

# Preparing Federal Gift Tax Returns (Form 709)

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# Why is Form 709 Required?

- Gift tax is imposed under § 2501, to backstop the federal estate tax
- Imposed “for each calendar year on the transfer of property by gift during such calendar year by any individual resident or nonresident”
- Unified credit allowed against taxable gifts, in the same amount as allowed against the federal estate tax (§ 2505): \$15M in 2026
- GST tax is imposed under § 2601; 40% rate applies in addition to any gift tax due
- GST exemption allowed against taxable generation-skipping transfers, in the same amount as federal estate tax exemption (§ 2631)
- Form 709 tracks individual’s unified credit and GST exemption applied to lifetime gifts (and received from a deceased spouse); reconciled on individual’s estate tax return (Form 706)

# Who Has a Filing Obligation?

- A gift tax return is required for each calendar year in which an individual makes any gift other than:
  - Annual exclusion gifts (\$19,000 or less in 2026) (§ 2503(b));
  - Gifts by direct payment of tuition/medical expenses (§ 2503(e));
  - Gifts to the individual's spouse (§ 2523); or
  - Gifts to charitable organizations (§ 2522).
- If an individual makes any gift that triggers a filing obligation, all charitable gifts must also be reported
- Recommended (but not required) to report noncharitable gifts below annual exclusion amount, if a return is required

# When is Form 709 Due?

- Annual return
- Due April 15<sup>th</sup> (or next business day) of year following the year of gift
- Two methods of extending due date:
  - Extend donor's Form 1040 for year of gift, or
  - Automatic six-month extension of time to file using Form 8892

# Why Else Might a Form 709 be Filed?

- Disclose a non-gift transaction to start statute of limitations for IRS review
- Elect gift-splitting with spouse
- Elect to allocate (or opt out of allocating) GST exemption to a trust
- Elect to take the marital deduction for certain kinds of trusts created during lifetime for the individual's spouse (QTIP or QDOT)

# Where is Each Gift Reported?

- Schedule A (Computation of Taxable Gifts) has Three Parts
  - Part 1: Gifts Subject Only to Gift Tax
    - Gifts to “non-skip persons”; can never be subject to GST tax
    - Example: Outright gift to child
  - Part 2: Direct Skips
    - Gifts to “skip persons”; are immediately subject to GST tax
    - Example: Outright gift to grandchild; gift to trust that benefits only grandchild
  - Part 3: Indirect Skips and Other Transfers in Trust
    - Gifts to trusts that could be subject to GST tax in the future
    - Example: Gift to trust that benefits child and/or grandchild

# Schedule A, Part I – Gifts Subject Only to Gift Tax

**Part I – Gifts Subject Only to Gift Tax.** Gifts less political organization, medical, and educational exclusions.

| (a)<br>Item<br>number | (b)<br>Donee's name and address | (c)<br>Relationship<br>to donor<br>(if any) | (d)<br>Description of gift | (e)<br>Donor's<br>adjusted basis<br>of gift | (f)<br>Date of gift | (g)<br>Value at<br>date of gift | (h)<br>For split<br>gifts, enter<br>1/2 of<br>column (g) | (i)<br>Net transfer<br>(subtract col.<br>(h) from col.<br>(g)) | Check boxes where applicable         |                           |                                        |                               |
|-----------------------|---------------------------------|---------------------------------------------|----------------------------|---------------------------------------------|---------------------|---------------------------------|----------------------------------------------------------|----------------------------------------------------------------|--------------------------------------|---------------------------|----------------------------------------|-------------------------------|
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | (j)<br>Reserved<br>for future<br>use | (k)<br>Charitable<br>gift | (l)<br>Deductible<br>gift to<br>spouse | (m)<br>2652(a)(3)<br>election |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      |

- Gifts to non-skip persons are reported on Part I
- Charitable gifts are also reported on Part I
- Gifts to trusts will not be reported on Part I unless there is no possibility that the trust could benefit a skip person
- § 2652(a)(3) election is a reverse QTIP election (applicable only for lifetime QTIP trusts)

# Schedule A, Part 2 – Direct Skips

**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)<br>Item<br>number | (b)<br>Donee's name and address | (c)<br>Relationship<br>to donor (if<br>any) | (d)<br>Description of gift | (e)<br>Donor's adjusted<br>basis of gift | (f)<br>Date of gift | (g)<br>Value at date of<br>gift | (h)<br>For split gifts,<br>enter 1/2 of<br>column (g) | (i)<br>Net transfer<br>(subtract col. (h)<br>from col. (g)) | Check boxes<br>where applicable |
|-----------------------|---------------------------------|---------------------------------------------|----------------------------|------------------------------------------|---------------------|---------------------------------|-------------------------------------------------------|-------------------------------------------------------------|---------------------------------|
|                       |                                 |                                             |                            |                                          |                     |                                 |                                                       |                                                             | (j)<br>2632(b)<br>election out  |
|                       |                                 |                                             |                            |                                          |                     |                                 |                                                       |                                                             | <input type="checkbox"/>        |
|                       |                                 |                                             |                            |                                          |                     |                                 |                                                       |                                                             | <input type="checkbox"/>        |
|                       |                                 |                                             |                            |                                          |                     |                                 |                                                       |                                                             | <input type="checkbox"/>        |

- Gifts to “skip persons” (defined in § 2613) are reported on Part 2
  - A natural person assigned to 2 or more generations below donor
  - Trust which can benefit only skip persons
- Only one election can be made on Part 2 (§ 2632(b) election):
  - May elect not to use GST exemption to shelter gift
  - Effect would be for donor to owe GST tax with the gift tax return (40% rate)

# Schedule A, Part 3 – Indirect Skips

**Part 3—Indirect Skips and Other Transfers in Trust.** Gifts to trusts that are indirect skips as defined under section 2632(c) or to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

| (a)<br>Item<br>number | (b)<br>Donee's name and address | (c)<br>Relationship<br>to donor (if<br>any) | (d)<br>Description of gift | (e)<br>Donor's<br>adjusted basis<br>of gift | (f)<br>Date of gift | (g)<br>Value at<br>date of gift | (h)<br>For split<br>gifts, enter<br>1/2 of<br>column (g) | (i)<br>Net transfer<br>(subtract col.<br>(h) from col.<br>(g)) | Check boxes where applicable         |                           |                                        |                               |                            |
|-----------------------|---------------------------------|---------------------------------------------|----------------------------|---------------------------------------------|---------------------|---------------------------------|----------------------------------------------------------|----------------------------------------------------------------|--------------------------------------|---------------------------|----------------------------------------|-------------------------------|----------------------------|
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | (j)<br>Reserved<br>for future<br>use | (k)<br>Charitable<br>gift | (l)<br>Deductible<br>gift to<br>spouse | (m)<br>2652(a)(3)<br>election | (n)<br>2632(c)<br>election |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      | <input type="checkbox"/>   |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      | <input type="checkbox"/>   |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      | <input type="checkbox"/>   |

- Gifts to trusts with GST potential are reported on Part 3
- § 2632(c) election allows election out of automatic allocation rules
- This election actually contains 3 different elections (attach separate election statement):
  - Election out for only the transfer(s) reported on this return (results in no allocation);
  - Election out for any and all future transfers to the trust (results in no allocation); or
  - Election to treat the trust as a “GST trust” (results in allocation of GST exemption)
- Don't rely on automatic allocation; affirmatively make an election consistent with the planning

# How is Each Gift Valued?

- Gift tax value of property is its fair market value as of the date of the gift
- Fair market value means “the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts” (Treas. Regs. § 25.2512-1)
- Regulations contain more specific rules for certain kinds of property (two examples below):
  - Stocks and bonds traded on a public exchange are valued at the mean of the highest and lowest quoted selling prices on the date of the gift (Treas. Regs. § 25.2512-2)
  - Promissory notes are valued at the amount of outstanding principal, plus accrued interest through the valuation date, unless donor establishes lower value (Treas. Regs. § 25.2512-4)

# Adequate Disclosure

- Gifts must be “disclosed in such return, or in a statement attached to the return, in a manner adequate to apprise the Secretary of the nature of such item” (§ 6501(c)(9))
- For a gift which is adequately disclosed, the statute of limitations will expire in three years (absent fraud, etc.)
- If a gift is not adequately disclosed, statute of limitations will not begin to run (as if the gift were not reported on a return at all)
- Treas. Regs. § 301.6501(c)-1(f)(2) provides safe harbor
  - Lists information required to adequately disclose a gift (an attached appraisal may be used to provide valuation methodology, if it meets certain requirements)
  - But see *Schlapfer v. Commissioner*, TCM 2023-65 (May 22, 2023), which confirmed that gift can be adequately disclosed without meeting the regulatory safe harbor requirements
- If valuation discounts are claimed for lack of control, lack of marketability, etc., that must be specifically disclosed on the return on Page 3 (check the box)

# Reporting Annual Exclusion Gifts

- First \$19,000 (in 2026) of gifts made to any individual of a present interest is excluded from total value of the donor's gifts
- Total of all annual exclusions reported on Schedule A, Part 4, Line 2
- Gifts in trust do not qualify for the annual exclusion (generally not a present interest gift), except:
  1. "Crummey" Trust: gift to trust qualifies if trust grants beneficiary the right to withdraw the gift from the trust (*Crummey v. Commissioner*)
  2. § 2503(c) Trust: gift to trust ("minor's trust") qualifies by statute, even though it is not a present interest; trust must terminate and distribute to beneficiary by age 21
- Cannot "double-up" annual exclusion for the same individual in different forms; if annual exclusion taken for outright gift, then cannot be taken for "Crummey" trust gift

# Special Rule for 529 Plan Gifts

- Donor can elect for gift to 529 Plan to apply over 5 years, to use 5 years' worth of annual exclusion amounts up front (§ 529(c)(2)(B))
- Election is made on Schedule A, line B (check the box and attach statement)

## **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** 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, check here ☐ . See instructions. Attach a statement.

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

| (a)<br>Item<br>number | (b)<br>Donee's name and address | (c)<br>Relationship<br>to donor<br>(if any) | (d)<br>Description of gift | (e)<br>Donor's<br>adjusted basis<br>of gift | (f)<br>Date of gift | (g)<br>Value at<br>date of gift | (h)<br>For split<br>gifts, enter<br>1/2 of<br>column (g) | (i)<br>Net transfer<br>(subtract col.<br>(h) from col.<br>(g)) | Check boxes where applicable         |                           |                                        |                               |
|-----------------------|---------------------------------|---------------------------------------------|----------------------------|---------------------------------------------|---------------------|---------------------------------|----------------------------------------------------------|----------------------------------------------------------------|--------------------------------------|---------------------------|----------------------------------------|-------------------------------|
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | (j)<br>Reserved<br>for future<br>use | (k)<br>Charitable<br>gift | (l)<br>Deductible<br>gift to<br>spouse | (m)<br>2652(a)(3)<br>election |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      |
|                       |                                 |                                             |                            |                                             |                     |                                 |                                                          |                                                                | <input type="checkbox"/>             | <input type="checkbox"/>  | <input type="checkbox"/>               | <input type="checkbox"/>      |

# Reporting Annual Exclusion from GST Tax

- Gifts in trust must meet additional requirements to qualify for the annual exclusion for GST tax purposes
- Trust must have single beneficiary for the beneficiary's lifetime, and at the beneficiary's death, any remaining trust property must be included in the beneficiary's gross estate for estate tax purposes (§ 2642(c))
- Report GST annual exclusion as "Nontaxable portion of transfer" for each GST on Schedule D (Computation of Generation-Skipping Transfer Tax)

## **SCHEDULE D** Computation of Generation-Skipping Transfer Tax

**Note:** Inter vivos direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule D.

**Part 1 — Generation-Skipping Transfers.** List items from Schedule A first, then items to be reported on Schedule D, including any transfers subject to an Estate Tax Inclusion Period (ETIP).

| (a)<br>Item number (from<br>Schedule A, Part 2, col. (a),<br>then ETIP transfers, if any) | (b)<br>Description<br>(only for ETIP transfers) | (c)<br>Value (from Schedule A, Part 2,<br>col. (i), or close of ETIP<br>described in col. (b)) | (d)<br>Nontaxable portion of transfer | (e)<br>Net transfer (subtract<br>col. (d) from col. (c)) |
|-------------------------------------------------------------------------------------------|-------------------------------------------------|------------------------------------------------------------------------------------------------|---------------------------------------|----------------------------------------------------------|
| 1                                                                                         |                                                 |                                                                                                |                                       |                                                          |
|                                                                                           |                                                 |                                                                                                |                                       |                                                          |
|                                                                                           |                                                 |                                                                                                |                                       |                                                          |

# Special Rules for Spousal Gift-Splitting

- Spouses may consent to “split” gifts: each split gift made by one spouse is treated as if it had been made one-half by each spouse (§ 2513)
- Check the box on Part III, line 1, and attach a signed “Notice of Consent”
- Spouse consents to split all gifts reported on the return (except gifts to the spouse; this is tricky to determine when spouse is one of several beneficiaries of a gift in trust)
- Gift-splitting election can be made on late filed return (if first return for the year in question)
- If gift-splitting election is made, gifts are also split for GST purposes (§ 2652(a)(2))

| Part III Spouse's Consent on Gifts to Third Parties |                                                                                                                                                                                                                                                                                                                                                                                   | Yes                      | No                       |
|-----------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|--------------------------|
| 1                                                   | <b>Gifts by spouses to third parties.</b> 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. <b>If the answer is “No,” skip lines 2–7.</b> ) | <input type="checkbox"/> | <input type="checkbox"/> |
| 2                                                   | Name of consenting spouse                                                                                                                                                                                                                                                                                                                                                         |                          |                          |
| 3                                                   | SSN of consenting spouse                                                                                                                                                                                                                                                                                                                                                          |                          |                          |
| 4                                                   | Were you married to one another during the entire calendar year? See instructions                                                                                                                                                                                                                                                                                                 | <input type="checkbox"/> | <input type="checkbox"/> |
| 5                                                   | If line 4 is “No,” check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/deceased, and give date. See instructions                                                                                                                                                                                                 |                          |                          |
| 6                                                   | Will a gift tax return for this year be filed by your spouse? If “Yes,” mail both returns in the same envelope                                                                                                                                                                                                                                                                    | <input type="checkbox"/> | <input type="checkbox"/> |
| 7                                                   | <b>Consent of Spouse.</b> Have you obtained required spousal consent for gifts made to third parties to be considered as made one-half by each spouse? If “Yes,” <b>you must attach a Notice of Consent.</b> See instructions                                                                                                                                                     | <input type="checkbox"/> | <input type="checkbox"/> |

Form 709 (2025)

# Gift to Qualified Terminable Interest (QTIP) Trust

- Must file timely Form 709 and report gift to QTIP Trust to qualify for marital deduction
- Report QTIP gift on Schedule A as a deductible gift to spouse

| <b>SCHEDULE A</b> Computation of Taxable Gifts (Including transfers in trust) (see instructions) (continued) |                                                                                                                                                                                                             |    |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----|
| <b>Part 4—Taxable Gift Reconciliation</b>                                                                    |                                                                                                                                                                                                             |    |
| 1                                                                                                            | Total value of gifts of donor. Add totals from column (i) of Parts 1, 2, and 3 . . . . .                                                                                                                    | 1  |
| 2                                                                                                            | Total annual exclusions for gifts listed on line 1 (see instructions) . . . . .                                                                                                                             | 2  |
| 3                                                                                                            | Total included amount of gifts. Subtract line 2 from line 1 . . . . .                                                                                                                                       | 3  |
| <b>Deductions</b> (see instructions)                                                                         |                                                                                                                                                                                                             |    |
| 4                                                                                                            | Gifts of interests to U.S. citizen spouse for which a marital deduction will be claimed. Enter the total value of items on Parts 1 and 3 of Schedule A for which the box in column (l) is checked . . . . . | 4  |
| 5                                                                                                            | Exclusions attributable to gifts on line 4 . . . . .                                                                                                                                                        | 5  |
| 6                                                                                                            | Marital deduction. Subtract line 5 from line 4 . . . . .                                                                                                                                                    | 6  |
| 7                                                                                                            | Charitable deduction. Enter the total value of items on Parts 1 and 3 of Schedule A for which the box in column (k) is checked, less exclusions . . . . .                                                   | 7  |
| 8                                                                                                            | Total deductions. Add lines 6 and 7 . . . . .                                                                                                                                                               | 8  |
| 9                                                                                                            | Subtract line 8 from line 3 . . . . .                                                                                                                                                                       | 9  |
| 10                                                                                                           | Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. (g), total) . . . . .                                                                                          | 10 |
| 11                                                                                                           | <b>Taxable gifts.</b> Add lines 9 and 10. Enter here and on page 1, Part II—Tax Computation, line 1 . . . . .                                                                                               | 11 |

**Qualified Terminable Interest Property (QTIP) Marital Deduction** (See instructions for Schedule A, Part 4, line 4.)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

- The trust (or other property) is listed on Schedule A and the box in column (l) is checked; and
- The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4, then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon your spouse's death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, your spouse will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the instructions.

You may make the special QTIP election to treat the entire trust as non-QTIP for purposes of the generation-skipping transfer tax by checking the box in column (m).

**12 Election Out of QTIP Treatment of Annuities**

☐ Check here if you elect under section 2523(f)(6) **not** to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election.

# Questions?

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