
Lifetime Gifts

Lifetime gifts and transfers at death are taxed using a unified tax rate schedule that has cumulatively progressive rates. Each taxable transfer, including the final transfer at death, begins in the tax bracket attained by the prior gift.

Annual Gift Tax Exclusion

Each taxpayer is allowed to transfer/gift a certain amount of assets each year, without concern for gift taxes. This "annual exclusion amount" is currently \$16,000¹ per donor and a gift of this amount can be given to each of any number of donees. If husband and wife agree, they can "split" gifts and give twice this amount, \$32,000, to each of any number of children, grandchildren, etc.

Marital Deduction

There is an unlimited marital deduction for gifts of separate or community property passing from one spouse to another. Transfers to spouses who are not U.S. citizens are not protected by the gift tax marital deduction, but a non-citizen spouse is entitled to a special, annual gift tax exemption if such a gift would qualify for the marital deduction if the spouse were a U.S. citizen. For 2022, this special exemption amount is \$164,000.

Educational or Medical Expenses

A donor may give, free of gift tax consequences, unlimited amounts for a donee's school tuition (not books, supplies, or other expenses) or qualified medical expenses. Such gifts must be made directly to the school or health care provider, and not to the donee.

Deductibility for Income Tax Purposes

Gifts or gift taxes are not deductible for income tax purposes, unless contributed to a qualified charity.

Gift Tax Returns

These returns are filed annually, generally by April 15 of the year following the gift for amounts in excess of the annual gift tax exclusion.

¹ 2022 value. This amount is subject to adjustment for inflation in future years.

Capital Gains and Losses

A donee generally takes over the basis of gifted property from the donor, known as “carry-over” basis. A later sale of gifted property by the donee can result in a capital gain, a capital loss, or a situation in which there is neither a gain nor a loss.

Includability of Gifts in the Estate

Gifts made within three years of death are not considered in the computation of the taxable estate. However, if they exceed the annual gift tax exclusion, they may be added to the taxable estate as adjusted taxable gifts. This, in effect, pushes the assets remaining in the taxable estate into the higher tax brackets; however, the appreciation on the assets from date of gift until date of death is not brought into the computation.

Gifts of life insurance policies, however, are still included if made within three years of death. Certain incomplete transfers (e.g., retained life estates, revocable transfers, etc.) will also be included in the gross estate without regard to when they were made.

All taxable transfers made within three years (except gifts that qualify for the annual gift tax exclusion) will be included for determining whether an estate qualifies for an IRC Sec. 303 stock redemption, the IRC Sec. 2032A special use valuation or the IRC Sec. 6166 deferral of estate tax payment.

Advantages of Making Gifts

- Gifts put future appreciation of assets out of the estate.
- The gift tax paid reduces the taxable estate.
- Making gifts of income-producing assets may reduce current income taxes.
- Probate administration is not necessary for gifted assets.
- The donor can see the beneficiaries enjoy the assets while he or she is still living.