

Form 709: The Gift Tax

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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 impact the estate & GST tax regimes?
- How is the tax computed?
- What taxpayer information is needed?



Definition of “Gift”

- Any transaction in which interest in property is gratuitously passed or conferred upon another

Oscar swag bag ≠ gift

(compensation as per Commissioner Mark Everson)

Home transferred to son in exchange for care provided = gift

(state law prohibits payments for services to in-home family members)

- Deemed complete when donor gives up control & cannot change disposition of property for own benefit or that of others



Are these gifts?

- Interest-free family loan: YES
Conveyance of economic benefit (use of money) without consideration (interest payments)
Gift equals interest income that should have been earned
- Loan guarantee: NO
Incomplete gift if there is no certainty that payment will be required
- Inducement: YES
Eager young man offers fiancé \$150K to accept marriage proposal since marriage is not consideration
- Divorce settlement: NO
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" [Is this a gift?]
- 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"



Common Types of Gifts

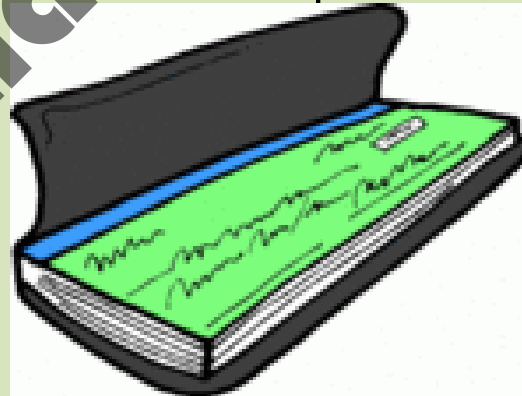
- **Below-market loan:** Gift = Interest at Applicable Federal Rate
- **Debt forgiveness:** Gift = Unpaid balance
 - Demand loan: treated as made on last day of calendar year
 - Term loan: treated as gift on date funds are loaned
 - De minimus exemption: \$10,000
- **Below-market sale:** Gift = FMV – 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 distribution – 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:

- *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*



Partial Gifts

- Could result:
 - from sale for insufficient consideration
 - when donee (rather than donor) pays attendant gift tax
- Donor may deduct gift tax paid by donee from FMV of gift (“net gift”) AND
- Donor must include excess of donee’s tax payment over property’s basis as taxable income

Donor gifted stock (basis \$50K) on condition that donee pays gift tax of \$60K. Donor must recognize taxable capital gain of \$10K.



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
- Support payments (if legally required)

*Contributions to living expenses 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)
- Direct payments for another's tuition (no books, room & board, or supplies)
 - No exemption for Qualified Tuition Programs (QTPs)
 - But QTP 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 I - 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 OJSIP 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

- \$14K/year to each donee (indexed for inflation)
- Gift must be present interest & grant donee immediate right to use / possession (right to income & right to sell)
- UTMA accounts 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
- Convert gifts of future interest using Crummey power granting right to withdraw donated funds for limited time



Exemption vs. Exclusion

- Grandpa sends
 - \$40K to University for grandson's tuition
 - \$14K to grandson for books & supplies
- Neither payment is reportable:
 - \$40K was direct payment for tuition (exempt)
 - \$14K eligible for annual exclusion



Gift-splitting

- Spouses may elect to jointly give \$28K
 - 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; each spouse must sign consent on Line 18 (NO joint return)



Example of Gift-splitting

- H & W agree to split 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	
8 If the donor died during the year, check here ▶ and enter date of death _____, _____, _____					
9 If you extended the time to file this Form 709, check here ▶ _____					
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"/> Yes <input type="checkbox"/> No					
b If the answer to line 11a is "Yes," has your address changed since you last filed Form 709 (or 709-A)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No					
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"/> Yes <input type="checkbox"/> No					
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"/> Yes <input type="checkbox"/> No					
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"/> Yes <input type="checkbox"/> No					
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 Exclusion

- Currently \$5.34 million; \$10.68 million MFJ (2014)
- Exclusion equals Applicable Credit of \$2,081,800 (2014)
- Gifts > annual exclusion must be reported on Form 709
- No tax due unless cumulative gifts > lifetime exclusion
- Taxpayer entitled to only *one* lifetime exclusion for gifts and/or estates



Apply Exclusions in Sequence

In 2012 (when Unified Credit = \$1,772,800 & max tax rate = 35%)...

Taxpayer gifted:

- \$8K car to son
- \$25K cash to daughter for down-payment on house
- \$15K paid college tuition of nephew

1. Apply educational (medical or charitable) exclusion
→ gift to nephew is exempt
 2. Apply annual exclusion
→ entire gift to son & first \$13K of gift to daughter are exempt
 3. Apply lifetime exclusion
→ remaining \$12K of gift to daughter is taxable
→ tax totals \$4,200 which reduces avail. Unified Credit to \$1,768,600
- Taxpayer does not owe gift tax but must file Form 709 (even if he does not anticipate exceeding exclusion during lifetime)



Non-Residents

- 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)

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

- Eligible for annual exclusion; ineligible for lifetime exclusion
- Marital deduction is not unlimited (\$145K in 2014)
- US bene of foreign gifts > \$100K generally must file Form 3520





Form 709 – Due Date

- Due April 15th of year following gift (or with Form 706 if donor has died since making gift)
- Automatically 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



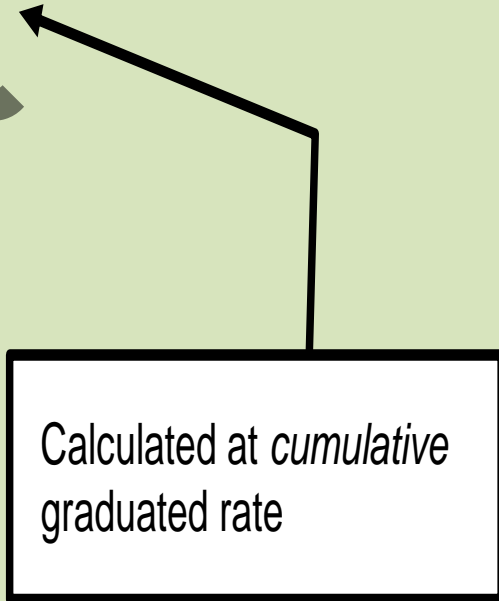
Form 709 – Filing Requirement

- Spouses must file separately
- Filing required even if no tax due
- Must file if:
 - Gift > annual exclusion (or annual limit to a non-citizen spouse)
 - Gift of future interest
 - Gift-splitting elected
 - Gift of jointly-held or community ppty by one spouse only
 - Executor on behalf of deceased donor
 - Indiv is beneficiary, partner, shareholder of donor entity



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 (2014)

For a Taxable Estate or Gift		The Federal
From	To	Tax Is
\$ 0	\$ 10,000	18%
10,000	20,000	\$ 1,800 + 20%
20,000	40,000	3,800 + 22%
40,000	60,000	8,200 + 24%
60,000	80,000	13,000 + 26%
80,000	100,000	18,200 + 28%
100,000	150,000	23,800 + 30%
150,000	250,000	38,800 + 32%
250,000	500,000	70,800 + 34%
500,000	750,000	155,800 + 37%
750,000	1,000,000	248,300 + 39%
1,000,000	Infinity	345,800 + 40%

Sample Calculation

- **Facts**

- 2003: \$500K taxable gifts (after annual exclusion)
- 2006: \$600K taxable gifts
- Value of estate at death (2006) = \$2.9 million

- **Step 1: Tax on previous gift(s)**

\$500K in 2003 → Tax = \$155,800

But \$0 paid since tax < lifetime credit available in 2003

\$190K lifetime credit remaining (\$345,800 – 155,800)



Sample Calculation (cont'd)

- **Step 2: Tentative tax on aggregate value of all gifts**
\$1.1M cumulative gifts in 2006 → Tentative tax = \$386,800
- **Step 3: Gift Tax due in 2006**

<i>\$386,800</i>	<i>Tentative tax</i>
<i>-<u>155,800</u></i>	<i>Tax previously paid on 2003 gift [see above]</i>
<i>\$231,000</i>	<i>Tax attributable to 2006 gift</i>
<i>-<u>190,000</u></i>	<i>Credit remaining after 2003 gift [see above]</i>
<i><u>\$ 41,000</u></i>	<i>Gift tax due in 2006</i>

Sample Calculation (cont'd)

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

\$2.90M	Value of estate in 2006
+ <u>1.10M</u>	Prior taxable gifts [see above] added back to estate
\$4.00M	Tax base used to compute estate tax

- **Step 5: Estate Tax due in 2006**

\$1,700,800	Tentative tax on \$4 million tax base
– <u>41,000</u>	Tax previously paid on gifts [see above]
\$1,659,800	Estate tax liability
– <u>780,800</u>	Unified credit (based on \$2M in 2006)
<u>\$ 879,000</u>	Estate tax due @ 2006



Who is liable for gift tax?

- Donor
- Liability may shift to donee if donor is delinquent
- Must be assessed against transferee within 1 year after donor's statute expires

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*

[Son is also liable for Dad's unpaid income tax since the IRS filed a lien secured by the home prior to its transfer]



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

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



Famous Problem

Nicolas Cage owes \$624,934.64 in unpaid gift taxes to the IRS for \$1.8 million paid to people between 2004 and 2009.

For Optional Use by Recording Office

Form 668 (Y)(c) Department of the Treasury - Internal Revenue Service
(Rev. October 2000) **Notice of Federal Tax Lien**

Area: SMALL BUSINESS/SELF EMPLOYED AREA #7 Serial Number: [REDACTED]
Lien Unit Phone: [REDACTED]

As provided by section 6321, 6322, and 6323 of the Internal Revenue Code, we are giving a notice that taxes (including interest and penalties) have been assessed against the following-named taxpayer. We have made a demand for payment of this liability, but it remains unpaid. Therefore, there is a lien in favor of the United States on all property and rights to property belonging to this taxpayer for the amount of these taxes, and additional penalties, interest, and costs that may accrue.

Name of Taxpayer: NICOLAS COPPOLA PKA CAGE

Residence: [REDACTED] LOS ANGELES, CA 91436-2778

IMPORTANT RELEASE INFORMATION: For each assessment listed below, unless notice of the lien is refiled by the date given in column (e), this notice shall, on the day following such date, operate as a certificate of release as defined in IRC 6325(a).

Kind of Tax (a)	Tax Period Ending (b)	Identifying Number (c)	Date of Assessment (d)	Last Day for Refiling (e)	Unpaid Balance of Assessment (f)
709	12/31/2004	[REDACTED]	09/06/2010	10/06/2020	134500.90
709	12/31/2005	[REDACTED]	09/06/2010	10/06/2020	113648.10
709	12/31/2006	[REDACTED]	09/06/2010	10/06/2020	163059.93
709	12/31/2007	[REDACTED]	09/06/2010	10/06/2020	164336.98
709	12/31/2008	[REDACTED]	09/06/2010	10/06/2020	40429.45
709	12/31/2009	[REDACTED]	11/29/2010	12/29/2020	8959.28



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



Carry-over Basis

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

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 Exceptions

	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 2014). No graduated rates!
- GST not imposed on direct payments for tuition and medical payments, nor on gifts $<$ annual exclusion
- \$5.34 million GST exemption in 2014 (not portable)



Transfers to Trusts

- No GST on gifts to trust if:
 - Less than \$14K,
 - 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 \$14K in 2014)
→ eligible for annual gift tax exclusion*

*Instead, Grandpa creates trust for benefit of all 3 children & makes one lump-sum gift of \$42K
→ ineligible for GST exclusion*



GST Tax Computation

$$\begin{array}{r}
 \text{All GST transfers during year} \\
 \times \quad \text{Maximum estate tax rate} \\
 \times \quad \underline{\text{Inclusion ratio}^*} \\
 = \quad \text{GST Tax}
 \end{array}$$

*Inclusion ratio converts part of GST exemption into tax rate deduction

Taxpayer transfers \$2 million to trust for son & grandson

Taxpayer allocates \$500K of her GST exemption 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 death = 40%

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

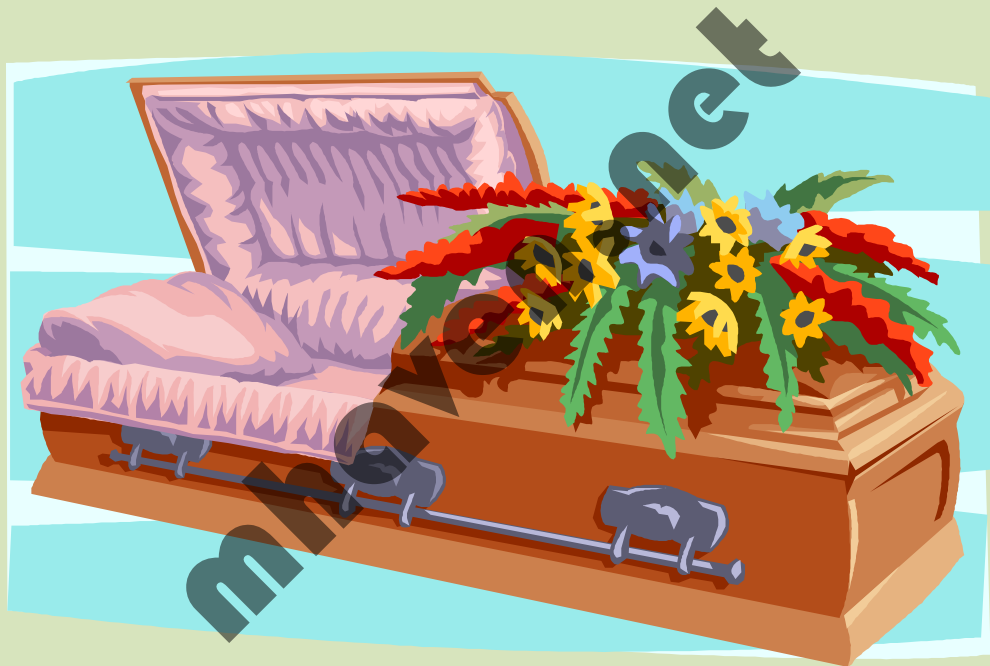
*GST Tax = \$3 million * 40% * 75% = \$900,000*



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 $\frac{2}{3}$

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



Deathbed Transfers

- Certain “last-minute” (within 3 years) transfers intended to reduce taxable estate are added back to gross estate
- Affected gifts: Retained life estates, revocable transfers, life insurance proceeds

Dad gifts personal residence valued at \$5,263,000 to Son in 2011, retaining the right to live in the home rent-free

→ Dad pays gift tax of \$87.5K

Dad dies in 2012

→ value of gift & gift tax paid are added back to estate (now \$5,350,500)

→ estate tax due will be reduced by amount of gift tax previously paid



Basis: Gift vs. Estate

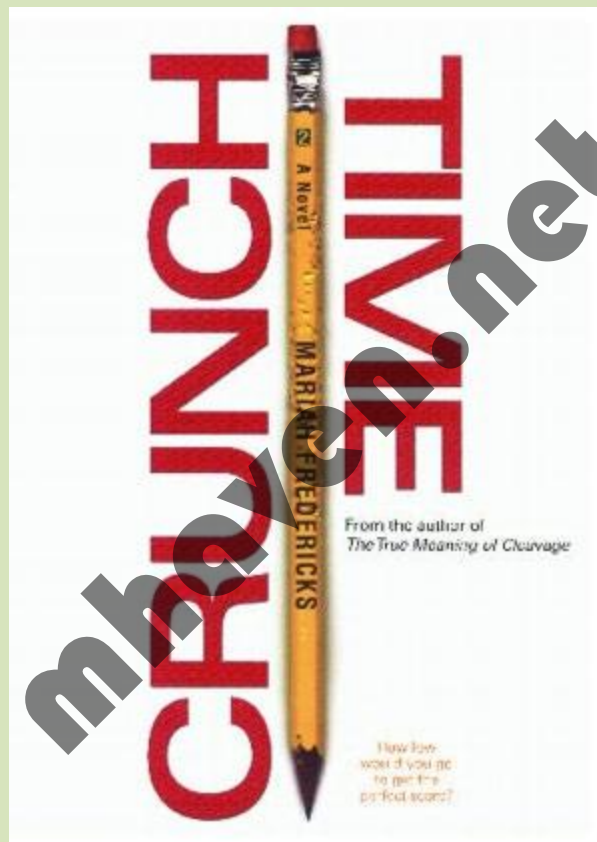
Gift

- 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!





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**

Department of the Treasury
Internal Revenue Service

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

(For gifts made during calendar year 2011)

▶ See instructions.

OMB No. 1545-0020

2011

Part 1 — General Information

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, state, and ZIP code				7 Citizenship (see instructions)		
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						✓
11b If the answer to line 11a is "Yes," 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 and go to Schedule A.)						
13 Name of consenting spouse				14 SSN		
15 Were you married to one another during the entire calendar year? (see instructions)						
16 If 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 (2011)

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 • 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)
1	Bob (Son) 1234 Main Street Anytown, USA 99999		200,000	6/15/11	200,000		200,000
2	First Church 1111 Pennsylvania Avenue Anytown, USA 99999		100,000	8/3/11	100,000		100,000

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 required to report other gifts

Total of Part 1. Add amounts from Part 1, column H **300,000**

Part 2 – Direct Skins. Gifts that are direct skins and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in



Step 2:

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

Total of Part 1. Add amounts from Part 1, column H 300,000

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							
<p>Gifts made by spouse — complete on <i>Form 708</i> if the spouse also made gifts.</p>							
<p>Total of Part 2. Add amounts from Part 2, column H ▶</p>							

Part 3—Indirect Skips. Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You

\$13,000 gifts to skip persons are excluded by the annual exemption and not reportable

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 (2011) 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	300,000
2	Total annual exclusions for gifts listed on line 1 (see instructions)		26,000
3	Total included amount of gifts. Subtract line 2 from line 1		274,000
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 nos. <u>2</u> less exclusions	7	87,000
8	Total deductions. Add lines 6 and 7	8	87,000
9	Subtract line 8 from line 3	9	187,000
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule C, Part 3, col. H, Total)	10	
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part 2 – Tax Computation, line 1	11	187,000

\$13,000 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			
1	Enter the amount from Schedule A, Part 4, line 11	1	187,000
2	Enter the amount from Schedule B, line 3	2	
3	Total taxable gifts. Add lines 1 and 2	3	187,000
4	Tax computed on amount on line 3 (see <i>Table for Computing Gift Tax</i> in instructions)	4	50,640
5	Tax computed on amount on line 2 (see <i>Table for Computing Gift Tax</i> in instructions)	5	
6	Balance. Subtract line 5 from line 4	6	50,640
7	Maximum unified credit (see instructions)	7	1,730,800
8	Enter the unified 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	1,730,800
10	Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977 (see instructions)	10	
11	Balance. Subtract line 10 from line 9. Do not enter less than zero	11	1,730,800
12	Unified credit. Enter the smaller of line 6 or line 11	12	50,640
13	Credit for foreign gift taxes (see instructions)	13	
14	Total credits. Add lines 12 and 13	14	50,640
15	Balance. Subtract line 14 from line 6. Do not enter less than zero	15	0
16	Generation-skipping transfer taxes (from Schedule C, Part 3, col. H, 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.

money order here.

No gifts made in prior years

In 2011

\$1,680,160 Unified Credit remaining for future years



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.





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 Exclusion	Marital Deduction
1932 – 33	33.5 → 52.5 (1936)	5,000	N/A	N/A
1942 – 77	57.75	4,400 (1942); → \$3,000	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	40	\$14,000	5,250,000	100%
2014	40	\$14,000	5,340,000	100%



Tax Law – what's in?

- Provisions under Tax Relief Reconciliation Act of 2001 extended (& modified) by Job Creation Act of 2010
- Temporary provisions permanently extended by American Taxpayer Relief Act of 2012
 - Annual gift tax exclusion indexed for inflation
 - Lifetime exemption set to \$5 million & indexed for inflation
 - Top marginal bracket set to 40%
 - Portability of spousal estate tax exclusion



What to do?!

- 2010 Act temporarily raised lifetime exemption to \$5 million for 2011 & 2012
- Uncertain whether law after 2012 would revert back to pre-2001 exemption level of \$1 million or be raised to new (?) amount, many taxpayers made last-minute transfers to lock-in \$5 million exemption
 - Non-taxable gifts \$122 billion reported on 2012 returns (4 times the amount reported in each of prior 2 years)
 - Only \$12 billion taxable gifts reported in 2012 → \$1.7 billion gift tax revenues (14% effective tax rate after exclusions and exemptions applied)
- BEWARE: Some of these taxpayers may have exhausted most of their lifetime exclusion and have none left to shelter gifts and estate in future years!!!



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
- Valuation reports & appraisals



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The information contained herein is for educational use only and should not be construed as tax, financial, or legal advice. Each individual's situation is unique and may require specialized treatment. It is, therefore, imperative that you consult with tax and legal professionals prior to implementation of any strategies discussed.

