

Take-Away: As 2026 inches closer, we can expect a huge number of gifts to be made to use the donor's large available *bonus* applicable exemption amount until it expires on 12/31/25. These gifts will require the filing of a federal Gift Tax Return, Form 709 along with adequate disclosure of information to the IRS. The clear goal with the Return is to avoid an IRS audit. Filing Form 709 starts a 3-year statute of limitations in which the IRS can conduct an audit of that Return. However, with the 2001 revision to the statute "Exceptions to General Period of Limitations on Assessment and Collection" the 3-year statute of limitations will not start to run until a detailed list of conditions is met by the donor as reflected on the Form 709- which means there must be *adequate disclosure*.

Background: When an individual gives money or property to another, other than to their spouse, they may be required to pay a gift tax. This federal excise tax starts at 18% and can reach 40% on certain gift amounts. Some gifts are not subject to this tax, including: (i) direct payments of school tuition and education payments; (ii) charitable donations; (iii) direct payments of medical expenses; (iv) political contributions; and (v) gifts to spouses and some dependents.

Form 709: Officially, this gift tax return is called the United State Gift (and Generation-Skipping Transfer) Tax Return, or Form 709.

Annual Exclusion: Excluded from the gift tax and the obligation to disclose the gift on a Form 709 are annual exclusion gifts; this exclusion is \$18,000 per donee in 2024, but only so long as the annual exclusion gift is a *present interest*, i.e., not a gift in trust or which is subject to restrictions where the donee cannot have immediate enjoyment of the gifted asset or access to the income the gifted asset generates. [IRC 2503.]

Amount of Gift: Once a lifetime transfer exceeds that annual exclusion amount, a taxable gift valued above that limit to any one person will require that a Form 709 must be filed. If the gift is less than \$18,000 per donee, but the gift does not satisfy the *present interest* requirement, a Form 709 must still be filed. If the donor makes a joint gift with his/her spouse, each individual spouse must fill out a Form 709, i.e., there is no joint Form 709 available to be filed.

Not Obvious Gifts: Sadly, some gifts are not as readily apparent. Examples include: (i) a large loan given without any interest charged; (ii) forgiving a large debt that is owed; (iii) transferring a non-qualified interest in a trust, i.e., a non-qualified disclaimer; or (iv) releasing a vested interest in a trust. All of these ‘hidden’ gifts must still be reported on a Form 709.

Gift Tax Rates: The federal gift tax rates are graduated:

Taxable Amount of Gift Exceeding Lifetime Exemption Limit - Gift Tax Rate

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\$0- \$10,000.	18%
\$10,001- \$20,000	20%
\$20,001- \$40,000	22%
\$60,001- \$80,000	26%
\$80,001- \$100,000	28%
\$100,001- \$150,000	30%
\$150,001- \$250,000	32%
\$250,001- \$500,000	34%

\$500,001- \$750,000	37%
\$750,001- \$1,000,000	39%
\$1,000,000+	40%
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Form 709: Completing the Form 709 appears to be simple, but mistakes are regularly made when the Form is filled out. Steps include-

First, complete the General Information section on Part One of the Form. Line 12 allows the donor to check off on whether the donor and the donor's spouse make joint gifts for the tax year. If not, the donor can skip lines 13 through 18. The donor's spouse must also sign Form 709 if gifts are to be split.

Next, Report the gifts on Schedule A, "Computation of Taxable Gifts." On this Schedule A the donor provides information such as the description of the gift, the donee, and the gift's value at the time the gift was made. The donor can also report transfers subject to the gift tax and/or generation-skipping transfer tax, if applicable. The donor will also report any transfers or gifts made to trusts.

Next, if this applies to the donor, the donor must complete the Sections on the Form 709 titled "Gifts From Prior Periods, Deceased Spousal Unused Exclusion amount and Computation of Generation Skipping Transfer Tax." These are reported on Schedule B, C, and D, respectively.

Next, Schedule D must be completed if the donor reports gifts under Parts 2 or 3 of Schedule A.

Next, Schedule A, Part 4 is completed- "Taxable Gift Reconciliation." Here the donor applies deductions or exclusions if any are available.

Next, the donor completes Part 3. Called “Tax Computation.” This is found on the first page of Form 709. It refers the donor to the “Table for Computing Gift Tax” under the instructions to calculate the tax on the amount of the reported gifts. The donor can apply his/her lifetime gift and estate tax exemption here, aka their available *unified credit*. The donor does not have to pay an out-of-pocket tax if the exemption is used, but it will reduce how much the donor can gift and transfer out of his/her estate tax-free in the future.

Adequate Disclosure: In the Exceptions to General Period of Limitations on Assessment and Collection, the 3-year statute of limitations period does not start to run until a detailed list of conditions is met. [26 Regulation Section 301.6501(c)-1.] The statute provides a long list of exceptions. To be expected, the IRS on audit will seek to look for facts or omissions that lead to one of the exceptions, usually then claiming gift-related valuation was understated, or valuation discounts claimed were overstated. On Form 709’s page 2, checkbox asks: “*Does the value of any item listed on Schedule A reflect any valuation discount? If Yes, attach explanation.*” Accordingly, if adequate disclosure of key facts is omitted from Form 709, or Schedule A, then many years down the road the donor could face an inflated gift tax assessment, even if the gift tax deficiency was relatively small amount.

Value of the Gift: The valuation standard used by the IRS for a gift is defined in the Regulations. Those Regulations provide:

The value of the property is 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 sell, and both having reasonable knowledge of relevant facts. [Regulation 25.2512-1.]

Additional language in the Regulations concern the preparation of personal property appraisals.

Appraisals: Gifts must be supported by a *qualified appraisal* made by a

qualified appraiser. Digging a bit deeper, this means:

- A. The *qualified* appraiser must be a qualified party, must regularly perform appraisals, and must be qualified for the particular type of property that is the subject of the gift.
- B. The *qualified* appraisal must contain all of the following details: (i) date of transfer, date and purpose of appraisal; (ii) property and appraisal process descriptions; (iii) assumptions, hypothetical and limiting conditions and restrictions; (iv) for business and real estate, or partnerships, including tenants in common, all the financial data, of sufficient detail so another person can replicate the process and arrive at the appraised value; (v) appraisal procedures, valuation method, and supporting reasoning; and (vi) the specific basis for the valuation.
- C. The date of value for the appraisal should also be the date of the gift, or at least close enough in time that the conclusion is reliable (in which case the appraisal should include a statement that the subsequent events or market changes would not have had a significant effect on value.)
- D. The purpose of the valuation and the underlying asset appraisal is to support tax reporting for the specific gift. The appraisal should not state 'for lending purposes' nor should it refer to 'internal use' or any other vague or misleading purpose- it should be to document the value of a lifetime gift.
- E. Value is measured by what the rights that pass between the hypothetical seller and buyer.

Conclusion: If any appraisal that supports a gift misstates or omits any of these disclosure requirements, then there is no *adequate disclosure* of the gift or its value on the Form 709, which then means that the 3-year statute of limitations will not run on the gift tax return. Accordingly, there is considerable vulnerability of being exposed to no statute of limitation through an IRS audit if

the IRS decides to 'nit-pick' whether there has been *adequate disclosure* on the donor's Form 709 or the appraisal that accompanies the Form 709.