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Preparing Form 709: What You Need to Know
About Filing a Gift Tax Return



Preparing Form 709: What You Need to Know About Filing a Gift Tax Return

Presented by: Brian Eisenmenger, CPA, MST

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Brian Eisenmenger, CPA, MST

Brian Eisenmenger is a CPA located in Wheaton, Illinois. His practice concentrates in serving corporate executives and successful small business owners with their tax planning needs.

Brian earned his undergraduate degree in accounting from Eastern Illinois University and his Masters of Science in Taxation from Northern Illinois University.

You can follow Brian on Twitter @EisenmengerCPAs



Learning Objectives

Upon completion of this webinar, participants should be able to—

- Explain how to prepare a basic Form 709.
- Explain the deceased spousal unused exclusion (DSUE).
- Identify which gifts are included on the return.

Purpose of the Form 709

The form 709 is used to report—

- Transfers subject to the federal gift tax and certain generation-skipping transfer (GST) taxes and to determine any tax due, if any, on those transfers, and
- Allocation of the lifetime GST exemption to property transferred during the transferor's lifetime.

Purpose of the Form 709

- All gift and GST taxes must be computed and filed on a calendar year basis.
- All reportable gifts made during the calendar year are listed on one Form 709.
Do not file more than one Form 709 for any one calendar year.

How to Complete the Form 709

1. Determine whether you are required to file Form 709.
2. Determine what gifts you must report.
3. Decide whether you and your spouse will elect to split gifts for the year.
4. Complete lines 1 through 19 of *Part 1 – General Information*.
5. List each gift on Part 1, 2, or 3 of Schedule A, as appropriate.

How to Complete the Form 709

6. Complete Schedules B, C, and D as applicable.
7. If the gift was listed on Part 2 or 3 of Schedule A, complete the necessary portions of Schedule D.
8. Complete Schedule A, Part 4.
9. Complete *Part 2 – Tax Computation*.
10. Sign and date the return.

Who Must File the Form 709

- If you gave gifts to someone in the current year totaling more than \$15,000 (other than to your spouse).
- Certain gifts called “Future Interests” are not subject to the \$15,000 annual exclusion and you must file Form 709 even if the gift was under \$15,000.

Who Must File the Form 709

- Spouses may not file a joint gift tax return. Each individual is responsible for his or her own Form 709.
- You must file a gift tax return to split gifts with your spouse (regardless of the amount).
- If the gift is community property, it is considered made one-half by each spouse.

Who Must File the Form 709

- Community Property Example...
- Larry and Fran gave a gift of \$100,000 of community property to their child. The gift is considered a gift of \$50,000 made by each spouse and each spouse must file a gift tax return.

Who Must File the Form 709

- Each spouse must file a gift tax return if they have made a gift of property held by them as joint tenants or tenants by the entirety.
- Only individuals are required to file gift tax returns. If a trust, estate, partnership or corporation makes a gift, the individual beneficiaries, partners or stockholders are considered donors and may be liable for the gift and GST taxes.

Who Must File the Form 709

- The donor is responsible for paying the gift tax. However, if the donor does not pay the tax, the person receiving the gift may have to pay the tax.
- If the donor dies before filing a return, the donor's executor must file the return.

Who Does Not Need to File Form 709

- You made no gifts during the year to your spouse.
- You did not give more than \$15,000 to any one donee.
- All gifts you made were of a present interest.

Gifts to Spouse

- Although gifts between spouses that qualify for the gift tax marital deduction generally do not have to be reported on Form 709, a return is required for:
 1. Any gift of a terminable interest that does not meet the exception of a “Life Estate with General Power of Appointment” discussed later;
 2. Any transfer of property for which a QTIP election is made; or
 3. Gifts of future interests where the present interest is not to the spouse.

Gifts to Spouse

- There are other circumstances where a Form 709 is required. For example...
 1. When the gift is made to a spouse who is not a U.S. citizen.
 2. When spouses are electing to split gifts.
- Also the donor may choose to file a return to adequately disclose a transfer and start the statute of limitations.

Gifts to Charities

- If the only gifts you made during the year are deductible as gifts to charities, you do not need to file a return as long as you transferred your entire interest in the property to qualifying charities.
- If you transferred only a partial interest or transferred part of your interest to someone other than a charity, you must still file a return and report all of your gifts to charities.
- If you are required to file a return to report noncharitable gifts and you made gifts to charities, you must include all of your gifts to charities on the return.

Transfers Subject to the Gift Tax

When a beneficial interest in property is transferred for less than full and adequate consideration in money or money's worth, a gift subject to gift tax occurs.

Transfers Not Subject to the Gift Tax

There are four types of transfers that are not subject to the gift tax:

- Transfers to political organizations
- Transfers to certain exempt organizations
- Payments that qualify for the educational exclusion
- Payments that qualify for the medical exclusion



Transfers to Certain Exempt Organizations

The gift tax does not apply to a transfer to any civic league or other organization described in IRC 501(c)(4); any labor, agricultural, or horticultural organization described in IRC 501(c)(5); or any business league or other organization described in section 501(c)(6) for the use of such organization, provided that the organization is exempt from tax under section 501(a).

Educational Exclusion

- The gift tax does not apply to an amount you paid on behalf of an individual to a qualifying domestic or foreign educational organization as tuition for the education or training of the individual.
- The payments must be made directly to the qualifying educational organization and it must be for tuition. No educational exclusion is allowed for amounts paid for books, supplies, room and board or other similar expenses that are not direct tuition costs.

Educational Exclusion

Contributions to a qualified tuition program (529 plan) on behalf of a designated beneficiary do not qualify for the educational exclusion.



Medical Exclusion

- The gift tax does not apply to an amount paid on behalf of an individual to a person or institution that provided medical care for the individual.
- The payment must be to the care provider and must meet the requirements of Section 213(d) (definition of medical care for income tax deductions purposes).

When to File Form 709

- You must file Form 709 no earlier than January 1 but not later than April 15 of the year after the gift was made.
- If the donor died during the year, the executor must file the donor's Form 709 not later than the earlier of:
 - The due date (with extensions) for filing the donor's estate tax return, or
 - April 15 of the year after the gift was made.

Extending the Time to File a Gift Tax Return

- There are two methods of extending the time to file the gift tax return. However, neither method extends the time to pay the gift or GST taxes.
- If you want an extension of time to pay the gift or GST taxes, that must be requested separately.

Extending the Time to File a Gift Tax Return

Method 1 – Extending the time to file your income tax return

- Any extension of time granted for filing your calendar year federal income tax return will also automatically extend the time to file your federal gift tax return.
- Income tax extensions are made by using form 4868, Application for Automatic Extension of Time to File U.S. Individual Income Tax Return or Form 2350 Application for Extension of Time to File U.S. Income Tax return.

Extending the Time to File a Gift Tax Return

Method 2 – By filing form 8892

- If you do not request an extension for your income tax return use Form 8892, Application for Automatic Extension of Time To file Form 709 and/or Payment of Gift/Generation –Skipping Transfer Tax.
- In addition to containing an extension request, Form 8892 also serves as a payment voucher (Form 8892-V) for a balance due on federal gift taxes for which you are extending the time to file.

Adequate Disclosure

To begin the running of the statute of limitations for a gift, the gift must be adequately disclosed on Form 709 filed for the year of the gift.



Adequate Disclosure

A gift will be considered adequately disclosed if the return or statement includes the following...

- A full and complete Form 709
- A description of the transferred property and any consideration received by the donor
- The identity of, and relationship between, the donor and each donee
- If the property is transferred in trust, the trust's EIN and brief description of the terms of the trust (or a copy of the trust instrument in lieu of the description)
- Either a qualified appraisal or a detailed description of the method used to determine the FMV of the gift

Failure to File a Gift Tax Return

IRC Section 6651 imposes penalties for both late filing and late payment, unless there is reasonable cause for the delay.

- If you fail to file a gift tax return, the penalty is 5% per month of tax due up to a limit of 25%.
- If the filing is more than 60 days late (including extensions) there is an additional penalty of \$435 or 100% of the tax due, whichever is less.
- Failure to pay gift tax on time results in a penalty of 0.5% per month up to a total of 25%.

Penalties

There are also penalties for...

- Willful failure to file a return on time
- Willful attempt to evade or defeat payment of tax, and
- Valuation understatements that cause an underpayment of the tax.



Penalties

- A **substantial** valuation understatement occurs when the reported value of property entered on Form 709 is **65% or less** of the actual value of the property.
- A **gross** valuation understatement occurs when the reported value listed on the Form 709 is **40% or less** of the actual value of the property.

Penalties

- Penalties may also be applied to tax return preparers including gift tax return preparers.
- Gift tax return preparers who prepare any return or claim for refund with an understatement of tax liability due to willful or reckless conduct can be penalized \$5,000 or 75% of the income received (or income to be received), whichever is greater for each return.

Joint Tenancy

- If you buy property with your own funds and the title to the property is held by you and a donee as joint tenants with right of survivorship and if either you or the donee may give up those rights by severing your interest, you have made a gift to the donee in the amount of half the value of the property.

Joint Tenancy

- If you create a joint bank account for yourself and a donee (or a similar kind of ownership by which you can get back the entire funds without the donee's consent), you have made a gift to the donee when the donee draws on the account for his or her own benefit. The amount of the gift is the amount that the donee took out without any obligation to repay you.

Joint Tenancy

- If you buy a U.S. savings bond registered as payable to yourself or a donee, there is a gift to the donee when he or she cashes the bond without any obligation to account to you.

Transfer of Certain Life Estates Received from Spouse

If you received a qualified terminable interest from your spouse for which a marital deduction was elected on your spouse's estate or gift tax return, you will be subject to the gift tax (and GST tax if applicable) if you dispose of all or part of your life income interest (by gift, sale or otherwise).

Transfer of Certain Life Estates Received from Spouse

Generally, the entire value of the property transferred will be treated as a gift less:

1. The amount you received (if any) for the life income interest, and
2. The amount (if any) determined after the application of Section 2702, valuing certain retained interest at zero, for the life income interest you retained after the transfer.

Transfer of Certain Life Estates Received from Spouse

- That portion of the property's value that is attributable to the remainder interest is a gift of a future interest for which no annual exclusion is allowed.
- To the extent you made a gift of the life income interest without receiving any value in return, the transfer is a gift, and you may claim an annual exclusion, treating the person to whom you transferred the interest as the donee for purposes of figuring the annual exclusion.

Part 1 – General Information

Line 12-18. Split Gifts

- A married couple **may not** file a joint gift tax return. However, if both spouses agree to split their gifts, both of their individual gift tax returns should be filed together (that is, in the same envelope) to help the IRS process the returns and to avoid correspondence from the IRS.

Part 1 – General Information

Line 12-18. Split Gifts

- If both spouses agree, all gifts (including gifts of property held with your spouse as joint tenants or tenants by the entirety) made by either spouse to third parties during the calendar year will be considered as made one-half by each spouse if:

Part 1 – General Information

Line 12-18. Split Gifts

- The two were married to each other at the time of the gift;
- If divorced or widowed after the gift, one did NOT remarry during the rest of the calendar year;
- Neither spouse was a nonresident not a citizen of the U.S. at the time of the gift, and
- One spouse did not give the other spouse a general power of appointment over the property interest transferred.

Part 1 – General Information

Line 12-18. Split Gifts

- If property was transferred partly to a spouse and partly to a third party(ies), you can only split the gifts if the interest transferred to third parties is ascertainable at the time of the gift.

Part 1 – General Information

Line 12-18. Split Gifts

- The consent is effective for the entire calendar year; therefore, ALL gifts made by the spouses to third parties during the calendar year (while married) must be split.
- If the consent is effective, the liability for the entire gift tax of each spouse is joint and several.

Part 1 – General Information

Line 12-18. Split Gifts

- If a husband/wife meet these requirements and want their gifts to be considered made one-half by one and one-half by the other, check “Yes” on line 12; complete lines 13 through 17 and have the other spouse sign the consent on line 18.

Part 1 – General Information

Consent

- The spouse must sign the consent (line 18) for the gift splitting election to be valid. The consent may be signed at any time after the end of the calendar year however there are two exceptions...

Part 1 – General Information

Consent

1. The consent may not be signed after April 15 following the end of the year in which the gift was made. But if neither spouse has filed a gift tax return for the year on or before that date, the consent must be made on the first gift tax return for the year filed by either spouse.
2. The consent may not be signed after a notice of deficiency for the gift tax for the year has been sent to either spouse.

Part 1 – General Information

Consent

- The executor for a deceased spouse or the guardian for a legally incompetent spouse may sign the consent.

Part 1 – General Information

When the Consenting Spouse Must Also File a Gift Tax Return...

- In general, if the spouses elect gift splitting, then both spouses must file their own individual gift tax return.
- However, only one spouse must file a return if the requirements of **either of the exceptions** are met.
- In these exceptions, gifts mean transfers (or parts of transfers) that do not qualify for the political organization, educational or medical exclusions.

Exception 1

During the calendar year:

- Only one spouse made any gifts,
- The total value of these gifts to each third-party donee does not exceed \$30,000, and
- All of the gifts were of present interests.

Exception 2

During the calendar year:

- Only one spouse (the donor spouse) made gifts of more than \$15,000 but not more than \$30,000 to any third-party donee.
- The only gifts made by the other spouse (the consenting spouse) were gifts of not more than \$15,000 to third-party donees other than those to whom the donor spouse made gifts, and
- All of the gifts by both spouses were of present interests.

Exceptions

If either of the exceptions are met, only the donor spouse must file a return and the consenting spouse signifies consent on that return.

Line 19 – Application of the DSUE Amount

- If the donor is a citizen or resident of the United States and his or her spouse died after December 31, 2010, the donor may be eligible to use the deceased spouse's unused exclusion (DSUE) amount.
- The executor of his or her spouse's estate must have elected on Form 706 to allow use of the unused exclusion amount.

Line 19 – Application of the DSUE Amount

If the executor of the estate made the DSUE election, attach the first four pages of Form 706 filed by the estate and include calculations of any adjustments to the DSUE amount like audit reports or previously filed Forms 709.

Schedule A. Computation of Taxable Gifts

Line A. Valuation Discounts

If the value of any gift you report in either Part 1, Part 2 or Part 3 of Schedule A includes a discount for lack of marketability, a minority interest, a fractional interest in real estate, blockage, market absorption, or any other reason, answer “Yes” to the question at the top of Schedule A. Also attach an explanation giving the basis for the claimed discounts and showing the amount of the discounts taken.

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans)

For 2021, if you contributed more than \$15,000 to a Qualified Tuition Plan (QTP) on behalf of any one person, you may elect to treat up to \$75,000 of the contribution for that person as if you had made it ratably over a 5-year period.

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans)

The election allows you to apply the annual exclusion to a portion of the contribution in each of the 5 years, beginning in the first year.

You can make this election for as many separate people as you made QTP contributions.

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans)

You can only apply the election to a maximum of \$75,000. You must report all of your 2021 QTP contributions for any single person that exceed \$75,000 (in addition to any other gifts you made to that person).

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans)

For each of the 5 years, you report in Part 1 of Schedule A one-fifth (20%) of the amount for which you made the election.

In column E of Part 1 (Schedule A) list the date of the gift as the calendar year for which you are deemed to have made the gift.

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans)

Do not list the actual year of contribution for subsequent years.

However, if in any of the last 4 years of the election, you did not make any other gifts that would require you to file a Form 709, you do not need to file Form 709 to report that year's portion of the election amount.

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans) *Example...*

In 2021 Mom contributed \$100,000 to a QTP for the benefit of her son. Mom elects to treat \$75,000 of this contribution as having been made ratably over a 5-year period. Accordingly, for 2021, Mom reports \$40,000 on Part 1 of Schedule A (\$25,000 the amount of the contribution that exceeded \$75,000 ÷ 5... 20% from the election).

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans) *Example...*

In 2022, Mom gives a gift of \$20,000 cash to her niece and no other gifts. On her 2022 Form 709 in Part 1 of Schedule A, the \$20,000 gift to her niece and a \$15,000 gift to her son (20% portion of the 2021 gift that is treated as made in 2022. In column E of Part 1 (Schedule A), Mom lists "2022" as the date of the gift.

Schedule A. Computation of Taxable Gifts

Line B. Qualified Tuition Programs (529 Plans) *Example...*

Mom makes no gifts in 2023, 2024 or 2025. She is not required to file Form 709 in any of those years to report the one-fifth portion of the QTP gift because she is not otherwise required to file Form 709.

Schedule A. Computation of Taxable Gifts

You make the election by checking the box on line B at the top of Schedule A. The election must be made for the calendar year in which the contribution is made. Also attach an explanation that includes:

- The total amount contributed per individual beneficiary.
- The amount for which the election is being made.
- The name of the individual for whom the contribution was made.

Schedule A. Computation of Taxable Gifts

If you are electing gift splitting, apply the gift splitting rules before applying the QTP rules.

Each spouse would then decide individually whether to make this QTP election.

Completing Parts 1, 2 and 3

After determining which gifts made that are subject to the gift tax, they are listed on Schedule A. You must divide these gifts between Part 1, 2 and 3.

Completing Parts 1, 2 and 3

- Part 1 – those gifts subject only to the gift tax (gifts made to nonskip persons)
- Part 2 – those gifts subject to both the gift and GST taxes (gifts made to skip persons)
- Part 3 – those gifts subject only to the gift tax at this time but which could later be subject to the GST tax (gifts that are indirect skips)

Completing Parts 1, 2 and 3

- Enter a gift only once in Part 1, 2 or 3.
- Do not enter any gift or part of a gift that qualified for the political organization, educational or medical exclusion.

Completing Parts 1, 2 and 3

- Enter gifts under “Gifts made by spouse” only if you have chosen to split gifts with your spouse and your spouse is required to file Form 709.
- In column F, enter the full value of the gift (including those made by your spouse if applicable). If you have chosen to split gifts, that one-half portion of the gift is entered in column G.

Gifts to Donees Other Than Your Spouse

- Gifts of future interests made during the calendar year must always be entered regardless of their value.

Gifts to Donees Other Than Your Spouse

Gift splitting not elected

- If the total gifts of present interests to any donee are more than \$15,000 in the calendar year, then all such gifts made during the year to or on behalf of that donee, including those gifts that will be excluded under the annual exclusion must be entered.
- If the total is \$15,000 or less, you need not enter on Schedule A any gifts (except gifts of future interests) that you made to that donee.

Gifts to Donees Other Than Your Spouse

Gift splitting elected

- Enter on Schedule A the entire value of every gift made during the calendar year while the couple was married, even if the gift's value will be less than \$15,000 after it is split in column G of Part 1, 2 or 3.

Gifts to Donees Other Than Your Spouse

Gifts made by spouse

- If gift splitting is elected and the spouse made gifts, list those gifts in the space below "Gifts made by spouse" in Part 1, 2 or 3.

Gifts to Spouse

With the exception of terminable interests, certain future interests and spouses who are not U.S. citizens, gifts made to spouses do not need to be made on Schedule A.

Gifts to Spouse

Terminable interests include:

- Life estates
- An estate for a specific number of years
- Any other property interest that after a period of time will terminate or fail

Gifts to Spouse

Terminable interests...

- If all the terminable interests given to a spouse qualify as life estates with power of appointment, you do not need to enter any of them on Schedule A.
- However, if you gave your spouse any terminable interest that does not qualify as a life estate with power of appointment, you must report on Schedule A all gifts of terminable interest you made to your spouse during the year.

Gifts to Spouse

Charitable remainder trusts

- If you make a gift to a charitable remainder trust and the spouse is the only noncharitable beneficiary (other than the donor), the interest given to the spouse is not considered a terminable interest and therefore should not be shown on Schedule A.

Gifts to Spouse

Future interest

- Generally, you should not report a gift of a future interest to a spouse unless the future interest is also a terminable interest that is required to be reported as previously described.
- However, if someone gave a gift of a future interest to their spouse and they are required to report the gift on Form 709 because they gave the present interest to a donee other than their spouse, then the entire gift, including the future interest given to the spouse should be entered on Schedule A.

Gifts to Spouse

Spouses who are not U.S. citizens

- If someone is not a U.S. citizen and their spouse gave him or her a gift of a future interest, all gifts to that spouse made during the year must be reported on Schedule A.
- If all gifts to the spouse were present interests, do not report on Schedule A any gifts to the spouse if the total of such gifts for the year does not exceed \$157,000 and all gifts in excess of \$15,000 (for 2020 and 2021) would qualify for a marital deduction if the spouse were a U.S. citizen.

Gifts Subject to Both Gift and GST Taxes

- Direct skip...
- The GST tax you must report on Form 709 is that imposed only on inter vivos direct skips. An inter vivos direct skip is a transfer that is:
 - Subject to the gift tax,
 - Of an interest in property, and
 - Made to a skip person.
- All three requirements must be met before the gift is subject to the GST tax.

Gifts Subject to Both Gift and GST Taxes

Skip person...

A donee, who is a natural person, is a skip person if that donee is assigned to a generation that is two or more generations below the generation assignment of the donor.

Gifts Subject to Both Gift and GST Taxes

Determining the Generation of a Donee

Generally a generation is determined along family lines as follows...

1. If the donee is a lineal descendant of a grandparent of the donor (i.e. donor's cousin, niece, nephew, etc.) the number of generations between the donor and the descendant (donee) is determined by subtracting the number of generations between the grandparent and the donor from the number of generations between the grandparent and the descendant (donee).

Gifts Subject to Both Gift and GST Taxes

2. If the donee is a lineal descendant of a grandparent of a spouse (or former spouse) of the donor, the number of generations between the donor and the descendent (donee) is determined by subtracting the number of generations between the grandparent and the spouse (or former spouse) from the number of generations between the grandparent and the descendant (donee).

Gifts Subject to Both Gift and GST Taxes

3. A person who at any time was married to a person described in (1) or (2) is assigned to the generation of that person. A person who at any time was married to the donor is assigned to the donor's generation.
4. A relationship by adoption or half-blood is treated as a relationship by whole-blood.

Gifts Subject to Both Gift and GST Taxes

A person who is not assigned to a generation according to (1), (2), (3) or (4) is assigned to a generation based on his or her birth date as follows...

1. A person who was not born more than 12 ½ years after the donor is in the donor's generation.
2. A person born more than 12 ½ years but not more than 37 ½ years after the donor is the first generation younger than the donor.
3. Similar rules apply for a new generation every 25 years.

Gifts Subject to Both Gift and GST Taxes

- If more than one of the rules for assigning generations applies to a donee, that donee is generally assigned to the youngest of the generations that would apply.
- If an estate, trust, partnership, corporation or other entity is a donee, then each person who indirectly receives the gift through the entity is treated as a donee and is assigned to a generation as explained in the previous rules.

Gifts Subject to Both Gift and GST Taxes

- Charitable organizations and trusts, described in sections 511(a)(2) and 511(b)(2) and governmental entities are assigned to the donor's generation.
- Transfers to such organizations are not subject to the GST tax. These gifts should be listed in Part 1 of Schedule A.

Gifts Subject to Both Gift and GST Taxes

Gifts in the form of CRATs, CRUTs, and pooled income funds are not transfers to skip persons and therefore are not direct skips. These should always be listed in Part 1 of Schedule A even if all of the life beneficiaries are skip persons.

Gifts Subject to Both Gift and GST Taxes

- If a gift was made to a grandchild and at the time the gift was made, the grandchild's parent is deceased, then for purposes of the generation assignment, the grandchild is considered to be the child of the donor rather than the grandchild.
- Your grandchild's children will be treated as your grandchildren rather than your great-grandchildren.

Gifts Subject to Both Gift and GST Taxes – Examples

- Abe gives his house to his daughter for her life with the remainder then passing to his children.
- This gift is made to a “trust” even though there is no explicit trust instrument.
- The interest in the property transferred is transferred to a nonskip person (the daughter) and is not a direct skip.
- Therefore, the “trust” is not a skip person because there is an interest in the transferred property that is held by a nonskip person, and the gift is not a direct skip. However, the transfer is an indirect skip because on the death of the daughter, a termination of her interest will occur that may be subject to the GST tax.

Gifts Subject to Both Gift and GST Taxes – Examples

- The transfer is an indirect skip, however, because on the death of the daughter, a termination of her interest in the “trust” will occur that may be subject to the GST tax.
- This would be reported on Schedule A, Part 3.

Gifts Subject to Both Gift and GST Taxes – Examples

Gary gives \$100,000 to his grandchild. This gift is a direct skip and should be listed in Part 2 of Schedule A.

Gifts Subject to Both Gift and GST Taxes – Examples

- Melanie establishes a trust that is required to accumulate income for 10 years and then pay income to her grandchildren for their lives and upon their deaths distribute corpus to their children.
- Because the trust has no current beneficiaries, there are no present interests in the property transferred to the trust.
- All of the persons to whom the trust can make future distributions (including distributions upon the termination of interest in property held in trust) are skip persons. Therefore the trust itself is a skip person and the gift should be listed in Part 2 of Schedule A.

Gifts Subject to Both Gift and GST Taxes – Examples

- Laurie establishes a trust that pays all of its income to her grandchildren for 10 years. At the end of 10 years the corpus is distributed to her children.
- Since for this purpose interests in trusts are defined only as present interests, all of the interest in this trust are held by skip persons (the children's interests are future interests).
- Therefore the trust is a skip person and the entire amount transferred to the trust should be listed in Part 2 of Schedule A even though some of the trust's ultimate beneficiaries are nonskip persons.

Part 1 – Gifts Subject Only to Gift Tax

List in Part 1 gifts subject only to the gift tax.

Group the gifts into four categories...

- Gifts made to your spouse
- Gifts made to third parties that are to be split with your spouse
- Charitable gifts (if you are not splitting gifts with your spouse)
- Other gifts

Part 1 – Gifts Subject Only to Gift Tax

- If a transfer results in gifts to two or more individuals (such as a life estate to one with remainder to the other), list the gift to each separately.
- Number and describe all gifts in the columns provided in Schedule A.

Part 1 – Gifts Subject Only to Gift Tax

Column B... describe each gift in enough detail so that property can be easily identified.

For Real Estate give:

- A legal description of each parcel,
- The street number, name and area if the property is located in a city, and
- A short statement of any improvements made to the property.

Part 1 – Gifts Subject Only to Gift Tax

For bonds give...

- The number of bonds transferred;
- The principal amount of each bond;
- Name of obligor;
- Date of maturity;
- Rate of interest;
- Date or dates when interest is payable;
- Series number if there is more than one issue;
- Exchanges where listed or if unlisted, the location of the principal business office of the corporation; and
- CUSIP number.

Part 1 – Gifts Subject Only to Gift Tax

For stocks...

- Give the number of shares;
- State whether common or preferred;
- If preferred, give the issue, par value, quotation at which returned, and exact name of corporation;
- If unlisted on a principal exchange, give the location of the principal business office of the corporation, the state in which incorporated, and the date of incorporation;
- If listed, give principal exchange; and
- CUSIP number.

Part 1 – Gifts Subject Only to Gift Tax

- For interests in property based on the length of a person's life, give the date of birth of the person.
- If you transfer any interest in a closely held entity, provide the EIN of the entity.

Part 1 – Gifts Subject Only to Gift Tax

Life Insurance Policies...

For life insurance policies, give the name of the insurer and the policy number.

Part 1 – Gifts Subject Only to Gift Tax

Column D. Donor's Adjusted Basis of Gifts

Show the basis that would be used for income tax purposes if the gift were sold or exchanged. Generally, this means the costs plus improvements less applicable depreciation, amortization and depletion.

Part 1 – Gifts Subject Only to Gift Tax

Columns E & F. Date and Value of Gift

The value of a gift is the FMV of the property on the date the gift is made (valuation date). The FMV is the price at which the property would change hands between a willing buyer and a willing seller when neither is forced to buy or sell and when both have reasonable knowledge of all relevant facts.

Part 1 – Gifts Subject Only to Gift Tax

Columns E & F. Date and Value of Gift

The FMV of a stock or bond (whether listed or unlisted) is the mean between the highest and lowest selling prices quoted on the valuation date. If only the closing selling prices are available, then the FMV is the mean between the quoted closing selling price on the valuation date and on the trading day before the valuation date.

Part 1 – Gifts Subject Only to Gift Tax

If there were no sales on the valuation date, figure the FMV as follows...

1. Find the mean between the highest and lowest selling prices on the nearest trading date before and the nearest trading date after the valuation date. Both trading dates must be reasonably close to the valuation date.
2. Prorate the difference between mean prices to the valuation date.
3. Add or subtract (whichever applies) the prorated part of the difference to or from the mean price figured to the nearest trading date before the actual valuation date.

Part 1 – Gifts Subject Only to Gift Tax

Stock of close corporations or inactive stock must be valued on the basis of net worth, earnings, earning and dividend capacity, and other relevant factors.

Part 1 – Gifts Subject Only to Gift Tax

Column G. Split Gifts

Enter an amount in this column only if the donor has chosen to split gifts with his/her spouse.

Part 1 – Gifts Subject Only to Gift Tax

- Supplemental Documents
- To support the value of the gifts, information must be provided showing how it was determined.
- For stock of close corporations or inactive stocks, attach balance sheets, particularly the one nearest the date of the gift, and statements of net earnings or operating results and dividends paid for each of the preceding 5 years.

Part 1 – Gifts Subject Only to Gift Tax

For each life insurance policy, attach Form 712, Life Insurance Statement

Part 1 – Gifts Subject Only to Gift Tax

- If the gift was made by means of a trust, attach a certified or verified copy of the trust instrument to the return on which you report your first transfer to the trust.
- However, to report subsequent transfers to the trust, you may attach a brief description of the terms of the trust or a copy of the trust instrument.
- Attach any appraisal used to determine the value of real estate or other property.

Part 2 – Direct Skips

List in Part 2 only those gifts that are subject to both the gift and GST taxes.

Part 3 – Indirect Skips

- Some gifts made to trusts are subject only to gift tax at the time of transfer but later may be subject to GST tax. The GST tax could apply at the time of a distribution from the trust, at the termination of the trust or both.
- In general an indirect skip is a transfer of property that is subject to gift tax (other than a direct skip) and is made to a GST trust.

Part 3 – Indirect Skips

A GST trust is a trust that could have a generation-skipping transfer with respect to the transferor, unless the trust provides for certain distributions of trust corpus to nonskip persons.

Part 3 – Indirect Skips

Column C. 2632(c) Election

Section 2632(c) provides for the automatic allocation of the donor's unused GST exemption to indirect skips. This section also sets forth three different elections you may make regarding the allocation of the exemption.

Part 3 – Indirect Skips

- Election 1 – You may elect not to have the automatic allocation rules apply to the current transfer made to a particular trust.
- Election 2 – You may elect not to have the automatic rules apply to both the current transfer and any and all future transfers made to a particular trust.
- Election 3 – You may elect to treat any trust as a GST trust for purposes of the automatic allocation rules.

Part 3 – Indirect Skips

- When to make an election...
- Election 1 is timely made if it is made on a timely filed gift tax return for the year the transfer was made or was deemed to have been made.
- Election 2 and 3 may be made on a timely filed gift tax return for the year for which the election is to become effective.

Part 3 – Indirect Skips

- To make one of these elections, check column C next to the transfer to which the election applies. You must also attach an explanation.
- If you are making election 2 or 3 on a return which the transfer is not reported, simply attach a statement that describes the election being made and clearly identifies the trusts and/or transfers to which the election applies.

Part 3 – Indirect Skips

If you are reporting a transfer to a trust for which election 2 or 3 was made on a previously filed return, do not make an entry in column C for that transfer and do not attach a statement.

Part 4 – Taxable Gift Reconciliation

- Line 1 – Enter only gifts of the donor. If gift splitting has been elected, enter only the value of the gift that is attributable to the spouse that is filing the return.
- Line 2 – Enter the total annual exclusions you are claiming for the gifts listed on Schedule A. If a gift is split with a spouse, the annual exclusion claimed against that gift may not be more than the smaller of half the gift or \$15,000.

Part 4 – Taxable Gift Reconciliation

Line 4 – Marital Deduction

- Enter all the gifts to the spouse that are listed on Schedule A and for which the donor is claiming a marital deduction.
- Do not enter any gift that was not included on Schedule A.
- Do not enter any gift to a spouse who was not a U.S. citizen at the time of the gift.

Part 4 – Taxable Gift Reconciliation

- Terminable interests – Generally you cannot take the marital deduction if the gift to the spouse is a terminable interest.
- If you transfer an interest to your spouse as sole joint tenant with yourself or as a tenant by the entirety, the interest is not considered a terminable interest just because the joint tenancy may be severed.

Part 4 – Taxable Gift Reconciliation

Life Estate with Power of Appointment

You may deduct, without an election, a gift of a terminable interest if all four requirements are met:

1. The spouse is entitled for life to all of the income from the entire interest.
2. The income is paid yearly or more often.
3. The spouse has the unlimited power, while still alive or by will to appoint the entire interest in all circumstances.
4. No part of the entire interest is subject to another person's power of appointment (except to appoint it to your spouse).

Part 4 – Taxable Gift Reconciliation

If either the right to income or the power of appointment given to the spouse pertains only to a specific portion of a property interest, the marital deduction is allowed only to the extent that the rights of the spouse meet all four of the afore referenced conditions.

Part 4 – Taxable Gift Reconciliation

For example, husband is to receive all of the income from the entire interest, but only has a power to appoint one-half of the entire interest, then only one-half qualifies for the marital deduction.

Part 4 – Taxable Gift Reconciliation

Election to deduct QTIP

- You may elect to deduct a gift of a terminable interest if it meets requirements 1, 2 and 4 earlier even though it does not meet requirement 3.
- You make the election simply by listing the qualified terminable interest property on Schedule A and deducting its value from Schedule A, Part 4 line 4.
- You are presumed to have made the election for all qualified property that you both list and deduct on Schedule A. You may not make the election on a late filed Form 709.

Part 4 – Taxable Gift Reconciliation

Line 7... Charitable Deduction

On line 7 show the total charitable, public or similar gifts (minus annual exclusions allowed). On the dotted line, indicate which numbered items from the top of Schedule A are charitable gifts.

Part 4 – Taxable Gift Reconciliation

Line 10... GST Tax

If GST tax is due on any direct skips reported on this return, the amount of that GST tax is also considered a gift and must be added to the value of the direct skip reported on the return.

Part 4 – Taxable Gift Reconciliation

Line 12. Election Out of QTIP Treatment of Annuities

Section 2523(f)(6) creates an automatic QTIP election for gifts of joint and survivor annuities where the spouses are the only possible recipients of the annuity prior to the death of the last surviving spouse.

Part 4 – Taxable Gift Reconciliation

- The donor spouse can elect out of QTIP treatment by checking the box on line 12 and entering the item number from Schedule A for the annuities for which the election is being made.
- Any annuities entered on line 12 cannot also be entered on line 4 of Schedule A, Part 4.
- Once made the election is irrevocable.

Schedule B – Gifts from Prior Periods

If you did not file gift tax returns for previous periods, check the “No” box on page 1 of Form 709, line 11a.

If you filed gift tax returns for prior periods, check the “Yes” box on line 11a and complete Schedule B by listing the years or quarters in chronological order.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

Section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 authorized estates of decedents dying on or after January 1, 2011, to elect to transfer any unused exclusion to the surviving spouse.

The amount received by the surviving spouse is called the Deceased Spousal Unused Exclusion (DSUE) amount.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

- If the executor of the decedent's estate elects portability of the DSUE amount, the surviving spouse can apply the DSUE amount received from the estate of his or her last deceased spouse against any tax liability arising from subsequent lifetime gifts and transfers at death.
- A nonresident surviving spouse who is not a U.S. citizen may not take into account the DSUE amount of a deceased spouse, except to the extent allowed by treaty with his or her country of citizenship.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

The *last deceased spouse* is the most recently deceased person who was married to the surviving spouse at the time of that person's death.

The **identity** of the last deceased spouse is determined as of the day a taxable gift is made and is not impacted by whether the decedent's estate elected portability or whether the last deceased spouse had any DSUE amount available.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

Remarriage also does not affect the designation of the last deceased spouse and does not prevent the surviving spouse from applying the DSUE amount to taxable transfers.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

- When a taxable gift is made, the DSUE amount received from the last deceased spouse is applied before the surviving spouse's basic exclusion amount.
- A surviving spouse who has more than one predeceased spouse is not precluded from using the DSUE amount of each spouse in succession. A surviving spouse may not use the sum of the DSUE amounts from multiple predeceased spouses at one time nor may the DSUE amount of a predeceased spouse be applied after the death of a subsequent spouse.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

Part 1. DSUE Received From the Last Deceased Spouse

- In this part, include information about the DSUE amount from the donor's most recently deceased spouse (whose date of death is after December 31, 2010).
- In column E, enter the total of the amount in column D that the donor has applied to gifts in previous years and is applying to gifts reported on this return.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

Part 2. DSUE Received from Other Predeceased Spouse(s)

- Enter information about the DSUE amount from the spouse(s), if any, who died prior to the donor's most recently deceased spouse (but not before January 1, 2011) if the prior spouse's executor elected portability of the DSUE amount.

Schedule C – Portability of Deceased Spousal Unused Exclusion Amount

Any remaining DSUE from a predeceased spouse cannot be applied against tax arising from lifetime gifts if that spouse is not the most recently deceased spouse on the date of the gift.

Schedule D – Computation of the GST Tax

Enter in Part 1 all of the gifts you listed in Part 2 of Schedule A in the same order and showing the same values.

Schedule D – Computation of the GST Tax

If you are reporting a generation-skipping transfer that occurred because of the close of an Estate Tax Inclusion Period (ETIP), complete column B for such transfers as follows...

1. If the GST exemption is being allocated on a timely filed (including exemptions) gift tax return, enter the value as of the close of the ETIP.
 - [An ETIP is any period during which (should death occur) the value of the transferred property would be included in the gross estate of either (1) the transferor or (2) the spouse of the transferor].

Schedule D – Computation of the GST Tax

2. If the GST exemption is being allocated on a late filed (past due including extensions) gift tax return, enter the value as of the date the gift tax return was filed.

Schedule D – Computation of the GST Tax

Column C

You are allowed to claim the gift tax annual exclusion currently allowable for your reported direct skips (other than certain direct skips to trusts) using the rules and limits discussed earlier for the gift tax annual exclusion. However you must allocate the exclusion on a gift-by-gift basis for GST computation purposes.

Schedule D – Computation of the GST Tax

Column C

You must allocate the exclusion to each gift to the maximum allowable amount and in chronological order beginning with the earliest gift that qualifies for the exclusion.

Schedule D – Computation of the GST Tax

Part 2 – GST Exemption Reconciliation

Every donor is allowed a lifetime GST exemption (the amount for 2018 is \$11,200,000). For transfers made through 1998 the GST exemption was \$1,000,000. The exemption amounts for 1999 – 2020 are as follows...

1999	\$1,010,000
2000	\$1,030,000
2001	\$1,060,000
2002	\$1,100,000

Schedule D – Computation of the GST Tax

2003	\$1,120,000
2004-2005	\$1,500,000
2006-2008	\$2,000,000
2009	\$3,500,000
2010-2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$5,450,000
2017	\$5,490,000

Schedule D – Computation of the GST Tax

2018	\$11,180,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000

Schedule D – Computation of the GST Tax

Example – Ron made \$1,750,000 in GSTs through 2005 and allocated all \$1,500,000 of the exemption to those transfers. In 2020, Ron makes a \$2,000,000 taxable generation skipping transfer.

Ron can allocate \$2,000,000 of the exemption to the 2020 transfer but cannot allocate the \$8,080,000 of unused 2020 exemption to pre-2020 transfers.

Schedule D – Computation of the GST Tax

However, in 2005, Ron made a \$1,750,000 transfer to a trust that was not a direct skip, but from which generation skipping transfers could be made in the future, Ron could allocate the increased exemption to the trust even though no additional transfers were made to the trust.

Schedule D – Computation of the GST Tax

Line 6 – Notice of Allocation

- You may wish to allocate the GST exemption to transfers not reported on the current return (such as a late allocation).
- To allocate your exemption to such transfers, attach a statement to the form 709 entitled “Notice of Allocation”. This notice must contain the following for each trust (or other transfer)...

Schedule D – Computation of the GST Tax

- Clear identification of the trust including the trusts EIN, if known
- If this is a late allocation, the year the transfer was reported on Form 709.
- The value of trust assets at the effective date of the allocation.

Schedule D – Computation of the GST Tax

- The amount of your GST exemption allocated to each gift (or a statement that you are allocating the exemption by means of a formula such as “an amount necessary to produce an inclusion ration of zero”)
- The inclusion ratio of the trust after the allocation.

Inclusion Ratio...

What is the **inclusion ratio**?

- The inclusion ratio is the fraction of a distribution from an individual or trust that is subject to the generation skipping transfer tax (GST).
- For example, if a lead trust distributes \$1,000,000 to a “skip person” and the inclusion ratio is .40, the amount of the distribution that will be subject to GST is $.40 \times \$1,000,000$ or \$400,000.
- An inclusion ratio of “zero” means that the trust is totally exempt from the GST Tax; an inclusion ratio of “one” means that all taxable distributions and taxable terminations will be fully subject to the GST Tax.

Part 2 – Tax Computation (Page 1)

Follow the line numbers by entering amounts from each of the schedules, and

Voila – you have a completed Gift Tax return.

Q&A

We will be happy to take questions at this time.

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