

Trump Accounts- A Taxable Gift?

Quick-Take: It is not clear if a donor's gift to a Trump Account will qualify for the federal gift tax annual exclusion.

Background: When Trump Accounts were created in the One Big Beautiful Bill (OB3) there was no mention of whether transfers to a Trump Account would qualify for the federal gift tax annual exclusion. [IRC 530A.] When the IRS issued its Notice 2025-68 that provided some guidance on Trump Accounts it did not address if a transfer to a Trump Account would qualify for the federal gift tax annual exclusion, which seems like a pretty glaring omission. The statutory omission may be just one of the many unintended consequences when Congress pushed through the OB3 before July 4, 2025, just to accommodate the President's optics demand.

Annual Exclusion Gifts: The Tax Code authorizes annual exclusion gifts, which do not erode the donor's lifetime applicable exclusion amount. However, it is clear that in order to qualify for the federal gift tax annual exclusion, the transfer must confer a *present interest* on the donee. [IRC 2503(b).] Inasmuch as a gift to a Trump Account cannot be accessed by the beneficiary until he/she attains the age of 18, that limitation pretty clearly creates a *future interest*, not a *present interest*. Accordingly, on its face, a transfer to a Trump Account will not qualify for the federal gift tax annual exclusion.

529 Account Comparison: To some degree, Trump Accounts are compared to qualified higher education accounts, [529 accounts] which receive contributions/gifts for a child's future educational needs. Unlike the Trump Account authorization, IRC 529 expressly provides that despite the normal rules of the Tax Code that require that a *present interest* be conveyed in order for the donor to qualify for the federal gift tax annual exclusion, a donor's gift to a 529 account will nonetheless qualify for the federal gift tax annual exclusion. That language that excepts contributions from the gift tax annual exclusion rules is missing from IRC 530A.

ACTEC: The American College of Trust and Estates Counsel (ACTEC) has brought this omission to the attention of the IRS both after the OB3 became law, and after the IRS

released its Notice 2025-68. We have to presume that the IRS will address this omission in upcoming Regulations prior to July 4, 2026, when Trump Accounts can begin to receive contributions.

Comment: Does the IRS even have the authority, via Regulation, to add the missing 'exception' language to the Tax Code, or must this exception be added by a technical corrections bill?

Conclusion: As prospective donors weigh the pros and cons of contributing to a Trump Account or to a 529 qualified higher education account, they should factor in the potential cost, and hassle, of filing a federal gift tax return (Form 709) for their contribution to a Trump Account.

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