

Frequently Asked Questions on Gift Taxes (IRS)

<http://www.irs.gov/Businesses/Small-Businesses-&Self-Employed/Frequently-Asked-Questions-on-Gift-Taxes>

Below are some of the more common questions and answers about Gift Tax issues straight from the IRS.

The laws on Estate and Gift Taxes are considered to be some of the most complicated in the Internal Revenue Code. For further guidance, we strongly recommend that you visit with an estate tax practitioner (Attorney or CPA) who has considerable experience in this field. You may also find additional information in [Publication 559](#) or some of the other forms and publications offered on our [Forms Page](#). Included in this area are the instructions to Forms 706 and 709. Within these instructions, you will find the tax rate schedules to the related returns.

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Who pays the gift tax?

The donor is generally responsible for paying the gift tax. Under special arrangements the donee *may* agree to pay the tax instead. Please visit with your tax professional if you are considering this type of arrangement.

What is considered a gift?

Any transfer to an individual, either directly or indirectly, where full consideration (measured in money or money's worth) is not received in return.

What can be excluded from gifts?

The general rule is that any gift is a taxable gift. However, there are many exceptions to this rule. Generally, the following gifts are not taxable gifts.

Gifts that are not more than the annual exclusion for the calendar year.

Tuition or medical expenses you pay for someone (the educational and medical exclusions).

Gifts to your spouse.

Gifts to a political organization for its use.

In addition to this, gifts to qualifying charities are deductible from the value of the gift(s) made.

May I deduct gifts on my income tax return?

Making a gift or leaving your estate to your heirs does not ordinarily affect your federal income tax. You cannot deduct the value of gifts you make (other than gifts that are deductible charitable contributions). If you are not sure whether the gift tax or the estate tax applies to your situation, refer to [Publication 950, Introduction to Estate and Gift Taxes](#).

How many annual exclusions are available?

The annual exclusion applies to gifts to each donee. In other words, if you give each of your children \$11,000 in 2002-2005, \$12,000 in 2006-2008, \$13,000 in 2009-2012 and \$14,000 on or after January 1, 2013, the annual exclusion applies to each gift.

What if my spouse and I want to give away property that we own together?

You are each entitled to the annual exclusion amount on the gift. Together, you can give \$22,000 to each donee (2002-2005) or \$24,000 (2006-2008), \$26,000 (2009-2012) and \$28,000 on or after January 1, 2013.

What other information do I need to include with the return?

Refer to [Form 709](#) (PDF), [709 Instructions](#) and [Publication 559](#). Among other items listed:

Copies of appraisals.

Copies of relevant documents regarding the transfer.

Documentation of any unusual items shown on the return (partially-gifted assets, other items relevant to the transfer(s)).

What is "Fair Market Value?"

Fair Market Value is defined as: "The fair market value is the price at which the 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. The fair market value of a particular item of property includible in the decedent's gross estate is not to be determined by a forced sale price. Nor is the fair market value of an item of property to be determined by the sale price of the item in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate." Regulation §20.2031-1.

Who should I hire to represent me and prepare and file the return?

The Internal Revenue Service cannot make recommendations about specific individuals, but there are several factors to consider:

How complex is the transfer?

How large is the transfer?

Do I need an attorney, CPA, Enrolled Agent (EA) or other professional(s)?

For most simple, small transfers (less than the annual exclusion amount) you may not need the services of a professional.

However, if the transfer is large or complicated or both, then these actions should be considered; It is a good idea to discuss the matter with several attorneys and CPAs or EAs. Ask about how much experience they have had and ask for referrals. This process should be similar to locating a good physician. Locate other individuals that have had similar experiences and ask for recommendations. Finally, after the individual(s) are employed and begin to work on transfer matters, make sure the lines of communication remain open so that there are no surprises.

Finally, people who make gifts as a part of their overall estate and financial plan often engage the services of both attorneys and CPAs, EAs and other professionals. The attorney usually handles wills, trusts and transfer documents that are involved and reviews the impact of documents on the gift tax return and overall plan. The CPA or EA often handles the actual return preparation and some representation of the donor in matters with the IRS. However, some attorneys handle all of the work. CPAs may also handle most of the work, but cannot take care of wills, trusts, deeds and other matters where a law license is required. In addition, other professionals (such as appraisers, surveyors, financial advisors and others) may need to be engaged during this time.

Do I have to talk to the IRS during an examination?

You do not have to be present during an examination unless IRS representatives need to ask specific questions. Although you may represent yourself during an examination, most donors prefer that the professional(s) they have employed handle this phase of the examination. You may delegate authority for this by executing Form 2848 "Power of Attorney."

What if I disagree with the examination proposals?

You have many rights and avenues of appeal if you disagree with any proposals made by the IRS. See [Publications 1](#) and [5](#) (PDF) for an explanation of these options.

What if I sell property that has been given to me?

The general rule is that your basis in the property is the same as the basis of the donor. For example, if you were given stock that the donor had purchased for \$10 per share (and that was his/her basis), and you later sold it for \$100 per share, you would pay income tax on a gain of \$90 per share. (Note: The rules are different for property acquired from an estate). [[Link to Estate Tax Q&A](#)]

Most information for this page came from the Internal Revenue Code: Chapter 12–Gift Tax (generally Internal Revenue Code §2500 and following, related regulations and other sources)

Note: *This page contains one or more references to the Internal Revenue Code (IRC), Treasury Regulations, court cases, or other official tax guidance. References to these legal authorities are included for the convenience of those who would like to read the technical reference material. To access the applicable IRC sections, Treasury Regulations, or other official tax guidance, visit the [Tax Code, Regulations, and Official Guidance](#) page. To access any Tax Court case opinions issued after September 24, 1995, visit the [Opinions Search](#) page of the United States Tax Court.*

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