Gift Tax

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Gift Tax

There is no dollar limit on the amount that one person is allowed to give to another. Gift tax rules do not prohibit a donor from making gifts in excess of the annual exclusion ($17,000 for 2023). However, if more than the annual exclusion is given to any one recipient, other than a spouse or charity, the amount over the annual exclusion is considered a "taxable gift."

Consequences of making taxable gifts:

- Donor is required to file a gift tax return (Form 709) for the year.
- Taxable gifts reduce the donor's $12,920,000 (2023) lifetime gift and estate tax exclusion. Gift tax is paid once the exclusion is exhausted.
- Taxable gifts are added to the donor's taxable estate at death.

Donors with small estates can make gifts over the annual exclusion and pay no gift or estate tax.

Example: *Kay wants to give her house to her daughter, Mary. The FMV of the house is $250,000. Kay's other assets total $175,000. The only tax consequence to Kay as a result of the gift is the requirement to file a gift tax return. Kay is unlikely to use the full gift tax exclusion and unlikely to pay estate tax at her death.*

Annual Exclusion ($17,000 for 2023)

Gifts must be of present interests to qualify for the annual exclusion.

Present and Future Interests

A present interest is an unrestricted right to the immediate use, possession, or enjoyment of property or its income. An annual exclusion is not allowed if these rights will begin at some time in the future. A gift in trust is a present interest if the trust will receive income and an ascertainable portion will flow steadily to the beneficiary.

Example: *Jo transfers securities into an irrevocable trust. Under the terms of the trust, Horace receives all trust income for life, and Sarah receives the securities at Horace's death. Horace has a present interest in the trust. Sarah has a future interest. The annual exclusion will apply to Horace's gift, but not to Sarah's.*

Gifts Subject to Gift Tax

Gift tax applies to any transfer by gift of real or personal property, whether tangible or intangible, that was made directly or indirectly, in trust, or by any other means to a donee. Gifts include transfers of cash, personal property, and payment of debts or expenses for another person. Certain transfers are specifically excluded from gift tax.

Completed Gifts

A gift is not subject to tax until the gift is complete. Gifts are valued on the date completed.

- ***Below-market sale.*** Property transferred in part as a sale and in part as a gift is a gift from the seller of the difference between the FMV and the amount realized. The seller's capital gain is the difference between the amount realized and adjusted basis. A loss is not deductible. The buyer's basis is the greater of the amount paid or gift basis.

  Example: *Nadya owns a cabin with a FMV of $200,000 and an adjusted basis of $50,000. She sells the property to her son, Jeremy, for $55,000. Nadya reports a capital gain of $5,000 on Form 1040 and a gift of $145,000 on Form 709. Jeremy's basis is $55,000 (assuming Nadya paid no gift tax on the gift).*
- ***Checks.*** Gifts by check are generally complete when the check is paid by the donor's bank.

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