

When to File a Gift Tax Return & Requirements Involved

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If you made gifts last year, you may be wondering if you need to file a gift tax return. There are many 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 look at some reasons why you might need or want to file.

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What gifts are considered nontaxable?

The federal gift tax regime begins with the assumption that all transfers of property by gifts (including below-market sales or loans) are taxable. It then sets forth several exceptions. Nontaxable transfers that need not be reported for gift tax purposes include:

- Gifts of present interests within the annual exclusion amount (\$17,000 per donee in 2023, up from \$16,000 in 2022),
- 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 one's U.S.-citizen spouse, either outright or to a trust that meets certain requirements, and
- Gifts to one's noncitizen spouse within a special annual exclusion amount (\$175,000 in 2023, up from \$164,000 in 2022).

If all your gifts for the year fall into these categories, no gift tax return is required. Gifts that don't meet these exceptions are generally considered taxable and must be reported on a gift tax return. Taxable gifts may be shielded from tax by the federal gift and estate tax exemption (\$12.92 million in 2023, up from \$12.06 million in 2022), so just because you have to file a return does not necessarily mean you'll pay gift tax.

Are there tax traps to be aware of?

If you make gifts during the year, consider whether you're required to file a gift tax return and watch out for these common traps:

Future interests. The \$17,000 annual exclusion applies only to present interest gifts. A present interest gift is one that the beneficiary can currently enjoy. Gifts of future interests, such as many transfers to a trust, aren't covered, so you're required to report them on a gift tax return even if they're within the taxable exclusion threshold of \$17,000 in 2023 (\$16,000 in 2022).

Spousal gifts. As previously noted, most gifts to a U.S.-citizen spouse do not need to be reported on Form 709. However, be careful if the gift is made in trust – it may be gift tax free, or it may be eligible for gift tax free treatment with the right election. Otherwise, a gift in trust to a spouse will require a gift tax return.

Tax free gifts in trust for a spouse require the following trust terms: 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.

Other spousal trusts which provide the spouse with the trust's income, but do not provide a general power of appointment, can make an election (on a timely filed gift tax return) to be eligible for gift tax free treatment.

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 \$34,000 for 2023 (up from \$32,000 for 2022) to each donee. To make the election, the donor spouse must file Form 709, and the other spouse must file a separate gift tax return reporting their half of the gifts (or, in some cases, sign a consent). Keep in mind that, once you make this election, you and your spouse must split *all* gifts to third parties during the year.

Whether or not to file a gift tax return is a complex question involving certain elections and valuation questions, which should be made in consultation with your tax and legal advisors. The deadline to file gift tax returns for 2022 is April 18, 2023 (and may be extended until October). To further discuss whether you are required or should consider filing a gift tax return, please contact [Kathleen Braica](#) or your Anchin Relationship Partner.

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