

To File or Not to File a Gift Tax Return, That's the Question

If you made gifts last year you may be wondering if you need to file a gift tax return this year. The answer may surprise you.

Many people aren't subject to federal gift taxes because of the \$15 million gift and estate tax exemption (\$30 million for married couples filing jointly) for 2026. However, there are situations when 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 tax. Let's take a closer look at the reasons why.

All gifts are taxable, with a few exceptions

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. Nontaxable transfers that don't need to be reported on Form 709 include:

- Gifts of present interests (see below) within the gift tax annual exclusion amount (currently, \$19,000 per person),
- Direct payments of qualifying medical or educational expenses on behalf of an individual,
- Gifts to political organizations and certain tax-exempt organizations,
- Deductible charitable gifts,
- Gifts to a U.S.-citizen spouse, either outright or to a trust that meets certain requirements, and
- Gifts to a noncitizen spouse within a special annual exclusion amount (\$194,000 for 2026).

If all your gifts for the year fall into these categories, no gift tax return is required. But gifts that don't meet these requirements are generally considered taxable — and must be reported on Form 709 — even if they're shielded from tax by the lifetime exemption.

Beware these pitfalls

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

Future interests. The \$19,000 gift tax annual exclusion applies only to present interests, such as outright gifts. Gifts of future interests, such as transfers to a trust for the donee's benefit, aren't covered, so you're required to report them on Form 709 even if they're less than \$19,000.

Spousal gifts. As previously noted, gifts to a U.S.-citizen spouse needn't 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 \$38,000 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. Keep in mind that, once you make this election, you and your spouse must split *all* gifts to third parties during the year.

When to voluntarily file a return

There are situations when it may be a good idea to file a gift tax return, even if it's not required. For example, if you make annual exclusion gifts of difficult-to-value assets, such as interests in a closely held business, a gift tax return that meets "adequate disclosure" requirements will trigger the three-year limitations period for audits.

Suppose you transfer business interests valued at \$15 million over a period of years, through a combination of tax-free gifts to your spouse and annual exclusion gifts to your children. If the IRS finds that the interests were worth \$20 million, which exceeds the lifetime exemption amount, it can assess gift taxes plus penalties and interest. If you don't file regular gift tax returns, the IRS has unlimited time to challenge the values of your gifts.

Turn to your advisor for help

A well-designed gifting strategy remains a vital part of effective estate planning because it allows you to transfer wealth on your own terms and may reduce future tax exposure. However, to keep from running afoul of the IRS, it's critical to know when you need to file a gift tax return. The deadline to file Form 709 for tax year 2025 is April 15. If you're unsure if you need to file a return, ask your estate planning advisor.