

Determining whether you need to file a gift tax return can be tricky

Published on February 6, 2020

For 2020, the lifetime gift and estate tax exemption has reached a whopping \$11.58 million (\$23.16 million for married couples). Accordingly, few people will be subject to federal gift taxes.

If your wealth is well within the exemption amount, does that mean there's no need to file gift tax returns? Not necessarily. There are many situations in which it's necessary (or desirable) to file Form 709 — "United States Gift (and Generation-Skipping Transfer) Tax Return" — even if you're not liable for any gift taxes.

If you're required to file, the deadline for Form 709 is April 15 of the year after you make a gift.

All gifts are taxable, except . . .

The federal gift tax regime begins with the assumption that all transfers of property by gift (including below-market sales or loans) are taxable, and then sets forth several exceptions. Some of the nontaxable transfers that need not be reported on Form 709 include:

- Gifts of present interests (see below) within the annual exclusion amount (currently, \$15,000 per donee);
- Deductible charitable gifts; and
- Gifts to one's U.S.-citizen spouse, either outright or to a trust that meets certain requirements.

If all your gifts for the year fall into these categories, no gift tax return is required. But other types of gifts may be taxable — and must be reported on Form 709 — even if they're shielded from tax by the lifetime exemption.

Traps to avoid

If you make gifts during the year, consider whether you're required to file Form 709. Watch out for these common traps:

Future interests. The \$15,000 annual exclusion applies only to present interests, such as outright gifts. Gifts of future interests, such as transfers to a trust for a donee's benefit, aren't covered, so you're required to report them on Form 709 even if they're less than \$15,000.

Spousal gifts. As previously noted, gifts to a U.S.-citizen spouse need not be reported on Form 709. However, if you make a gift to a trust for your spouse's benefit, the trust must (1) provide that your spouse is entitled to all the trust's income for life, payable at least annually, (2) give your spouse a general power of appointment over its assets, and (3) not be subject to any other person's power of appointment. Otherwise, the gift must be reported.

Gift splitting. Spouses may elect to split a gift to a child or other donee, so that each spouse is deemed to have made one-half of the gift, even if one spouse wrote the check. This allows married couples to combine their annual exclusions and give up to \$30,000 to each donee. To make the election, the donor spouse must file Form 709, and the other spouse must sign a consent or, in some cases, file a separate gift tax return.

To file or not to file

To keep from running afoul of the IRS, it's critical to know when you need to file a gift tax return. We can help you in that determination.

© 2020

The Law Office of Eugene Gorrin, LLC
17 Watchung Avenue, Suite 204
Chatham, NJ 07928
973.701.9300
egorrin@gorrinlaw.com
www.gorrinlaw.com