



# Instructions for Form 709

(Revised November 1991)

## United States Gift (and Generation-Skipping Transfer) Tax Return

(For gifts made after October 8, 1990, and before January 1, 1993)

**For Privacy Act Notice, see the Instructions for Form 1040**

(Section references are to the Internal Revenue Code unless otherwise noted.)

**If you are filing this form solely to elect gift-splitting for gifts of not more than \$20,000 per donee, you may be able to use Form 709-A, United States Short Form Gift Tax Return, instead of this form. See the instructions for "Who Must File" on page 2.**

After	For Gifts Made and	Before	Use Revision of Form 709 dated
-----		January 1, 1982	November 1981
December 31, 1981		January 1, 1987	January 1987
December 31, 1986		January 1, 1989	December 1988
December 31, 1988		January 1, 1990	December 1989
December 31, 1989		January 1, 1991	October 1990

**Paperwork Reduction Act Notice.**—We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that taxpayers are complying with these laws and to allow us to figure and collect the right amount of tax.

The time needed to complete and file this form will vary depending on individual circumstances. The estimated average time is:

Recordkeeping . . . . .	40 min.
Learning about the law or the form . . . . .	55 min.
Preparing the form . . . . .	1 hr., 41 min.
Copying, assembling, and sending the form to IRS . . . . .	1 hr., 3 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form more simple, we would be happy to hear from you. You can write to both the **Internal Revenue Service**, Washington, DC 20224, Attention: IRS Reports Clearance Officer, T:FP; and the **Office of Management and Budget**, Paperwork Reduction Project (1545-0020), Washington, DC 20503. DO NOT send the tax form to either of these offices. Instead, see the instructions on page 3 for information on where to file.

### Change You Should Note

Use Form 709 also to report certain generation-skipping transfers that you are reporting due to the close of an "estate tax inclusion period" (ETIP), provided the ETIP closed as the result of something other than

the death of the transferor. See **Transfers Subject to an "Estate Tax Inclusion Period"** on page 2 for a discussion of such transfers.

**Note:** *New Code section 2701, added by section 11602 of the Omnibus Budget Reconciliation Act of 1990 (OBRA), provides for two elections regarding certain transfers of interests in corporations or partnerships. While section 2701 is applicable to transfers made after October 8, 1990, these elections will not have to be made on the Form 709 otherwise due on April 15, 1992, with respect to these transfers. The IRS will issue regulations in the future specifying when these elections must be made.*

*Taxpayers should be aware that section 11602 of OBRA also amended Code section 6501(c) (relating to limitations on assessment and collection of the gift tax) to provide that the limitations do not apply to transfers valued under Code sections 2701 and 2702 (relating to transfers in trust), until the transfer is disclosed in a gift tax return, or in a statement attached to a gift tax return, in a manner that is adequate to apprise the IRS of the nature of the transaction.*

### General Instructions

**Note:** *If you meet all of the following requirements, you are not required to file Form 709:*

1. You made no gifts during the year to your spouse;
2. You gave no more than \$10,000 during the year to any one donee; and,
3. All of the gifts you made were of present interests.

*For additional information, see **Who Must File** on page 2.*

**Purpose of Form.**—Form 709 is used to report transfers subject to the Federal gift and certain generation-skipping transfer (GST) taxes and to figure the tax, if any, due on those transfers.

All gift and GST taxes are computed and filed on a calendar year basis regardless of your income tax accounting period.

### Transfers Subject to the Gift Tax

Generally, the Federal gift tax applies to any transfer by gift of real or personal property, whether tangible or intangible, that you made directly or indirectly, in trust, or by any other means to a donee.

The gift tax applies not only to the gratuitous transfer of any kind of property, but also to sales or exchanges, not made in the ordinary course of business, where money or money's worth is exchanged but the value of the money received is less than the value of what is sold or exchanged. The gift tax is in addition to any other tax, such as Federal income tax, paid or due on the transfer.

The exercise or release of a power of appointment may be a gift by the individual possessing the power.

The gift tax may also apply to the forgiveness of a debt, to interest-free (or below market interest rate) loans, to the assignment of the benefits of an insurance policy, to certain property settlements in divorce cases, and to certain survivorship annuities.

Bonds that are exempt from Federal income taxes are not exempt from Federal gift taxes.

Code sections 2701 and 2702 provide new rules for determining whether certain transfers to a family member of interests in corporations, partnerships, and trusts are gifts. The rules of section 2704 determine whether the lapse of any voting or liquidation right is a gift.

**Pub. 448**, Federal Estate and Gift Taxes, contains further information on the gift tax.

### Transfers Not Subject to the Gift Tax

Three types of transfers are not subject to the gift tax. These are transfers to political organizations and payments that qualify for the educational and medical exclusions. These transfers are not "gifts" as that term is used on Form 709 and its instructions. You need not file a Form 709 to report these transfers and should not list them on Schedule A of Form 709.

**Political organizations.**—The gift tax does not apply to a transfer to a political organization (defined in section 527(e)(1)) for the use of the organization.

**Educational exclusion.**—The gift tax does not apply to an amount you paid on behalf of an individual to a qualifying domestic or foreign educational organization as tuition for the education or training of the individual. A *qualifying educational organization* is one that normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. See section 170(b)(1)(A)(ii) and its regulations.

The payment must be made directly to the qualifying educational organization and it

must be for tuition. No educational exclusion is allowed for amounts paid for books, supplies, dormitory fees, board or other similar expenses that do not constitute direct tuition costs. To the extent that the payment to the educational institution was for something other than tuition, it is a gift to the individual for whose benefit it was made, and may be offset by the annual exclusion if it is otherwise available.

**Medical exclusion.**—The gift tax does not apply to an amount you paid on behalf of an individual to a person or institution that provided medical care for the individual. The payment must be to the care provider. The medical care must meet the requirements of section 213(d) (definition of medical care for income tax deduction purposes). Medical care includes expenses incurred for the diagnosis, cure, mitigation, treatment, or prevention of disease, or for the purpose of affecting any structure or function of the body, or for transportation primarily for and essential to medical care. Medical care also includes amounts paid for medical insurance on behalf of any individual.

The medical exclusion does not apply to amounts paid for medical care that are reimbursed by the donee's insurance. If payment for a medical expense is reimbursed by the donee's insurance company, your payment for that expense, to the extent of the reimbursed amount, is not eligible for the medical exclusion and you have made a gift to the donee.

To the extent that the payment was for something other than medical care, it is a gift to the individual on whose behalf the payment was made, and may be offset by the annual exclusion if it is otherwise available.

The medical and educational exclusions are allowed without regard to the relationship between you and the donee. For examples illustrating these exclusions, see Regulations section 25.2503-6.

**Disclaimers.**—For the rules governing when a disclaimer is a qualified disclaimer and not subject to the gift tax, see Pub. 448.

### Transfers Subject to the Generation-Skipping Transfer Tax

The GST tax to report on Form 709 is that imposed on inter vivos direct skips made after September 25, 1985. (See Temp. Regs. section 26.2662-1(b), for instructions on how to report other generation-skipping transfers.) An *inter vivos direct skip* is a transfer of an interest in property that is: (1) subject to the gift tax; and (2) made to a skip person. (See page 4.)

A transfer is *subject to the gift tax* if it is required to be reported on Schedule A of Form 709 under the rules contained in the gift tax portions of these instructions, including the split gift rules. Therefore, transfers made to political organizations, transfers that qualify for the medical or educational exclusions, transfers that are fully excluded under the annual exclusion, and most transfers made to your spouse are not subject to the GST tax.

Transfers subject to the GST tax are described in further detail in the instructions for Schedule A, on page 4.

### Transfers Subject to an "Estate Tax Inclusion Period"

If property that is transferred by gift in a GST direct skip would have been includible in the donor's estate if the donor had died immediately after the transfer (other than by reason of the donor having died within 3 years of making the gift), the direct skip will be treated as having been made at the end of the "estate tax inclusion period" (ETIP) rather than at the time it was actually made. For details, see section 2642(f).

Report the gift portion of such a transfer on Schedule A, Part 1, at the time of the actual transfer. Report the GST portion on Schedule A, Part 2, but only at the close of the ETIP. Use Form 709 only to report those transfers where the ETIP closed due to something other than the death of the transferor. If the ETIP closed as the result of the death of the transferor, report the transfer on Form 706.

If you are filing this Form 709 solely to report transfers subject to an ETIP, complete the form as you normally would with the following exceptions:

1. Write "ETIP" at the top of page 1;
2. Complete only lines 1-4, 6, 8, and 9 of Part 1, General Information;
3. Complete Schedule A, Part 2, as explained in the instructions for that schedule on page 6;
4. Complete Column B of Schedule C, Part 1, as explained in the instructions for that schedule on page 7;
5. Complete only lines 14 and 15 of Schedule A, Part 3. (Also list here direct skips that are subject only to the GST tax as the result of the termination of an "estate tax inclusion period." See instructions for Schedule C on page 7.)

### Who Must File

Only individuals are required to file gift tax returns. If a trust, estate, partnership, or corporation makes a gift, the individual beneficiaries, partners, or stockholders are considered donors and may be liable for the gift and GST taxes.

If a donor dies before filing a return, the donor's executor must file the return.

A married couple may not file a joint gift tax return. However, see "Split Gifts" on page 3.

If a gift is of community property, it is considered made one-half by each spouse. For example, a gift of \$100,000 of community property is considered a gift of \$50,000 made by each spouse, and each spouse must file a gift tax return.

Likewise, each spouse must file a gift tax return if they have made a gift of property held by them as joint tenants or tenants by the entirety.

### Citizens or Residents of the United States

If you are a citizen or resident of the United States, you must file a gift tax return (whether or not any tax is ultimately due) in the following situations:

**Gifts to Your Spouse.**—Except as described below, you do not have to file a gift tax return to report gifts to your spouse regardless of the amount of these

### gifts and regardless of whether the gifts are present or future interests.

You must file a gift tax return if your spouse is **not** a U.S. citizen and the total gifts you made to your spouse during the year exceed \$100,000, or if you made any gift of a terminable interest that does not meet the "Life Estate With Power of Appointment" exception described on page 6.

You must also file a gift tax return to make the QTIP (Qualified Terminable Interest Property) election described on page 6.

**Gifts to Donees Other Than Your Spouse (including charitable donees).**—You must file a gift tax return if you gave gifts to any such donee that are not fully excluded under the \$10,000 annual exclusion (as described below). Thus, you must file a gift tax return to report any gift of a future interest (regardless of amount) or to report gifts to any donee that total more than \$10,000 for the year.

**Gift Splitting.**—You must file a gift tax return to split gifts (regardless of their amount) with your spouse as described in the **Specific Instructions** for Part 1 on page 3.

The term *citizen of the United States* includes a person who, at the time of making the gift:

- Was domiciled in a possession of the United States;
- Was a U.S. citizen; and
- Became a U.S. citizen for a reason other than being a citizen of a U.S. possession or being born or residing in a possession.

### Annual Exclusion

The first \$10,000 of gifts of present interests to each donee during the calendar year is subtracted from total gifts in figuring the amount of taxable gifts.

All of the gifts made during the calendar year to a donee are **fully excluded under the annual exclusion** if they are all gifts of *present interests* and if they total \$10,000 or less.

**Note:** For gifts made to spouses who are **not** U.S. citizens, the annual exclusion has been increased from \$10,000 to \$100,000, provided the additional \$90,000 gift would otherwise qualify for the gift tax marital deduction.

A gift of a *future interest* cannot be excluded under the annual exclusion.

A gift is considered a *present interest* if the donee has all immediate rights to the use, possession, and enjoyment of the property and income from the property. A gift is considered a *future interest* if the donee's rights to the use, possession, and enjoyment of the property and income from the property will not begin until some future date. Future interests include reversions, remainders, and other similar interests or estates.

The gift of a present interest to more than one donee as joint tenants qualifies for the annual exclusion for each donee.

In the case of transfers for the benefit of a minor and for the transitional rules for certain trusts with a power of appointment referenced to the annual exclusion, see Pub. 448.

### Nonresident Aliens

Nonresident aliens are subject to gift and GST taxes for gifts of tangible property situated in the United States. Under certain

circumstances they are also subject to gift and GST taxes for gifts of intangible property. (See section 2501(a).)

If you are a nonresident alien who made a gift subject to gift tax, you must file a gift tax return if: (1) you gave *any* gifts of future interests; or (2) your gifts of present interests to *any donee* other than your spouse total more than \$10,000; or (3) your outright gifts to your spouse who is not a U.S. citizen total more than \$100,000.

## When To File

Form 709 is an annual return.

Generally, you must file Form 709 on or after January 1 but not later than April 15 of the year following the calendar year when the gifts were made.

If the donor of the gifts died during the year in which the gifts were made, the executor must file the donor's Form 709 not later than the earlier of: (1) the due date (with extensions) for filing the donor's estate tax return; or (2) April 15 of the year following the calendar year when the gifts were made. Under this rule, Form 709 may be due before April 15 if the donor died before July 15 of the year in which the gifts were made. If the donor died after July 14, the due date for Form 709 (without extensions) will always be April 15 of the following year. If no estate tax return is required to be filed, the due date for Form 709 (without extensions) is April 15. For more information, see Regulations section 25.6075-1.

## Extension of Time To File

There are two methods of extending the time to file the gift tax return. *Neither method extends the time to pay the gift or GST taxes.* If you want an extension of time to pay the gift or GST taxes, you must request that separately. (See Regulations section 25.6161-1.)

(1) *By letter.*—You can request an extension of time to file your gift tax return by writing to the district director or service center for your area. You must explain the reasons for the delay.

(2) *By form.*—Any extension of time granted for filing your calendar year Federal income tax return will also extend the time to file any gift tax return. Income tax extensions are made by using Form 4868, 2688, or 2350, which have check boxes for Form 709.

## Where To File

File Form 709 with the Internal Revenue Service Center where you would file your Federal income tax return. See the Form 1040 instructions for a list of filing locations.

## Penalties

The law provides for penalties for both late filing of returns and late payment of tax unless you have reasonable cause. There are also penalties for valuation understatements that cause an underpayment of the tax, willful failure to file a return on time, and for willful attempt to evade or defeat payment of tax.

The late filing penalty will not be imposed if the taxpayer can show that the failure to file a timely return is due to reasonable cause. Those filing late (after the due date, including extensions) should attach an explanation to the return to show reasonable cause.

A valuation understatement occurs when the reported value of property entered on Form 709 is 50 percent or less of the actual value of the property.

## Joint Tenancy

If you buy property with your own funds and the title to such property is held by yourself and the donee as joint tenants with right of survivorship and if either you or the donee may give up those rights by severing your interest, you have made a gift to the donee in the amount of half the value of the property. If you create a joint bank account for yourself and the donee (or a similar kind of ownership by which you can get back the entire fund without the donee's consent), you have made a gift to the donee when the donee draws on the account for his or her own benefit. The amount of the gift is the amount that the donee took out without any obligation to repay you. If you buy a U.S. savings bond registered as payable to yourself or the donee, there is a gift to the donee when he or she cashes the bond without any obligation to account to you.

## Transfer of Certain Life Estates

If you received a qualifying terminable interest (see page 6) from your spouse for which a marital deduction was elected on your spouse's estate or gift tax return, you will be subject to the gift (and GST, if applicable) tax if you dispose of (by gift, sale, or otherwise) all or part of your life income interest.

The entire value of the property involved less: (1) the amount you received on the disposition, and (2) the amount (if any) of the life income interest you retained after the transfer will be treated as a taxable gift. That portion of the property's value that is attributable to the remainder interest is a gift of a future interest for which no annual exclusion is allowed. To the extent you made a gift of the life income interest, you may claim an annual exclusion, treating the person to whom you transferred the interest as the donee for purposes of computing the annual exclusion.

## Specific Instructions

### Part I.—General Information

#### Split Gifts—Gifts by Husband or Wife to Third Parties

A married couple may not file a joint gift tax return.

If you and your spouse agree, all gifts (including gifts of property held with your spouse as joint tenants or tenants by the entirety) either of you make to third parties during the calendar year will be considered as made one-half by each of you if:

- You and your spouse were married to one another at the time of the gift;
- If divorced or widowed after the gift, you did not remarry during the rest of the calendar year;
- Neither of you was a nonresident alien at the time of the gift; and
- You did not give your spouse a general power of appointment over the property interest transferred.

If you transferred property partly to your spouse and partly to third parties, you can only split the gifts if the interest transferred to the third parties is ascertainable at the time of the gift.

If you meet these requirements and want your gifts to be considered made one-half by you and one-half by your spouse, check the "Yes" box on line 12, page 1; complete lines 13 through 17; and have your spouse sign the consent on line 18. If you are not married or do not wish to split gifts, skip to Schedule A.

**Line 15.**—If you were married to one another for the entire calendar year, check the "Yes" box and skip to line 17. If you were married for only part of the year, check the "No" box and go to line 16.

**Line 16.**—Check the box that explains the change in your marital status during the year and give the date you were married, divorced, or widowed.

## Consent of Spouse

To have your gifts (and generation-skipping transfers) considered as made one-half by each of you, your spouse must sign the consent. The consent may generally be signed at any time after the end of the calendar year. However, there are two exceptions. They are:

1. The consent may not be signed after April 15 following the end of the year in which the gift was made. (But, if neither you nor your spouse has filed a gift tax return for the year on or before that date, the consent must be made on the first gift tax return for the year filed by either of you.)

2. The consent may not be signed after a notice of deficiency for the gift or GST tax for the year has been sent to either you or your spouse.

The executor for a deceased spouse or the guardian for a legally incompetent spouse may sign the consent.

The consent is effective for the entire calendar year; therefore, all gifts made by both you and your spouse to third parties during the calendar year (while you were married) must be split.

If the consent is effective, the liability for the entire gift and GST taxes of each spouse is joint and several.

#### When the Consenting Spouse Must Also File a Gift Tax Return

If the spouses elect gift splitting (described under **Split Gifts**, above), then both the donor spouse and the consenting spouse must each file separate gift tax returns unless all the requirements of either Exception 1 or 2 below are met.

*Exception 1.*—During the calendar year:

- Only one spouse made any gifts;
- The total value of these gifts to each third-party donee does not exceed \$20,000; and
- All of the gifts were of present interests.

*Exception 2.*—During the calendar year:

- Only one spouse (the donor spouse) made gifts of more than \$10,000 but not more than \$20,000 to any third-party donee;
- The only gifts made by the other spouse (the consenting spouse) were gifts of not

more than \$10,000 to third-party donees other than those to whom the donor spouse made gifts; and

- All of the gifts by both spouses were of present interests.

If either Exception 1 or 2 is met, only the donor spouse needs to file a return and the consenting spouse signifies consent on that return. This return may be made on **Form 709-A**, United States Short Form Gift Tax Return. This form is much easier to complete than Form 709, and you should consider filing it whenever your gifts to each third-party donee are not more than \$20,000 for the year and consist entirely of tangible personal property.

## Schedule A.—Computation of Taxable Gifts

Do not enter on Schedule A any gift or part of a gift that qualifies for the political organization, educational, or medical exclusions. In the instructions below, “gifts” means gifts (or parts of gifts) that do not qualify for the political organization, educational, or medical exclusions.

### Gifts to Donees Other Than Your Spouse

You must always enter all gifts of *future interests* that you made during the calendar year regardless of their value.

**If you do not elect gift splitting.**—If the total gifts of *present interests* to any donee are more than \$10,000 in the calendar year, then you must enter *all such gifts* that you made during the year to or on behalf of that donee, including those gifts that will be excluded under the annual exclusion. If the total is \$10,000 or less, you need not enter on Schedule A any gifts (except gifts of future interests) that you made to that donee.

**If you elect gift splitting.**—Enter on Schedule A the entire value of every gift you made during the calendar year while you were married, even if the gift’s value will be less than \$10,000 after it is split on line 2 of Part 3.

### Gifts to Your Spouse

You do not need to enter any of your gifts to your spouse on Schedule A unless you gave a gift of a terminable interest to your spouse, you gave a gift of a future interest to your spouse as described below, or your spouse was not a citizen of the U.S. at the time of the gift.

**Terminable interest.**—Terminable interests are defined in the instructions to line 8. If all the terminable interests you gave to your spouse qualify as life estates with power of appointment (defined on page 6) you do not need to enter any of them on Schedule A. However, if you gave your spouse *any* terminable interest that does not qualify as a life estate with power of appointment, you must report on Schedule A *all* gifts of terminable interests you made to your spouse during the year. You should not report any gifts you made to your spouse who is a U.S. citizen that are not terminable interests (except as described under *Future interest* below); however, you must report all terminable interests, whether or not they can be deducted.

**Charitable remainder trusts.**—If you make a gift to a charitable remainder trust and your spouse is the only noncharitable beneficiary (other than yourself), the interest you gave to your spouse is not considered a terminable interest and, therefore, should not be shown on Schedule A. For definitions and rules concerning these trusts, see section 2056(b)(8)(B) and Regulations section 20.2055-2.

**Future interest.**—Generally, you should not report gifts of future interests to your spouse unless the future interest is also a terminable interest that is required to be reported as described above. However, if you gave a gift of a future interest to your spouse and you are required to report the gift on Form 709 because you gave the present interest to a donee other than your spouse, then you should enter the entire gift, including the future interest given to your spouse, on Schedule A. You should use the rules under “Gifts Subject to Both Gift and GST Taxes,” below, to determine where to enter the gift on Schedule A.

**Non-U.S. citizen spouse donee.**—If your spouse is not a U.S. citizen and you gave him or her a gift of a future interest, you must report on Schedule A all gifts to your spouse for the year. If all gifts to your spouse were present interests, do not report on Schedule A any gifts to your spouse if the total of such gifts for the year does not exceed \$100,000 and all gifts in excess of \$10,000 would qualify for a marital deduction if your spouse were a U.S. citizen. If the gifts exceed \$100,000, you must report all of the gifts even though some may be excluded.

### How To Complete Schedule A

After you determine which gifts you made are subject to the gift tax and therefore should be listed on Schedule A, you must divide these gifts between those subject only to the gift tax (gifts made to non-skip persons—see below) and those subject to both the gift and GST taxes (gifts made to skip persons—see below). Gifts made to non-skip persons are entered on Part 1. Gifts made to skip persons are entered on Part 2.

If you need more space than that provided, attach a separate sheet, using the same format as Schedule A.

## Gifts Subject to Both Gift and GST Taxes

### Direct Skip

The GST tax you must report on Form 709 is that imposed only on inter vivos direct skips. An “inter vivos direct skip” is a gift that (1) is subject to the gift tax, (2) is an interest in property, and (3) is made to a skip person. All three requirements must be met before the gift is subject to the GST tax.

A gift is “subject to the gift tax” if you are required to list it on Schedule A of Form 709 (as described above). However, if you make a nontaxable gift (which is a direct skip) to a trust for the benefit of an individual, this transfer is also subject to the GST tax unless:

1. During the lifetime of the beneficiary, no corpus or income may be distributed to anyone other than the beneficiary; and
2. If the beneficiary dies before the termination of the trust, the assets of the trust

will be included in the gross estate of the beneficiary.

**Note:** *If the property transferred in the direct skip would have been includible in the donor’s estate if the donor had died immediately after the transfer, see Transfers Subject to an “Estate Tax Inclusion Period” on page 2.*

To determine if a gift “is of an interest in property” and “is made to a skip person,” you must first determine if the donee is a “natural person” or a “trust” as defined below.

### Trust

For purposes of the GST tax, “trust” includes not only an explicit trust, but also any other arrangement (other than an estate) which although not explicitly a trust, has substantially the same effect as a trust. For example, “trust” includes life estates with remainders, terms for years, and insurance and annuity contracts. A transfer of property that is conditional on the occurrence of an event is a transfer in “trust.”

### Interest in Property

If a gift is made to a “natural person,” it is always considered a gift of an interest in property for purposes of the GST tax.

If a gift is made to a “trust,” a natural person will have an interest in the property transferred to the trust if that person either has a present right to receive income or corpus from the trust (such as an income interest for life) or is a permissible current recipient of income or corpus from the trust (e.g., possesses a general power of appointment).

### Skip Person

A donee who is a “natural person” is a “skip person” if that donee is assigned to a generation that is two or more generations below the generation assignment of the donor. See **Determining the Generation of a Donee**, below.

A donee who is a “trust” is a “skip person” if all the interests in the property transferred to the trust (as defined above) are held by skip persons.

A trust will also be a “skip person” if there are no interests in the property transferred to the trust held by any person, and future distributions or terminations from the trust can be made only to skip persons.

### Non-Skip Person

A non-skip person is any donee who is not a skip person.

### Determining the Generation of a Donee

Generally, a generation is determined along family lines as follows:

1. If the donee is a lineal descendant of a grandparent of the donor (for example, the donor’s cousin, niece, nephew, etc.), the number of generations between the donor and the descendant (donee) is determined by subtracting the number of generations between the grandparent and the donor from the number of generations between the grandparent and the descendant (donee).
2. If the donee is a lineal descendant of a grandparent of a spouse (or former spouse) of the donor, the number of generations between the donor and the descendant

(donee) is determined by subtracting the number of generations between the grandparent and the spouse (or former spouse) from the number of generations between the grandparent and the descendant (donee).

3. A person who at any time was married to a person described in 1 or 2 above is assigned to the generation of that person. A person who at any time was married to the donor is assigned to the donor's generation.

4. A relationship by adoption or half-blood is treated as a relationship by whole-blood.

5. A person who is not assigned to a generation according to 1, 2, 3, or 4 above is assigned to a generation based on his or her birth date as follows:

a. A person who was born not more than 12½ years after the donor is in the donor's generation.

b. A person born more than 12½ years, but not more than 37½ years, after the donor is in the first generation younger than the donor.

c. Similar rules apply for a new generation every 25 years.

If more than one of the rules for assigning generations applies to a donee, that donee is generally assigned to the youngest of the generations that would apply.

If an estate or trust, partnership, corporation, or other entity (other than certain charitable organizations and trusts described in sections 511(a)(2) and 511(b)(2) and governmental entities) is a donee, then each person who indirectly receives the gift through the entity is treated as a donee and is assigned to a generation as explained in the above rules.

Charitable organizations and trusts described in sections 511(a)(2) and 511(b)(2) and governmental entities are assigned to the donor's generation. Transfers to such organizations are therefore not subject to the GST tax. These gifts should always be listed in Part 1 of Schedule A.

### Charitable Remainder Trusts

Gifts in the form of charitable remainder annuity trusts, charitable remainder unitrusts, and pooled income funds are not transfers to skip persons and therefore are not direct skips. You should always list these gifts on Part 1 of Schedule A even if all of the life beneficiaries are skip persons.

### Generation Assignment Where Intervening Parent Is Dead

If you made a gift to your grandchild and at the time you made the gift, the grandchild's parent (who is your or your spouse's or your former spouse's child) is dead, then for purposes of generation assignment, your grandchild will be considered to be your child rather than your grandchild. Your grandchild's children will be treated as your grandchildren rather than your great-grandchildren.

This rule is also applied to your lineal descendants below the level of grandchild. For example, if your grandchild is dead, your great-grandchildren who are lineal descendants of the dead grandchild are considered your grandchildren for purposes of the GST tax.

The rules above can be illustrated by the following examples:

*Example 1.*—You give your house to your daughter for her life with the remainder then passing to her children. This gift is made to a "trust" even though there is no explicit trust instrument. The interest in the property transferred (the present right to use the house) is transferred to a non-skip person (your daughter). Therefore, the trust is not a skip person because there is an interest in the transferred property that is held by a non-skip person. The gift is not a direct skip and you should list it on Part 1 of Schedule A. (Note, however, that upon the death of the daughter, a termination of her interest in the trust will occur which may be subject to the generation-skipping transfer tax. See the instructions for line 5, Part 2, Schedule C (on page 7) for a discussion of how to allocate GST exemption to such a trust.)

*Example 2.*—You give \$100,000 to your grandchild. This gift is a direct skip that is not made in trust. You should list it on Part 2 of Schedule A.

*Example 3.*—You establish a trust that is required to accumulate income for 10 years and then pay its income to your grandchildren for their lives and upon their deaths distribute the corpus to their children. Since the trust has no current beneficiaries, there are no present interests in the property transferred to the trust. All of the persons to whom the trust can make future distributions (including distributions upon the termination of interests in property held in trust) are skip persons (i.e., your grandchildren and great-grandchildren). Therefore, the trust itself is a skip person and you should list the gift on Part 2 of Schedule A.

*Example 4.*—You establish a trust that pays all of its income to your grandchildren for 10 years. At the end of 10 years, the corpus is to be distributed to your children. Since for this purpose "interests" in trusts are defined only as present interests, all of the interests in this trust are held by skip persons (the children's "interests" are future interests). Therefore, the trust is a skip person and you should list the entire amount you transferred to the trust on Part 2 of Schedule A even though some of the trust's ultimate beneficiaries are non-skip persons.

### Part 1

List gifts subject only to the gift tax on Part 1. Generally, all of the gifts you made to your spouse (that are required to be listed, as described earlier), to your children, and to charitable organizations are not subject to the GST tax and should, therefore, be listed only on Part 1.

Group the gifts in four categories: gifts made to your spouse; gifts made to third parties that are to be split with your spouse; charitable gifts (if you are not splitting gifts with your spouse); and other gifts. If a transfer results in gifts to two or more individuals (such as a life estate to one with remainder to the other), list the gift to each separately.

Number and describe all gifts (including charitable, public, and similar gifts) in the columns provided in Schedule A. Describe each gift in enough detail so that the property can be easily identified, as explained below.

For real estate provide:

- a legal description of each parcel;

- the street number, name, and area if the property is located in a city; and
- a short statement of any improvements made to the property.

For bonds, give:

- the number of bonds transferred;
- the principal amount of each bond;
- name of obligor;
- date of maturity;
- rate of interest;
- date or dates when interest is payable;
- series number if there is more than one issue;
- exchanges where listed or, if unlisted, give the location of the principal business office of corporation; and
- CUSIP number, if available. The CUSIP number is a nine-digit number assigned by the American Banking Association to traded securities.

For stocks:

- give number of shares;
- state whether common or preferred;
- if preferred, give the issue, par value, quotation at which returned, and exact name of corporation;
- if unlisted on a principal exchange, give location of principal business office of corporation, state in which incorporated, and date of incorporation;
- if listed, give principal exchange; and
- give CUSIP number, if available. The CUSIP number is a nine-digit number assigned by the American Banking Association to traded securities.

For interests in property based on the length of a person's life, give the date of birth of the person.

For life insurance policies, give the name of the insurer and the policy number.

Clearly identify in the description column which gifts create the opening of an "estate tax inclusion period" (ETIP) as described under **Transfers Subject to an "Estate Tax Inclusion Period"** on page 2. Describe the interest that is creating the ETIP. You may not allocate the GST exemption to these transfers until the close of the ETIP. See the instructions for Schedule C.

### Donor's Adjusted Basis of Gifts

Show the basis you would use for income tax purposes if the gift were sold or exchanged. Generally, this means cost plus improvements, less applicable depreciation, amortization, and depletion.

For more information on adjusted basis, get **Pub. 551, Basis of Assets**.

### Date and Value of Gift

The value of a gift is the fair market value of the property on the date the gift is made. The fair market value is the price at which the property would change hands between a willing buyer and a willing seller, when neither is forced to buy or to sell, and when both have reasonable knowledge of all relevant facts. Fair market value may not be determined by a forced sale price, nor by the sale price of the item in a market other than that in which the item is most commonly sold

to the public. The location of the item must be taken into account wherever appropriate.

Stock of close corporations or inactive stock must be valued on the basis of net worth, earnings, earning and dividend capacity, and other relevant factors.

**Note:** *IRS has issued revised valuation tables to be used in determining the present value of an annuity, an interest for life or for a term of years, or a remainder or reversionary interest. The revised tables must be used for gifts made after April 30, 1989. For details, see Notice 89-60, 1989-1 C.B. 700.*

### Supplemental Documents

To support the value of your gifts, you must provide information showing how it was determined.

For stock of close corporations or inactive stock, attach balance sheets, particularly the one nearest the date of the gift, and statements of net earnings or operating results and dividends paid for each of the five preceding years.

For each life insurance policy, attach **Form 712**, Life Insurance Statement.

**Note for single premium or paid-up policies:** *In certain situations, for example, where the surrender value of the policy exceeds its replacement cost, the true economic value of the policy will be greater than the amount shown on line 56 of Form 712. In these situations, you should report the full economic value of the policy on Schedule A. See Rev. Rul. 78-137, 1978-1 C.B. 280 for details.*

If the gift was made by means of a trust, attach a certified or verified copy of the trust instrument.

Also attach any appraisal used to determine the value of real estate or other property.

If you do not attach this information, you must include in Schedule A full information to explain how the value was determined.

### Part 2

List on Part 2 only those gifts that are subject to both the gift and GST taxes. **You must list the gifts on Part 2 in the chronological order that you made them.** Number, describe, and value the gifts as described in the instructions for Part 1 on page 5.

If you made a gift in trust, list the entire gift as one line entry in Part 2. Enter the entire value of the property transferred to the trust even if the trust has non-skip person future beneficiaries.

### How To Report GST Transfers After the Close of an ETIP

If you are reporting a generation-skipping transfer that was subject to an "estate tax inclusion period" (ETIP) (provided the ETIP closed as a result of something other than the death of the transferor—see Form 706), and you are also reporting gifts made during the year, complete Schedule A as you normally would with the following changes:

**Sch. A, Part 2.**—Report the transfer subject to an ETIP on Schedule A, Part 2.

a. Column B.—In addition to the information already requested, describe the interest that is closing the ETIP; explain what caused the interest to terminate; and, list the

year the gift portion of the transfer was reported and its item number on Schedule A of the Form 709 that was originally filed to report the gift portion of the ETIP transfer.

b. Column D.—give the date the ETIP closed rather than the date of the initial gift.

c. Column E.—Enter "N/A" in Column E.

The value is entered only in Column B, Part I, Schedule C. See the instructions for Schedule C.

### Part 3. Gift Tax Reconciliation

If you have made no gifts yourself and are filing this return only to report gifts made by your spouse but which are being split with you, skip lines 1–3 and enter your share of the split gifts on line 4.

**Line 1.**—Add the value of all your gifts shown in column E, Parts 1 and 2. Enter the total on line 1.

**Line 2.**—If you are not splitting gifts with your spouse, skip this line and enter the amount from line 1 on line 3. If you are splitting gifts with your spouse, show half of the gifts you made to third parties on line 2. On the dotted line indicate which numbered items from Parts 1 and 2 of Schedule A you treated this way.

**Line 4.**—If you are not splitting gifts, skip this line and go to line 5. If you gave all of the gifts, and your spouse is only filing to show his or her half of those gifts, you need not enter any gifts on line 4 of your return, or include your spouse's half anywhere else on your return. Your spouse should enter the amount from Schedule A, line 2, of your return on Schedule A, line 4, of his or her return.

If both you and your spouse make gifts for which a return is required, the amount each of you shows on Schedule A, line 2, of his or her return must be shown on Schedule A, line 4, of the other's return.

**Line 6.**—Enter the total annual exclusions you are claiming for the gifts listed on Schedule A (including gifts listed on line 4). See **Annual Exclusion** on page 2. If you split a gift with your spouse, the annual exclusion you claim against that gift may not be more than your half of the gift.

### Deductions

**Line 8.**—Enter on line 8 all of the gifts to your spouse which you listed on Schedule A and for which you are claiming a marital deduction. **Do not enter any gift that you did not include on Schedule A.** On the dotted line on line 8, indicate which numbered items from Schedule A are gifts to your spouse for which you are claiming the marital deduction.

**Do not enter on line 8 any gifts to your spouse who was not a U.S. citizen at the time of the gift.**

You may deduct all gifts of nonterminable interests made during this time that you entered on Schedule A regardless of amount, and certain gifts of terminable interests as outlined below.

**Terminable Interests.**—Generally, you cannot take the marital deduction if the gift to your spouse is a terminable interest. In most instances, a terminable interest is nondeductible if someone other than the donee spouse will have an interest in the property following the termination of the

donee spouse's interest. Some examples of terminable interests are:

- a life estate;
- an estate for a specified number of years; or
- any other property interest that after a period of time will terminate or fail.

If you transfer an interest to your spouse as sole joint tenant with yourself or as a tenant by the entirety, the interest is not considered a terminable interest just because the tenancy may be severed.

**Life Estate With Power of Appointment.**—You may deduct, without an election, a gift of a terminable interest if all four requirements below are met:

1. Your spouse is entitled for life to all of the income from the entire interest;
2. The income is paid yearly or more often;
3. Your spouse has the unlimited power, while he or she is alive or by will, to appoint the entire interest in all circumstances; and
4. No part of the entire interest is subject to another person's power of appointment (except to appoint it to your spouse).

If only part of the property interest meets the above requirements, see Pub. 448 for the part that qualifies for the marital deduction.

**Election To Deduct Qualified Terminable Interest Property (QTIP).**—You may elect to deduct a gift of a terminable interest if it meets requirements 1, 2, and 4 above, even though it does not meet requirement 3.

You make this election simply by listing the qualified terminable interest property on Schedule A and deducting its value on line 8, Part 3, Schedule A. There is no longer a box to check to make the election. You are presumed to have made the election for all qualified property that you both list and deduct on Schedule A. You may not make the election on a late filed Form 709.

**Line 9.**—Enter the amount of the annual exclusions that were claimed for the gifts you listed on line 8.

**Line 11.**—You may deduct from the total gifts made during the calendar year all gifts you gave to or for the use of:

- The United States, a state or political subdivision of a state or the District of Columbia, for exclusively public purposes;
- Any corporation, trust, community chest, fund, or foundation organized and operated only for religious, charitable, scientific, literary, or educational purposes, or to prevent cruelty to children or animals, or to foster national or international amateur sports competition (if none of its activities involve providing athletic equipment (unless it is a qualified amateur sports organization)), as long as no part of the earnings benefits any one person, no substantial propaganda is produced, and no lobbying or campaigning for any candidate for public office is done;
- A fraternal society, order, or association operating under a lodge system, if the transferred property is to be used only for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;
- Any war veterans organization organized in the United States (or any of its possessions),

or any of its auxiliary departments or local chapters or posts, as long as no part of any of the earnings benefits any one person.

On line 11, show your total charitable, public, or similar gifts (minus annual exclusions allowed). On the dotted line indicate which numbered items from the top of Schedule A are charitable gifts.

See Pub. 448 for more information.

**Line 14.**—If you did not list any gifts on Part 2, enter -0- on line 14. If you entered gifts on Part 2, or if you and your spouse elected gift splitting and your spouse made gifts subject to the GST tax that you are required to show on your Form 709, complete Schedule C, and enter on line 14 the total of Schedule C, Part 3, column H.

**Line 17.**—Section 2523(f)(6) creates an automatic QTIP election for gifts of joint and survivor annuities where the spouses are the only possible recipients of the annuity prior to the death of the last surviving spouse.

The donor spouse can elect out of QTIP treatment, however, by checking the box on line 17 and entering the item number from Schedule A for the annuities for which you are making the election. Any annuities entered on line 17 cannot also be entered on line 8 of Schedule A, Part 3. Any such annuities that are not listed on line 17 must be entered on line 8 of Part 3, Schedule A. If there is more than one such joint and survivor annuity, you are not required to make the election for all of them. Once made, the election is irrevocable.

## Schedule B. Gifts From Prior Periods

If you did not file gift tax returns for previous periods, check the "No" box on line 11a of Part I, Page 1, and skip to the Tax Computation on page 1. (However, be sure to complete Schedule C, if applicable.) If you filed gift tax returns for previous periods, check the "Yes" box on line 11a and complete Schedule B by listing the years or quarters in chronological order as described below. If you need more space than that provided, attach a separate sheet, using the same format as Schedule B.

If you filed returns for gifts made before 1971 or after 1981, show the calendar years in column A. If you filed returns for gifts made after 1970 and before 1982, show the calendar quarters.

In column B, identify the Internal Revenue Service office where you filed the returns. If you have changed your name, be sure to list any other names under which the returns were filed. If there was any other variation in the names under which you filed, such as the use of full given names instead of initials, please explain.

In column E, show the correct amount (the amount finally determined) of the taxable gifts for each earlier period.

## Schedule C. Computation of Generation-Skipping Transfer Tax

### Part 1. Generation-Skipping Transfers

You must enter on Part 1 all of the gifts you listed on Part 2 of Schedule A in that order and using those same values.

**Column B. Transfers Subject to an ETIP.**—If you are reporting a generation-skipping transfer that occurred because of the close of an "estate tax inclusion period" (ETIP), complete column B for such transfer as follows:

a. Provided the GST exemption is being allocated on a timely filed gift tax return, enter the value as of the close of the ETIP;

b. If the exemption is being allocated after the due date (including extensions) for the gift tax return on which the transfer should be reported, enter the value as of the time the exemption allocation was made.

**Column C.**—If you elected gift splitting, enter half the value of each gift entered in column B. If you did not elect gift splitting, enter -0- in column C.

**Column E.**—You are allowed to claim the gift tax annual exclusion currently allowable with respect to your reported direct skips (other than certain direct skips to trusts), using the rules and limits discussed earlier for the gift tax annual exclusion. However, you must allocate the exclusion on a gift by gift basis for GST computation purposes. You must allocate the exclusion to each gift to the maximum allowable amount and in chronological order, beginning with the earliest gift that qualifies for the exclusion. Be sure that you do not claim a total exclusion of more than \$10,000 per donee.

**Note:** *You may not claim any annual exclusion for a direct skip made to a trust unless the trust meets the requirements discussed under Direct Skip on page 4.*

### Part 2. GST Exemption Reconciliation

Every donor is allowed a \$1 million lifetime GST exemption. The donor can apply this exemption to inter vivos transfers (i.e., transfers made during the donor's life) on Form 709. The executor can apply the exemption on Form 706 to transfers taking effect at death. An allocation is irrevocable.

In the case of inter vivos direct skips, a portion of the donor's unused exemption is automatically allocated to the transferred property unless the donor elects otherwise. To elect out of the automatic application of exemption, you must file Form 709 and attach a statement to it clearly describing the transaction and the extent to which the automatic allocation is not to apply. Reporting a direct skip on a timely filed Form 709 and paying the GST tax on the transfer will qualify as such a statement.

**Special QTIP Election.**—If you have elected QTIP treatment for any gifts in trust listed on Schedule A, Part 1, then you may make an election on Schedule C to treat the entire trust as non-QTIP for purposes of the GST tax. The election must be made for the entire trust that contains the particular gift involved on this return. Be sure to identify by item number the specific gift for which you are making this special QTIP election.

**Line 5.**—You may wish to allocate your exemption to transfers made in trust that are not direct skips. For example, if you transferred property to a trust that has your children as its present beneficiaries and your grandchildren and great-grandchildren as future beneficiaries, the transfer was not a direct skip because the present interests in the trust are held by non-skip persons. However, future terminations and distributions made from this trust would be subject to the GST tax. You may elect to reduce the trust's inclusion ratio by allocating part or all of your exemption to the transfer. Since this transfer would be entered on Schedule A, Part 1, it will not be shown on Schedule C. In other cases you may wish to allocate your exemption to a trust that is not involved in a transfer listed on Schedule A or C.

To allocate your exemption to such transfers, you should attach a statement to this Form 709 and entitle it "Notice of Allocation." You may file one Notice of Allocation and consolidate on it all of your Schedule A, Part 1, transfers, plus all transfers not appearing on Form 709, to which you wish to allocate your exemption. The notice should contain the following for each trust:

- The trust's EIN, if known;
- The item number(s) from column A, Schedule A, Part 1, of the gifts to that trust;
- The values shown in column E, Schedule A, Part 1 for the gifts (adjusted to account for split gifts, if any, reported on Schedule A, Part 3, line 2);
- The annual exclusion claimed against each gift;
- The net value of each gift after the reduction for the annual exclusion, if applicable; and
- The amount of your GST exemption allocated to each gift.

Total the exemption allocations and enter this total on line 5.

**Note:** *Where the property involved in such a transfer is subject to an estate tax inclusion period because it would be includible in the donor's estate if the donor died immediately after the transfer (other than by reason of the donor having died within 3 years of making the gift), you cannot allocate the GST exemption at the time of the transfer but must wait until the end of the "estate tax inclusion period." For details, see Transfers Subject to an "Estate Tax Inclusion Period" on page 2, and section 2642(f).*

### Part 3. Tax Computation

You must enter in Part 3 every gift you listed in Part 1 of Schedule C.

**Column C.**—You are not required to allocate your available exemption. You may allocate some, all, or none of your available exemption, as you wish, among the gifts listed in Part 3 of Schedule C. However, the total exemption claimed in column C may not exceed the amount you entered on line 3 of Part 2 of Schedule C.

You may enter an amount in column C that is greater than the amount you entered in column B.

**Column D.**—Carry your computation to three decimal places (e.g., "1.000").

**Part 2. Tax Computation  
(Page 1)**

**Line 7**

If you are a citizen or resident of the United States, you must take any available unified credit against gift tax. Nonresident aliens may not claim the unified credit. If you are a nonresident alien, delete the 192,800 entry and write in -0- on line 11.

**Line 10**

Enter 20% of the amount allowed as a specific exemption for gifts made after

September 8, 1976, and before January 1, 1977. (These amounts will be among those listed in column D of Schedule B, for gifts made in the third and fourth quarters of 1976.)

**Line 13**

Gift tax conventions are in effect with France, the United Kingdom, Australia, Germany, and Japan. If you are claiming a credit for payment of foreign gift tax, figure the credit on an attached sheet and attach evidence that the foreign taxes were paid. See the applicable convention for details of computing the credit.

**Line 19**

Make your check or money order payable to "Internal Revenue Service" and write the donor's social security number on it. You may not use an overpayment on Form 1040 to offset the gift and GST taxes owed on Form 709.

**Signature**

You, as a donor, must sign the return. If you pay another person, firm, or corporation to prepare your return, that person must also sign the return as preparer unless he or she is your regular full-time employee.

**Table for Computing Tax**

Column A	Column B	Column C	Column D
Taxable amount over—	Taxable amount not over—	Tax on amount in Column A	Rate of tax on excess over amount in Column A
- - - -	\$10,000	- - - -	18%
\$10,000	20,000	\$1,800	20%
20,000	40,000	3,800	22%
40,000	60,000	8,200	24%
60,000	80,000	13,000	26%
80,000	100,000	18,200	28%
100,000	150,000	23,800	30%
150,000	250,000	38,800	32%
250,000	500,000	70,800	34%
500,000	750,000	155,800	37%
750,000	1,000,000	248,300	39%
1,000,000	1,250,000	345,800	41%
1,250,000	1,500,000	448,300	43%
1,500,000	2,000,000	555,800	45%
2,000,000	2,500,000	780,800	49%
2,500,000	3,000,000	1,025,800	53%
3,000,000	10,000,000	1,290,800	55%
10,000,000	21,040,000	5,140,800	60%
21,040,000	- - - -	11,764,800	55%