – 10,000	18	\$0 + 18% over \$0K
10,001 – 20,000	20	\$1,800 + 20% over \$10K
20,001 – 40,000	22	\$3,800 + 22% over \$20K
40,001 – 60,000	24	\$8,200 + 24% over \$40K
60,001 – 80,000	26	\$13,000 + 26% over \$60K
80,001 – 100,000	28	\$18,200 + 28% over \$80K
100,001 – 150,000	30	\$23,800 + 30% over \$100K
150,001 – 250,000	32	\$38,800 + 32% over \$150K
250,001 – 500,000	34	\$70,800 + 34% over \$250K
500,001 – 750,000	37	\$155,800 + 37% over \$500K
750,001 – 1,000,000	39	\$248,300 + 39% over \$750K
1,000,001 and over	40	\$345,800 + 40% over \$1 M

Sample Calculation

- **Facts**
 - 2017: \$5 million taxable gifts (after annual exclusion)
 - 2020: \$13 million taxable gifts
 - Value of estate at death (2021) = \$30 million
- **Step 1: Tax on previous gift(s)**

\$5 million in '17 → Tax = **\$1,945,800**

But \$0 paid...

...because Tax < \$2,141,800 lifetime credit available

Sample Calculation (cont'd)

- **Step 2: Tentative tax on aggregate value of all gifts**

\$13 million cumulative gifts in '20

→ Tentative tax = **\$7,145,800**

- **Step 3: Gift Tax due in 2020**

\$ 7,145,800 *Tentative tax [from Step 2]*

– **1,945,800** *Tax previously attributed to '17 gift [see Step 1]*

\$ 5,200,000 *Tax attributable to '20 gift*

– **2,632,000** *Credit avail for '20 (= \$4,577,800 – 1,945,800 used in '17)*

\$ 2,568,800 *Gift tax due in '20*

Sample Calculation (cont'd)

- **Step 4: Tax base for Estate Tax**

\$30M	Value of estate in '21
+ <u>18M</u>	Prior taxable gifts added back to estate
\$48M	Tax base used to compute estate tax

- **Step 5: Estate Tax due in '21**

\$19,145,800	Tentative tax on \$48 M tax base
– <u>2,568,000</u>	Tax previously paid on gifts [from Step 3]
\$16,577,800	Estate tax liability
– <u>4,625,800</u>	Credit avail for '21
\$11,952,000	Estate tax due in '21

Who is liable for gift tax?

- Donor (or personal representative if donor deceased)
- Liability may shift to donee if donor is:
 1. Expatriate
 2. Delinquent
 - Must be assessed against transferee w/i 1 year after donor's SOL expires
 - IRS may file lien against transferred property for 10 yrs after date of gift



Title to family home transferred from father to son. Dad was assessed gift tax on transfer but did not pay.

→ Son (as transferee) assumes liability for gift tax

- Voluntary assumption of donor's liability by donee...

Net Gift

- Donee assumes liability to relieve donor of burden
 - Must file 709 for Donor (not Donee)
 - Any tax paid by Donee must be added back to Donor's estate (3 years)
- NO tax savings → Donee will net same gift whether
 - Donor pays tax and then gifts net amount, or
 - Donee receives full gift and then pays tax

In 2020, 85-yr old Mom gifts \$15 M to Son who agrees to pay gift tax.

<i>Tax on Gross Transfer of \$15 M</i>	<i>\$ 5,945,800</i>
<i>Applicable Credit (TY'20)</i>	<i><u>(4,577,800)</u></i>
<i>Tentative Gift Tax</i>	<i>\$ 1,368,000</i>
<i>Divide by 1.40 (= 1 + 40% tax rate)</i>	<i><u>÷ 1.40</u></i>
<i>Actual Tax Due</i>	<i>\$ 977,143</i>

Net Gift to Donee (= \$15 M – Actual Tax) \$14,022,857

Net, Net Gift

- Donee assumes gift tax AND contingent liability for estate tax
- Can provide estate & gift tax savings
 - Contingent liability can be discounted for present value
 - Donee nets larger gift

	Traditional or Net Gift	Net, Net Gift
Amt. received by Donee	10,665,517	10,882,918
Amt. reported as Gift	10,665,517	10,182,403
Gift Tax Due	4,334,483	4,117,082
Estate Tax due if 3-yr look-back	2,331,952	2,214,990
Gift & Estate Tax liability	6,666,435	6,332,072
Combined tax savings		334,363

Example based on 85-year old Donor makes gift in 2007 [Arlein & Frazier, <https://www.pbwt.com/content/uploads/2015/07/Trust-Estates-Article-August-2008-ePrint.pdf>].

Penalties



- 20% for “substantial” valuation misstatements; 40% for “gross” misstatements
- May be assessed against taxpayers as well as persons who knowingly aid/abet understatement of tax liability (e.g. attorney & appraiser)
- Preparer penalties – previously applicable to income tax returns only – were extended to include gift & estate returns in 2007

Statute of Limitations

- 3 years (6 years if > 25% of items unreported)
- Gift tax valuations adequately disclosed on properly filed (and unchallenged) 709 cannot be challenged by IRS on 706 [TRA 1997]

Taxpayer gifts private company stock to daughter & values shares at \$10K based on minority & marketability discounts. Since value of gift < annual exclusion, it is not reportable

TIP: *File 709 anyway to explain valuation & prevent IRS from challenging future gifts & inheritances after statute on 709 expires*

Valuation

- Valued at FMV when transfer is complete
- Value may be discounted for:
 - Lack of marketability (e.g. restricted stock, limited partnerships)
 - Lack of control (e.g. minority shares)
 - Built-in gains on appreciation prior to donee ownership

- Frequently disputed by IRS

TIP: Use “qualified” appraisers



Carry-over Basis

GENERAL RULE: Donee's Basis = Donor's Basis + Gift tax paid* attributable to accumulated appreciation

* NO basis adjustment if gift tax offset by applicable credit

Donor gifts property with FMV of \$120K (basis = \$100K basis)

Donor pays \$5K gift tax

Donee then sells property for \$150K (at a gain)

100,000 Donor's basis

*+ 1,000 Allocated gift tax paid $\{(120K - 100K) \div 100K\} * 5K$*

101,000 Donee's basis

Carryover Basis Exception

HOWEVER, if Donee later sells gifted property at a loss, Donee's basis is lower of carry-over basis or FMV at time of gift.

	Sell < FMV LOSS	Sell btw FMV & D's Basis	Sell > FMV GAIN
Donor's Basis	100	100	100
FMV at the time of gift	90	90	90
Donee's Sales Price	80	95	120
→ Donee's Basis	90	90 or 100	100
Donee's Capital Gain (Loss)	(10) = 80 - 90	0	20 = 120 - 100
Donee's Basis equals...	The lower of FMV or Donor's Basis	Basis for gain is 100, but no gain; basis for loss is 90, but no loss	Donor's basis [GENERAL rule]

Generation-skipping Transfers

- GST Imposed on direct skips to a relative ≥ 2 generations below
- GST tax rate = top Estate Tax rate in effect (40% in 2022). No graduated rates!
- GST not imposed on direct payments for tuition and medical payments, nor on gifts $<$ annual exclusion



Transfers to Trusts

- No GST on gifts to trust if:
 - Less than \$16K (in 2022),
 - For the benefit of *one* skip person, and
 - Trust will be includible in skip person's estate

Grandpa previously made annual gifts to 3 grandchildren (3 X \$16K in 2022)

→ eligible for annual gift tax exclusion

Instead, Grandpa creates trust for benefit of all 3 grandchildren & makes one lump-sum gift of \$48K

→ ineligible for GST exclusion

GST Exclusion

- \$12.06 million GST exclusion in 2022 (not portable)
- Lifetime exemption is automatically allocated first to lifetime direct skips & indirect skips made to a trust; then to post-death transfers
- BUT taxpayer may elect to change allocation by establishing an inclusion ratio → use to preserve the GST Exclusion for future taxable distributions & terminations from a trust

Inclusion ratio of zero = full exemption (no GST currently due)

GST Tax Computation

All GST transfers during year * max estate tax rate * Inclusion Ratio = GST Tax

Taxpayer transfers \$2 million to trust for Son & Grandson, & allocates \$500K of her GST exclusion to the transfer. When Son dies several years later, there is taxable termination of trust now valued at \$3 million. [Tax rate at time of Son's death = 40%]

Inclusion Ratio = $1 - (500,000 \div 2,000,000) = 75\%$

*GST Tax = \$3 million * 40% tax * 75% inclusion = \$900,000*

[If all of transfer had been allocated, then inclusion ratio = 0 & NO tax due]



- TIPS:** Allocate to one trust only rather than partial exclusions to several trusts.
 Allocate exclusion to trusts FBO of skip-persons.
 Allocate additional inflation-adjusted amt of available exclusion annually.

GST Tax Reporting

- Lifetime transfers reported on Form 709, Schedule A, Part 2
- Transfers at death reported on Form 706, Schedule R
- Liability for GST Tax:
 - Transferor if direct skip
 - Trustee if taxable termination of trust
 - Transferee if distribution from trust

Estate Tax

- Lifetime gifts are added back to bump decedent's estate into higher marginal bracket
- Gift tax previously paid is deducted against estate tax liability
→ no double taxation
- Result = gift is always taxed at highest possible bracket



Gift vs. Estate Tax

- Gift tax is tax-exclusive (assessed only on assets transferred)
- Estate tax is inclusive (assessed on assets transferred + assets used to pay tax)

Assume gift & estate tax rates are flat 50% & all unified credit has been used...

Gift: Donor transfers \$2 million gift to donee & pays \$1 million tax from other moneys → Donee pockets $\frac{2}{3}$ of total \$ paid out

Estate: Decedent leaves \$3 million estate; executor must use \$1.5 million to pay tax → Heir receives only $\frac{1}{2}$ of total \$ out

Deathbed Transfers

- Certain “last-minute” (within 3 years) transfers intended to reduce taxable estate are added back to gross estate
 - Applies to retained life estates, revocable transfers, life insurance proceeds
 - “Lookback Rule” applied to ALL gifts before 1997

*Dad gifts personal residence valued at \$13 million to Daughter in 2020, retaining the right to live in the home rent-free
→ Dad pays gift tax of \$562,000*

*Dad dies in 2021 → value of gift & gift tax paid are added back to estate
(= \$13,547,000 = 13 M - \$15K annual exclusion + 562K gift tax)
BUT estate tax due will be reduced by amount of gift tax previously paid*



Basis: Gift vs. Estate

Gift

- Donor's basis (general rule)
- Donor's holding period
 - Donee liable for gains accumulated by Donor BUT gets basis adjustment for allocable gift tax paid

Estate

- Stepped-up basis (DoD)
- Long-term holding period
 - Donee gets fresh start!



Changes are coming!

Proposals include:

- Annual Exclusion – eliminate for transfers to trusts & family entities
- Lifetime Exemption – reduce to \$3.5 or 5 M (w/o inflation adjustments) & limit gift exclusions to \$1 M
- Valuation Discounts – eliminate for intra-family transfers
- Trusts – impose GST tax on dynasty trusts & limits on GRATs
- Tax Rates – start at 45% and graduate to 65% (for \$1 B estates)
- Basis Step-up – Apply carry-over basis for gifts and estates

Tax Strategies

- Until legislative changes are enacted, minimize wealth taxes by:
 - Making inter vivos transfers
 - Removing assets from taxable estate
 - Maximizing use of exempt transfers
 - Using enhanced lifetime exemption
 - Using discounts & present value computations to reduce taxable values
 - Sheltering future appreciation
- Strategies previously discussed, include:
 - Direct payments to 3rd parties (tuition & medical expenses)
 - Charitable contributions
 - Gift-splitting
 - Conversion of future interest to present (Crummey power)
 - Net, net gifting

Other Strategies

Grantor Retained Annuity Trust (GRAT)

- Grantor deposits assets into a fixed-term irrevocable trust (NO annual or GST exemption)
- Grantor retains right to fixed annuity stream – use corpus if income insufficient
- All income & gains (losses) are taxed to Grantor
- Beneficiaries get residual at end of trust term
- If Grantor pre-deceases term of trust, remainder interest is included in his estate



Taxpayer (T) funds 10-year GRAT with \$5 million → gift tax assessed on ca. \$820K (= present value of remainder interest)

T receives annual annuity pymts of \$500K; beneficiaries eventually receive ca. \$1.15 M (= future value of \$5M – annuity pymts)

Other Strategies (cont'd)

Qualified Personal Residence Trust (QPRT)

- Grantor places 1° or 2° home into trust
- Grantor retains right to live in home for term of trust
- Grantor remains responsible for upkeep → can claim deductions for property taxes & mortgage interest
- Grantor pays gift tax on transfer → value discounted for lack of marketability
- Capital improvements made by Grantor = additional gifts to the trust
- If Grantor survives term of trust, property passes to Beneficiaries who can then rent back to Grantor
- Beneficiaries receive carry-over basis → large future capital gains (?)



Other Strategies (cont'd)

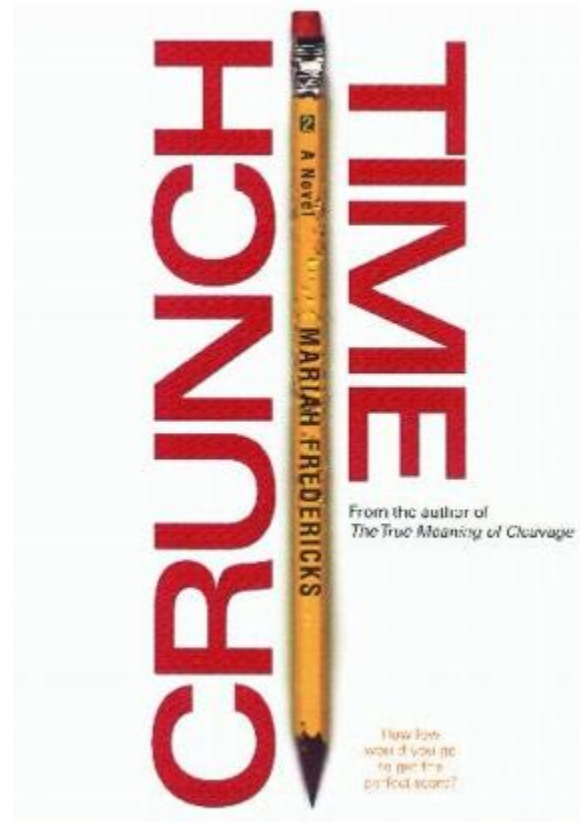
Spousal Lifetime Access Trust (SLAT)

- Grantor spouse transfers appreciated assets to trust FBO of Donee spouse
- Apply marketability & control discounts to carefully selected assets → use up lifetime exemption
- Donee spouse receives lifetime income stream; Beneficiaries receive remainder assets (carry-over basis)
- Grantor remains liable for trust taxes
→ income taxes paid = *tax-free* gift to Beneficiaries



Upstream Planning

- Younger generation use maximum lifetime exemption to gift assets to elders
- Elders “promise” to return those assets to children at death
- IRS may deem transaction as deathbed transfer if elder dies too soon



Comprehensive Example

Facts:

Single Taxpayer gifted

- *\$200K to Son → reportable*
- *\$100K to Church → reportable*
- *\$13K each to 5 grandchildren → not reportable
(exempted by annual exclusion)*

Form **709**

United States Gift (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0020

Department of the Treasury
Internal Revenue Service

▶ Go to www.irs.gov/Form709 for instructions and the latest information.

(For gifts made during calendar year 2020)

▶ See instructions.

2020

1 Donor's first name and middle initial		2 Donor's last name		3 Donor's social security number		
4 Address (number, street, and apartment number)				5 Legal residence (domicile)		
6 City or town, state or province, country, and ZIP or foreign postal code				7 Citizenship (see instructions)		
Part 1 — General Information	8 If the donor died during the year, check here <input type="checkbox"/> and enter date of death _____ . _____ . _____				Yes	No
	9 If you extended the time to file this Form 709, check here <input type="checkbox"/>					
	10 Enter the total number of donees listed on Schedule A. Count each person only once ▶					
	11a Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b					✓
	b Has your address changed since you last filed Form 709 (or 709-A)?					
	12 Gifts by husband or wife to third parties. Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (See instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. If the answer is "No," skip lines 13–18.)					
	13 Name of consenting spouse		14 SSN			
	15 Were you married to one another during the entire calendar year? See instructions					
16 If line 15 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/deceased, and give date. See instructions ▶						
17 Will a gift tax return for this year be filed by your spouse? If "Yes," mail both returns in the same envelope						
18 Consent of Spouse. I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.						
Consenting spouse's signature ▶				Date ▶		

Use if reporting split gifts

Step 1:

Use Schedule A, Part 1 to report gifts to Son and Church – report gifted amounts in full (attach statement & provide as much detail as possible).

Form 709 (2020)

Page 2

SCHEDULE A Computation of Taxable Gifts (Including transfers in trust) (see instructions)

A Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation Yes No

B Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

Part 1—Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions. See instructions.

A Item number	B • Donor's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/3 of column F	H Net transfer (subtract col. G from col. F)
1	Bob (son) 1234 Main Street Anytown, USA 99999		1,000,000	6/15/20	1,000,000		1,000,000
2	First Church 1111 Pennsylvania Avenue Anytown, USA 99999		12,000,000	8/3/20	12,000,000		12,000,000

Gifts made by spouse—complete *only* if you are splitting gifts with your spouse and he/she also made gifts.

Charitable gifts must be included if Form 709 is req'd to report other gifts

Total of Part 1. Add amounts from Part 1, column H **13,000,000**

Step 2:

Do not report gifts to grandchildren in Part 2 or 3 since they are exempt under the annual exclusion.

Part 2—Direct Skips. Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
1	\$15,000 gifts to skip persons are excluded by annual exclusion and not reportable						
<i>Gifts made by spouse—complete only if you are splitting gifts with your spouse and he/she also made gifts.</i>							
Total of Part 2. Add amounts from Part 2, column H							▶

Step 3:

Carry totals from Part 1 to Part 4 (on Page 3) – deduct annual exclusion & non-taxable charitable deduction (net of its exclusion) to determine taxable gifts.

Form 709 (2020)

Page 3

Part 4—Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	13,000,000
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	30,000
3	Total included amount of gifts. Subtract line 2 from line 1	3	12,970,000
Deductions (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	
5	Exclusions attributable to gifts on line 4	5	
6	Marital deduction. Subtract line 5 from line 4	6	
7	Charitable deduction, based on item numbers <u>2</u> less exclusions	7	11,985,000
8	Total deductions. Add lines 6 and 7	8	11,985,000
9	Subtract line 8 from line 3	9	985,000
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. G, total)	10	
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	985,000

**\$15,000 annual
exclusion per donee**

Step 4:

Carry total of taxable gifts on Line 11 of Schedule A, Part 4 to Line 1 of Form 709, Page 1 and complete tax computation using tax rate schedule provided with Form 709 Instructions; then subtract available Unified Credit to determine tax due.

Part 2—Tax Computation			
Money order here.	1	Enter the amount from Schedule A, Part 4, line 11	1 985,000
	2	Enter the amount from Schedule B, line 3 NO gifts made in prior years	2
	3	Total taxable gifts. Add lines 1 and 2	3 985,000
	4	Tax computed on amount on line 3 (see Table for Computing Gift Tax in instructions)	4 339,950
	5	Tax computed on amount on line 2 (see Table for Computing Gift Tax in instructions)	5
	6	Balance. Subtract line 5 from line 4	6 339,950
	7	Applicable credit amount. If donor has DSUE amount from predeceased spouse(s) or Restored Exclusion Amount, enter amount from Schedule C, line 5; otherwise, see instructions for TY'20	7 4,577,800
	8	Enter the applicable credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	8
	9	Balance. Subtract line 8 from line 7. Do not enter less than zero	9 4,577,800
	10	Enter 20% (0.20) of the amount allowed as a specific exemption for gifts made after September 8, 1970, and before January 1, 1977. See instructions	10
	11	Balance. Subtract line 10 from line 9. Do not enter less than zero	11 4,577,800
	12	Applicable credit. Enter the smaller of line 6 or line 11 \$4,237,850 Applicable Credit remaining for future years (= 4,577,800 - 339,950)	12 339,950
	13	Credit for foreign gift taxes (see instructions)	13
	14	Total credits. Add lines 12 and 13	14 339,950
	15	Balance. Subtract line 14 from line 6. Do not enter less than zero	15 0
	16	Generation-skipping transfer taxes (from Schedule D, Part 3, col. G, total)	16
	17	Total tax. Add lines 15 and 16	17 0
	18	Gift and generation-skipping transfer taxes prepaid with extension of time to file	18
	19	If line 18 is less than line 17, enter balance due. See instructions	19 0
	20	If line 18 is greater than line 17, enter amount to be refunded	20

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

Disclosure is Crucial

Sample Gift Tax Return Attachment

Taxpayer: John and Mary Doe
Taxpayer ID Number: 999-99-9999

IRS Form: 709
For Tax Year Ending on 12/31/99

Attachment to Form 709, Page 2, Schedule A, Part 1, Section E – Value at Date of Gift

1. Description of Transaction:

Donor, John Doe, made a gift on November 15, 1999 to his daughter, Jane, of 25% of his Investor Class membership interest in ABC, LLC, a North Carolina limited liability company (see the attached Articles of Organization and LLC Operating Agreement). The Donor owned 70% of the Investor Class membership interests in ABC, LLC prior to the transfer gifting 17.5% of the Investor Class membership interests to his daughter and retaining 52.5% of his Investor Class membership interests in ABC, LLC

2. Identification of Parties:

- (a) Donor: John Doe is the father of the Donee, Jane Doe.
- (b) Donee: Jane Doe is the daughter of the Donor, John Doe. The gift was transferred to Mary through her trust "The Mary Doe Irrevocable Trust dated 1/15/97", which provides income and principal to Mary as the beneficiary of the trust in the absolute discretion of the Trustee of the trust. The federal ID number for this Trust is 58-9999999.
- (c) Other related parties:
 - (1) LLC Manager: The Donor and his wife, Mary Doe, control the Manager Class membership interest, representing 1% of the LLC's outstanding membership interests, as Co-Trustees of an irrevocable trust, known as "The ABC Management Trust dated 12/15/96". The federal ID number for the management trust is 58-8888888.
 - (2) Remaining LLC Member: Mary Doe is the owner of the remaining 30% of the Investor Class membership interests in ABC, LLC. Mary is John's wife and also Jane's mother.

3. Valuation Method:

The Donor engaged Edward Expert of XYZ Appraisal Services, Inc, a Member of the Appraisal Institute (MAI), to determine the value of the real property in the LLC as of 11/15/99, the date of the gift. 75% of the property in the LLC consisted of real property, and the balance was made up of publicly traded marketable securities and cash. The appraised value of the real property in the LLC was determined to be \$750,000 on 11/15/99 under the Comparative Sales Approach and the liquid assets had a current value of \$250,000 on that date for a total of \$1,000,000.

Tax Prep Pointers

Charitable Gifts

- Include *all* gifts on Form 709, Schedule A, Part 4, Line 1
- Then deduct gifts of partial interest
- If no excludible gifts, then net on Line 11 will equal Line 1

Allocate annual exclusion (\$16K/donee in 2026)

- For gifts to a trust, each beneficiary is treated as a separate donee

On September 1st, Grandma gifts \$40K to an ILIT (w/ Crummey Powers) for 5 grandkids AND on October 1st, she gifts additional \$10K to Grandkid A.

- *\$8K contributions to ILIT for 4 grandkids are non-taxable since < annual exclusion*
- *BUT aggregate to Grandson A must be allocated based on date of gifts*
\$8K to ILIT & first \$8K of cash gift are excludable; \$2K of cash gift is taxable
UNLESS Grandma allocates a portion of GST exemption

Mist(r)akes to avoid



- Not read Form 709 instructions
- 709 not filed by true donor
- No spousal signature when gift-splitting has been elected
- Inaccurate summary of previously filed gift tax returns
- Failure to report § 529 gifts ratably over 5 years
- Reportable charitable donations omitted
- Improper GST exemption allocations and tax computations
- Deceased Spousal Unused Exclusion (DSUE) overlooked
- Insufficient supporting documents

Gift Tax Return Organizer

Questions to ask:

- Have any gifts been made in current or prior years?
- Were gifts made from community property?
- Do spouses intend to elect gift-splitting?
- Were gifts made to a §529 Plan?
- Does taxpayer have any Unused Exclusion from a deceased spouse?

Documents to request:

- All previously filed 709s (& examination reports, if any)
- Governing instrument if gifts made to a trust
- Estate tax return if spouse died after 2011 (for DSUE)
- Valuation reports & appraisals

Why impose gift tax?

- **Arguments in favor of tax:**
 - Provides progressivity
 - Provides backstop to income tax
 - Targets inheritances rather than earnings
- **Arguments against tax:**
 - Discourages savings & economic growth
 - Burdens small businesses & family farms
 - Assessed at inopportune time

Gift Tax History

Years	Max. Tax Rates (%)	Annual Exclusion	Lifetime Exemption	Marital Deduction
1932 – 33	33.5 → 52.5 (1936)	5,000	N/A	N/A
1942 – 77	57.75	4,400 → \$3,000 (1977)	N/A	50% (1949)
1977 – 1981	70	\$3,000	\$30,000 → \$47,000 (1981)	50%
1982 – 2001	65 (1982 – 84); → 55	\$10,000	62,800 → \$675,000 (2001)	100%
2002 – 2009	50 (2002) → 45 (2007)	\$11,000 (2002 – 05); \$12,000 (2006 – 10)	1,000,000	100%
2010				
2011 - 12	35	\$13,000	5,000,000 → 5,120,000 (2012)	100%
2013 - 17	40	\$14,000	5,250,000 → 5,490,000 (2017)	100%
2018 - 2021	40	\$15,000	11,180,000 → 11,700,000 (2021)	100%
2023 –	40	\$16,000	12,060,000 →	100%

IRS Filing Stats (TY'19)

Form 709 Type	# of Returns Filed	Current Yr Gifts (\$)	Tax on Current Gifts (\$)
Non-taxable	247,000	80.6 B	0
Taxable	1,000	5.8 B	1.2 B
Total	248,000	86.4 B	1.2 B

- Average gift tax collected per taxable return filed = \$1.2 M
- Average tax collected per total returns filed < \$5,000
- Average tax rate on taxable gifts = \$17%

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