Trump Account Trap?

Quick-Take: A Trump Account contribution is not a second, or 'free,' annual exclusion gift by its contributor.

Background: It was previously reported that with the Revenue Procedure 2026-25 a *safe harbor* was created for contributions to a Trump Account under IRC 530A that would satisfy the *present interest* requirement for the gift tax annual exclusion. [IRC 2503(b).] The gift tax annual exclusion amount in 2026 is $19,000, so long as the gift is not a gift of a future interest, e.g., a transfer to a trust. If the transfer is a gift of a future interest, then that transfer must be reported on a gift tax return. [Form 709.] While a gift to a Trump Account looks like, and is, a future interest gift, the *safe harbor* effectively treats it like a gift of a *present interest* to the Trump Account beneficiary, much like a contribution made to an IRC 529 account. The Revenue Procedure will treat the contribution as a completed gift to the Trump Account beneficiary that is not a future interest in property and to which the annual exclusion applies for the federal gift tax, and also for the federal generation skipping transfer tax (GST.) But then, there are requirements that must be met.

***Safe Harbor* Requirements:** The requirements to fall within the Revenue Procedure's *safe harbor* are the following:

1. The contributor to the Trump Account is an individual.
2. The only taxable gifts made by the contributor during the calendar year are in the form of cash, check, money order, or electronic funds transfer to one or more Trump Accounts, each made before the calendar year in which the Trump Account beneficiary attains the age of 18.
3. The contributor's total gifts during the calendar year to each individual who is a Trump Account beneficiary, including contributions to that account beneficiary's Trump Account, do *not exceed* the annual exclusion amount.
4. The contributions to the Trump Account made during the year do not generate for that calendar year either a gift tax or GST tax liability after application of the contributor's remaining applicable exemption amount against the gift tax or his/her remaining GST tax exemption; and

5. Disregarding the Trump Account contributions (#2 above), no gift tax return is required to be filed, and no gift tax return is otherwise filed for that calendar year by or on behalf of the contributor, whether for GST tax, *portability*, or other purposes.

Trump Trap? It is the last requirement (#5) that may cause a trap. It deals with a situation in which a gift tax return (Form 709) is required to allocate GST tax exemption, such as a late allocation of GST tax exemption to a prior transfer or an allocation at the close of an estate tax inclusion period (ETIP) or to make certain GST elections. A gift tax return may also be required as a result of an audit of an estate tax return. In each of these situations, a gift to a Trump Account will *not* qualify for the *safe harbor.* A couple of examples follow to explain how this requirement could cause the transfer to the Trump Account to not qualify for the gift or GST tax annual exclusion.

Example 1: In 2026 Hubris contributes $5,000 cash to each of three Trump Accounts for his grandchildren, Don, Eric, and Baron. Hubris makes an additional gift of $13,000 cash to Baron. Hubris makes no other gifts during 2026, and he is not required to do so, nor does he file a gift tax return for 2026 for any other purpose. The $15,000 in contributions made to Trump Accounts do not generate a gift or GST tax liability, after taking into consideration Hubris' remaining lifetime applicable exclusion amount or his remaining GST exemption amount. With these facts, all 5 requirements are satisfied, and Hubris' 2026 Trump Account contributions will be treated as completed gifts and not gifts of a future interest.

Example 2: Same facts as in Example 1, but with one change. Rather than gift $13,000 cash to Baron, Hubris' gift of cash is $14,500. With this modest change in facts, the requirements of the Revenue Procedure are not met because Hubris' total gifts to Baron during 2026 exceed the annual per-donee gift tax exclusion under IRC 2503(b) of $19,000 (by $500.). In this situation, Hubris must file a gift tax return for calendar year 2026 reporting *all* 2026 gifts, *and* he must report the Trump Account contributions to Don, Eric, and Baron as gifts of future interests. In short, if a gift tax return is otherwise required to be filed by Hubris, including if his total gifts to a Trump Account beneficiary exceed the annual exclusion amount limit, then *no gifts* to Trump Accounts in 2026 will qualify for the annual exclusion.

Conclusion: Example #2 tells us two things. First, that while there is a *safe harbor* for contributions to a Trump Account that will cause the transfer to be treated as a transfer of a *present interest,* it does not create an 'extra' annual exclusion gift opportunity ('in addition to') for the contributor. Second, if a reportable gift must be filed by the contributor on a Form 709 for the calendar year, then none of the Trump Account contributions by the contributor will qualify as annual exclusion gifts. [Footnote 5 of the Revenue Procedure.] It is something to keep in mind if a contributor to a Trump Account is contemporaneously generous when it comes to birthday gifts, holiday gifts, and possibly funding 529 accounts.

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