

# Instructions for Form 709

## 2023

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

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Volume 1 of 2



Department of the Treasury  
**Internal Revenue Service**

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## **Future Developments**

For the latest information about developments related to Form 709 and its instructions, such as legislation enacted after they were published, go to [IRS.gov/Form709](https://www.irs.gov/Form709).

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### For Gifts Made

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<b>After</b>		<b>Use Revision of and Before Form 709 Dated</b>
- - - - -		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, October 9, October 1990  
1989 1990

October 8, January 1, November 1991  
1990 1992

December 31, January 1, December 1996  
1992 1998

December 31, 1997 – – – – \*

\* Use the corresponding annual form.

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## **What's New**

- The annual gift exclusion for 2023 is \$17,000. See Annual Exclusion, later.
- For gifts made to spouses who are not U.S. citizens, the annual exclusion has increased to \$175,000. See Nonresidents Not Citizens of the United States, later.

- The top rate for gifts and generationskipping transfers remains at 40%. See Table for Computing Gift Tax.
- The basic credit amount for 2023 is \$5,113,800. See Table of Basic Exclusion and Credit Amounts.
- The applicable exclusion amount consists of the basic exclusion amount (\$12,920,000 in 2023) and, in the case of a surviving spouse, any unused exclusion amount of the last deceased spouse (who died after December 31, 2010). The executor of the predeceased spouse's estate must have elected on a timely and complete Form 706 to allow the donor to use the predeceased spouse's unused exclusion amount.
- **Digital assets.** A new question regarding digital assets appears on Line 20. See Digital assets and Line 20. Digital Assets, later, for information on transfers involving digital assets. **Do not leave**

**this question unanswered.** The question must be answered by all taxpayers, not just taxpayers who made transfers involving digital assets.

## **Photographs of Missing Children**

The IRS is a proud partner with the [National Center for Missing & Exploited Children® \(NCMEC\)](#). Photographs of missing children selected by the Center may appear in instructions on pages that would otherwise be blank. You can help bring these children home by looking at the photographs and calling 1-800-THE-LOST (1-800-843-5678) if you recognize a child.

## **General Instructions**

### **Purpose of Form**

Use Form 709 to report the following.

- Transfers subject to the federal gift and certain generation-skipping transfer (GST)



taxes and to figure the tax due, if any, on those transfers.

- Allocation of the lifetime GST exemption to property transferred during the transferor's lifetime. (For more details, see Schedule D, Part 2—GST Exemption Reconciliation, later, and Regulations section 26.2632-1.)



*All gift and GST taxes must be figured and filed on a calendar year basis. List all reportable gifts made during the calendar year on one Form 709. This means you must file a separate return for each calendar year a reportable gift is given (for example, a gift given in 2023 must be reported on a 2023 Form 709). Do not file more than one Form 709 for any 1 calendar year.*

## **How To Complete Form 709**

1. Determine whether you are required to file Form 709.

2. Determine what gifts you must report.
3. Decide whether you and your spouse, if any, will elect to split gifts for the year.
4. Complete lines 1 through 19 of *Part 1—General Information*.
5. List each gift on Part 1, 2, or 3 of Schedule A, as appropriate.
6. Complete Schedules B, C, and D, as applicable.
7. If the gift was listed on Part 2 or 3 of Schedule A, complete the necessary portions of Schedule D.
8. Complete Schedule A, Part 4.
9. Complete *Part 2—Tax Computation*.
10. Sign and date the return.



*Make sure to complete page 1 and the applicable schedules in their entirety. Returns filed without entries in **CAUTION** each field will not be processed.*



*Remember, if you are splitting gifts, your spouse must sign line 18 in Part 1—General Information.*

## **Who Must File**

**In general.** 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.

- If you gave gifts to someone in 2023 totaling more than \$17,000 (other than to your spouse), you probably must file Form 709. But see Transfers Not Subject to the Gift Tax and Gifts to Your Spouse, later, for more information on specific gifts that are not taxable.
- Certain gifts, called future interests, are not subject to the \$17,000 annual

exclusion and you must file Form 709 even if the gift was under \$17,000. See Annual Exclusion, later.

- Spouses may not file a joint gift tax return. Each individual is responsible to file a Form 709.
- You must file a gift tax return to split gifts with your spouse (regardless of their amount) as described in Part 1—General Information, later.
- 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.

- 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.
- The donor is responsible for paying the gift tax. However, if the donor does not pay the tax, the person receiving the gift may have to pay the tax.
- If a donor dies before filing a return, the donor's executor must file the return.

**Who does not need to file.** If you meet all of the following requirements, you are not required to file Form 709.

- You made no gifts during the year to your spouse.
- You did not give more than \$17,000 to any one donee.

- All the gifts you made were of present interests.

**Gifts to charities.** If the only gifts you made during the year are deductible as gifts to charities, you do not need to file a return as long as you transferred your entire interest in the property to qualifying charities. If you transferred only a partial interest, or transferred part of your interest to someone other than a charity, you must still file a return and report all of your gifts to charities.

**Note.** See Pub. 526, Charitable Contributions, for more information on identifying a qualified charity.

If you are required to file a return to report noncharitable gifts and you made gifts to charities, you must include all of your gifts to charities on the return.

## **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.

The gift tax applies not only to the free transfer of any kind of property, but also to sales or exchanges, not made in the ordinary course of business, where value of the money (or property) 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 general power of appointment may be a gift by the individual possessing the power. General powers of appointment are those in which the holders of the power can appoint the property under the power to themselves, their creditors, their estates, or the creditors of their estates. To qualify as a power of appointment, it must be created by someone other than the holder of the power.

The gift tax may also apply to forgiving a debt, to making an interest-free or below-market interest rate loan, to transferring the benefits of an insurance policy, to certain property settlements in divorce cases, and to giving up some amount of annuity in exchange for the creation of a survivor annuity.

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

Sections 2701 and 2702 provide 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.

**Digital assets.** The gift tax applies to transfers of digital assets. Digital assets are any digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology. For example, digital assets include non-



fungible tokens (NFTs) and virtual currencies, such as cryptocurrencies and stablecoins. If a particular asset has the characteristics of a digital asset, it will be treated as a digital asset for federal transfer tax purposes.

**Gifts to your spouse.** You must file a gift tax return if you made any gift to your spouse of a terminable interest that does not meet the exception described in *Life estate with power of appointment*, later, or if your spouse is not a U.S. citizen and the total gifts you made to your spouse during the year exceed \$175,000.

You must also file a gift tax return to make the qualified terminable interest property (QTIP) election described under *Line 12. Election Out of QTIP Treatment of Annuities*, later.

Except as described earlier, 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.

## **Transfers Not Subject to the Gift Tax**

Four types of transfers are not subject to the gift tax. These are:

- Transfers to political organizations,
- Transfers to certain exempt organizations,
- Payments that qualify for the educational exclusion, and
- Payments that qualify for the medical exclusion.

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 if you do file 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.

**Certain exempt organizations.** The gift tax does not apply to a transfer to any civic league or other organization described in section 501(c)(4); any labor, agricultural, or horticultural organization described in section 501(c)(5); or any business league or other organization described in section 501(c)(6) for the use of such organization, provided that such organization is exempt from tax under section 501(a).

**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, room and board, or other similar expenses that are not direct tuition costs. To the extent that the payment to the educational organization 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.

Contributions to a qualified tuition program (QTP) on behalf of a designated beneficiary do not qualify for the educational exclusion. See Line B. Qualified Tuition Programs (529 Plans or Programs) in the instructions for Schedule A, later.

**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 are considered to have made a gift to the donee of the reimbursed amount.

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(c).

**Qualified disclaimers.** A donee's refusal to accept a gift is called a *disclaimer*. If a person makes a qualified disclaimer of any interest in property, the property will be treated as if it had never been transferred to that person. Accordingly, the disclaimant is not regarded as making a gift to the person who receives

the property because of the qualified disclaimer.

***Requirements.*** To be a qualified disclaimer, a refusal to accept an interest in property must meet the following conditions.

1. The refusal must be in writing.
2. The refusal must be received by the donor, the legal representative of the donor, the holder of the legal title to the property disclaimed, or the person in possession of the property within 9 months after the later of:
  - a. The day the transfer creating the interest is made, or
  - b. The day the disclaimant reaches age 21.
3. The disclaimant must not have accepted the interest or any of its benefits.

4. As a result of the refusal, the interest must pass without any direction from the disclaimant to either:
  - a. The spouse of the decedent, or
  - b. A person other than the disclaimant.
5. The refusal must be irrevocable and unqualified.

The 9-month period for making the disclaimer is generally determined separately for each taxable transfer. For gifts, the period begins on the date the transfer is a completed transfer for gift tax purposes.

## **Annual Exclusion**

The first \$17,000 of gifts of present interest to each donee during the calendar year is subtracted from total gifts in figuring the amount of taxable gifts. For a gift in trust, each beneficiary of the trust is treated as a



separate donee for purposes of the annual exclusion.

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 interest and they total \$17,000 or less.

**Note.** For gifts made to spouses who are not U.S. citizens, the annual exclusion has been increased to \$175,000, provided the additional (above the \$17,000 annual exclusion) \$158,000 gift would otherwise qualify for the gift tax marital deduction (as described in the Schedule A, Part 4, line 4, instructions, later).

**Note.** Only the annual exclusion applies to gifts made to a nonresident not a citizen of the United States. Deductions and credits are not considered in determining gift tax liability for such transfers.

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 or 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 or income from the property will not begin until some future date. Future interests include reversions, remainders, and other similar interests or estates.

A contribution to a QTP on behalf of a designated beneficiary is considered a gift of a present interest.

A gift to a minor is considered a present interest if all of the following conditions are met.

1. Both the property and its income may be expended by, or for the benefit of, the minor before the minor reaches age 21.

2. All remaining property and its income must pass to the minor on the minor's 21st birthday.
3. If the minor dies before the age of 21, the property and its income will be payable either to the minor's estate or to whomever the minor may appoint under a general power of appointment.

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

## **Nonresidents Not Citizens of the United States**

Nonresidents not citizens of the United States are subject to gift and GST taxes for gifts of tangible property situated in the United States. A person is considered a *nonresident not a citizen of the United States* if, at the time the gift is made, (1) was not a citizen of the United States and did not reside there, or (2) was domiciled in a U.S. territory and

acquired citizenship solely by reason of birth or residence in the territory. 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 not a citizen of the United States who made a gift subject to gift tax, you must file a gift tax return when any of the following apply.

- You gave any gifts of future interests.
- Your gifts of present interests to any donee other than your spouse total more than \$17,000.
- Your outright gifts to your spouse who is not a U.S. citizen total more than \$175,000.

## **Transfers Subject to the GST Tax**

You must report on Form 709 the GST tax imposed on inter vivos direct skips. An *inter*

*vivos direct skip* is a transfer made during the donor's lifetime that is:

- Subject to the gift tax,
- Of an interest in property, and
- Made to a skip person. (See *Gifts Subject to Both Gift and GST Taxes*, later.)

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 made to certain exempt 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.



*Certain transfers, particularly transfers to a trust, that are not subject to gift tax and are therefore not subject to the GST tax on Form 709 may be subject to the GST tax at a later date. This is true even if the transfer is less than the \$17,000 annual exclusion. In this instance, you may want to apply a GST exemption amount to the transfer on this return or on a Notice of Allocation. However, you should be aware that a GST exemption may be automatically allocated to the gift if the trust that receives the gift is a "GST trust" (as defined under section 2632(c)). For more information, see Schedule D, Part 2—GST Exemption Reconciliation and Schedule A, Part 3—Indirect Skips and Other Transfers in Trust, later.*

## **Transfers Subject to an Estate Tax Inclusion Period (ETIP)**

Certain transfers receive special treatment if the transferred property is subject to an ETIP. An ETIP is the period during which, should the donor die, the value of transferred property would be includible (other than by reason of section 2035) in the gross estate of the donor or the spouse of the donor. For transfers subject to an ETIP, GST tax reporting is required at the close of the ETIP.

For example, if A transfers a house to a qualified personal residence trust for a term of 10 years, with the remainder to A's granddaughter, the value of the house would be includible in A's estate if A died within the 10-year period during which A retained an interest in the trust. In this case, a portion of the transfer to the trust is a completed gift that must be reported on Part 1 of Schedule A. The GST portion of the transfer would not

be reported until A died or A's interest in the trust otherwise ended.

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 D, Part 1, 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 donor's death. (If the ETIP closed as the result of the donor's death, report the transfer on Form 706,

United States Estate (and Generation-Skipping Transfer) Tax Return.)

If you are filing this Form 709 solely to report the GST portion of 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 through 6, 8, and 9 of *Part 1—General Information*.
3. Complete Schedule D. Complete columns B and C of Schedule D, Part 1, as explained in the instructions for that schedule.
4. Complete only lines 10 and 11 of Schedule A, Part 4.
5. Complete *Part 2—Tax Computation*.



*A direct skip that is subject to an ETIP is deemed to have been made only at the close of the ETIP. Any allocation of GST exemption to the transfer of property subject to an ETIP, whether a direct skip or an indirect skip, shall not be made until the close of the ETIP. The donor may prevent the automatic allocation of GST exemption by electing out of the automatic allocation rules at any time prior to the due date of the Form 709 for the calendar year in which the close of the ETIP occurs (whether or not any*

*transfer was made in the calendar year for which the Form 709 was filed, and whether or not a Form 709 would otherwise be required to be filed for that year).*

## **Section 2701 Elections**

The special valuation rules of section 2701 contain three elections that you can make only with Form 709.

1. A transferor may elect to treat a qualified payment right that the transferor holds (and all other rights of the same class) as other than a qualified payment right.
2. A person may elect to treat a distribution right held by that person in a controlled entity as a qualified payment right.
3. An interest holder may elect to treat as a taxable event the payment of a qualified payment that occurs more than 4 years after its due date.

The elections described in (1) and (2) must be made on the Form 709 that is filed by the transferor to report the transfer that is being valued under section 2701. The elections are made by attaching a statement to Form 709. For information on what must be in the statement and for definitions and other details on the elections, see section 2701 and Regulations section 25.2701-2(c).

The election described in (3) may be made by attaching a statement to the Form 709 filed by the recipient of the qualified payment for the year the payment is received. If the election is made on a timely filed return, the taxable event is deemed to occur on the date the qualified payment is received. If it is made on a late-filed return, the taxable event is deemed to occur on the first day of the month immediately preceding the month in which the return is filed. For information on what must be in the statement and for definitions and other details on this election,

see section 2701 and Regulations section 25.2701-4(d).

All of the elections may be revoked, but only with the consent of the IRS.

## **When To File**

Form 709 is an annual return.

Generally, you must file Form 709 no earlier than January 1, but not later than April 15, of the year after the gift was made. However, in instances when April 15 falls on a Saturday, Sunday, or legal holiday, Form 709 will be due on the next business day. See section 7503.

If the donor died during 2023, the executor must file the donor's 2023 Form 709 not later than the earlier of:

- The due date (with extensions) for filing the donor's estate tax return; or

- April 15, 2024, or the extended due date granted for filing the donor's gift tax return.

## **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.

**By extending the time to file your income tax return.** Any extension of time granted for filing your calendar year 2023 federal income tax return will also automatically extend the time to file your 2023 federal gift tax return. Income tax extensions are made by using Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return, or Form 2350, Application for Extension of Time To File U.S. Income Tax Return. You may only use these

forms to extend the time for filing your gift tax return if you are also requesting an extension of time to file your income tax return.

**By filing Form 8892.** If you do not request an extension for your income tax return, use Form 8892, Application for Automatic Extension of Time To File Form 709 and/or Payment of Gift/

Generation-Skipping Transfer Tax, to request an automatic 6-month extension of time to file your federal gift tax return. In addition to containing an extension request, Form 8892 also serves as a payment voucher (Form 8892-V) for a balance due on federal gift taxes for which you are extending the time to file. For more information, see Form 8892.

### **Private Delivery Services (PDSs)**

Filers can use certain PDSs designated by the IRS to meet the “timely mailing as timely

filing” rule for tax returns. Go to [IRS.gov/PDS](https://www.irs.gov/PDS) for the current list of designated services.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using a PDS, go to [IRS.gov/PDSstreetAddresses](https://www.irs.gov/PDSstreetAddresses).



*PDSs can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.*

## **Where To File**

File Form 709 at the following address.

Department of the Treasury  
Internal Revenue Service Center  
Kansas City, MO 64999

If using a PDS, file at this address.

Internal Revenue Service  
333 W. Pershing Road  
Kansas City, MO 64108

## **Amending Form 709**

If you find that you must change something on a return that has already been filed, you should:

- File another Form 709;
- Enter “Supplemental Information” across the top of page 1 of the form;
- Include a statement of what has changed, along with the supporting information; and
- Attach a copy of the original Form 709 that has already been filed.

For the mailing address for a supplemental Form 709, see [Filing Estate and Gift Tax](#)



Returns. File the amended Form 709 at the following address.

Internal Revenue Service Center  
Attn: E&G, Stop 824G  
7940 Kentucky Drive  
Florence, KY 41042-2915

If using a PDS, file at this address.

Internal Revenue Service Center  
Attn: E&G, Stop 824G  
7940 Kentucky Drive  
Florence, KY 41042-2915

If you have already been notified that the return has been selected for examination, you should provide the additional information directly to the office conducting the examination.



*See the Caution under Lines 12–18.  
Split Gifts, later, **TIP** before you mail  
the return.*

# Adequate Disclosure



*To begin the running of the statute of limitations for a gift, the gift must be adequately disclosed on Form 709 (or an attached statement) filed for the year of the gift.*

In general, a gift will be considered adequately disclosed if the return or statement includes the following.

- A full and complete Form 709.
- A description of the transferred property and any consideration received by the donor.
- The identity of, and relationship between, the donor and each donee.
- If the property is transferred in trust, the trust's employer identification number (EIN) and a brief description of the terms of the trust (or a copy of the trust instrument in lieu of the description).

- Either a qualified appraisal or a detailed description of the method used to determine the fair market value of the gift.

See Regulations section 301.6501(c)-1(e) and (f) for details, including what constitutes a qualified appraisal, the information required if no appraisal is provided, and the information required for transfers under sections 2701 and 2702.

## **Penalties**

**Late filing and late payment.** Section 6651 imposes penalties for both late filing and late payment, unless there is reasonable cause for the delay.

**Reasonable-cause determinations.** If you receive a notice about penalties after you file Form 709, send an explanation and we will determine if you meet reasonable-cause criteria. Do **not** attach an explanation when you file Form 709.

There are also penalties for willful failure to file a return on time, willful attempt to evade or defeat payment of tax, and valuation understatements that cause an underpayment of the tax. A substantial valuation understatement occurs when the reported value of property entered on Form 709 is 65% or less of the actual value of the property. A gross valuation understatement occurs when the reported value listed on the Form 709 is 40% or less of the actual value of the property.

**Return preparer.** Penalties may also be applied to tax return preparers, including gift tax return preparers.

Gift tax return preparers who prepare any return or claim for refund that reflects an understatement of tax liability due to an unreasonable position are subject to a penalty equal to the greater of \$1,000 or 50% of the income earned (or to be earned) for the preparation of each such return.

Gift tax return preparers who prepare any return or claim for refund with an understatement of tax liability due to willful or reckless conduct can be penalized \$5,000 or 75% of the income derived (or to be derived) for the preparation of the return.

Gift tax return preparers who prepare any return or claim for a refund are required to furnish a copy to the taxpayer, sign the return, and provide their PTIN, but who fail to do so, are subject to a penalty of \$50 for such failure, unless it is shown that such failure is due to reasonable cause and not due to willful neglect.

See section 6694, the related regulations, and Ann. 2009-15, 2009-11 I.R.B. 687, available at [IRS.gov/pub/irs-irbs/irb09-11.pdf](https://www.irs.gov/pub/irs-irbs/irb09-11.pdf), for more information.

## **Joint Tenancy**

If you buy property with your own funds and the title to the property is held by you and a

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 a 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 the donee's 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 a donee, there is a gift to the donee when the donee cashes the bond without any obligation to account to you.

## **Transfer of Certain Life Estates Received From Spouse**

If you received a qualified terminable interest (see Line 12.Election Out of QTIP Treatment of Annuities in the instructions for Schedule A, later) 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 tax (and GST tax, if applicable) if you dispose of all or part of your life income interest (by gift, sale, or otherwise).

Generally, the entire value of the property transferred will be treated as a taxable gift less:

1. The amount you received (if any) for the life income interest; and
2. The amount (if any) determined after the application of section 2702, valuing certain retained interests at zero, for the life income interest you retained after the transfer.

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 that you transferred the life income interest without receiving any value in return, the transfer is a gift, and you may claim an annual exclusion, treating the person to whom you transferred the interest as the donee for purposes of figuring the annual exclusion.

## **Specific Instructions**

### **Part 1—General Information**

#### **Line 3. Donor's Social Security Number**

Enter your social security number (SSN), if applicable, or your individual taxpayer identification number (ITIN), but only if you have previously used the ITIN to file other U.S. tax returns. If you do not have an SSN or a previously used ITIN, the IRS will assign an Internal Revenue Service Number (IRSN)



to you. If you have already been assigned an IRSN, please enter the number on line 3. If you do not have a SSN, ITIN, or IRSN, leave line 3 blank.

## **Lines 4 and 6. Address**

Enter your current mailing address.

***Foreign address.*** If your address is outside of the United States or its territories, enter the information as follows: city, province or state, and name of country. Follow the country's practice for entering the postal code. Do not abbreviate the country name.

## **Line 5. Legal Residence (Domicile)**

In general, your legal residence (also known as your domicile) is acquired by living in a place, for even a brief period of time, with no definite present intention of moving from that place.

Enter the state of the United States (including the District of Columbia) or a foreign country in which you legally reside or are domiciled at the time of the gift.

## **Line 7. Citizenship**

Enter your citizenship.

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

- Was domiciled in a territory 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. territory or being born or residing in a territory.

*A nonresident not a citizen of the United States* includes a person who, at the time of making the gift:

- Was domiciled in a territory of the United States,
- Was a U.S. citizen, and
- Became a U.S. citizen only because that person was a citizen of a territory or was born or resided in a territory.

### **Lines 12–18. Split Gifts**



*A married couple may not file a joint gift tax return. However, if after reading the instructions below, you and your spouse agree to split your gifts, you should file both of your individual gift tax returns together (that is, in the same envelope) to help the IRS process the returns and to avoid correspondence from the IRS.*

If you and your spouse both consent, 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 all of the following apply.

- 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 not a citizen of the United States at the time of the gift.
- 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.

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 tax of each spouse is joint and several.

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, 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 line 19.

**Line 15.** If you were married to one another for all of 2023, 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. If you were divorced or widowed after you

made the gift, you cannot elect to split gifts if you remarried before the end of 2023.

**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**

Your spouse must sign the consent for your gift-splitting election to be valid. The consent may generally be signed at any time after the end of the calendar year. However, there are two exceptions.

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 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.

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

In general, if you and your spouse elect gift splitting, then both spouses must file their own individual gift tax return.

However, only one spouse must file a return if the requirements of either of the exceptions below are met. In these exceptions, *gifts* means transfers (or parts of transfers) that do not qualify for the political organization, educational, or medical exclusions.

**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 \$34,000, 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 \$17,000 but not more than \$34,000 to any third-party donee,
  - The only gifts made by the other spouse (the consenting spouse) were gifts of not more than \$17,000 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 of the above exceptions is met, only the donor spouse must file a return and the consenting spouse signifies consent on that return.



Specific instructions for Part 2—Tax Computation are discussed later. Because you must complete Schedules A, B, C, and D to fill out Part 2, you will find instructions for these schedules later.

### **Line 19. Application of DSUE Amount**

If the donor is a citizen or resident of the United States and the spouse died after December 31, 2010, the donor may be eligible to use the deceased spouse's unused exclusion (DSUE) amount. The executor of the spouse's estate must have elected on Form 706 to allow use of the unused exclusion amount. See the instructions for Form 706, *Part 6—Portability of Deceased Spousal Unused Exclusion*. If the executor of the estate made this election, attach the first four pages of Form 706 filed by the estate. Include any attachments related to DSUE that were filed with Form 706 and calculations of any adjustments to the DSUE amount like audit reports or previously filed Forms 709.

Please see [Rev. Proc. 2022-32](#), which provides an update to the simplified method for making a late DSUE election for certain qualifying taxpayers (superseding Rev. Proc. 2017-34). See also section 2010(c)(4) and related regulations.

Using the checkboxes provided, indicate whether the donor is applying or has applied a DSUE amount from a predeceased spouse to gifts reported on this or a previous Form 709. If so, complete Schedule C before going to *Part 2—Tax Computation*, later.

## **Line 20. Digital Assets**

If you reported on this Form 709 any transfer that includes a digital asset (or a financial interest in a digital asset), answer “Yes” to the question on Line 20. **Do not leave the question unanswered.** You must answer “Yes” or “No” by checking the appropriate box.

## **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 transfers (or parts of transfers) that do not qualify for the political organization, educational, or medical exclusions.

### **Line A. Valuation Discounts**

If the value of any gift you report in either Part 1, Part 2, or Part 3 of Schedule A includes a discount for lack of marketability, a minority interest, a fractional interest in real estate, blockage, market absorption, or for any other reason, answer "Yes" to the question at the top of Schedule A. Also attach an explanation giving the basis for the claimed discounts and showing the amount of the discounts taken.

## **Line B. Qualified Tuition Programs (529 Plans or Programs)**

If in 2023, you contributed more than \$17,000 to a qualified tuition plan (QTP) on behalf of any one person, you may elect to treat up to \$85,000 of the contribution for that person as if you had made it ratably over a 5-year period. The election allows you to apply the annual exclusion to a portion of the contribution in each of the 5 years, beginning in 2023. You can make this election for as many separate people as you made QTP contributions.

You can only apply the election to a maximum of \$85,000. You must report all of your 2023 QTP contributions for any single person that exceed \$85,000 (in addition to any other gifts you made to that person).

For each of the 5 years, you report in Part 1 of Schedule A one-fifth (20%) of the amount for which you made the election. In column E of Part 1 (Schedule A), list the date of the gift

as the calendar year for which you are deemed to have made the gift (that is, the year of the current Form 709 you are filing). Do not list the actual year of contribution for subsequent years.

However, if in any of the last 4 years of the election, you did not make any other gifts that would require you to file a Form 709, you do not need to file Form 709 to report that year's portion of the election amount.

**Example.** In 2023, D contributed \$100,000 to a QTP for the benefit of A. D elects to treat \$85,000 of this contribution as having been made ratably over a 5-year period. Accordingly, for 2023, D reports the following.

\$15,000	(the amount of the contribution that exceeded \$85,000)
+ \$17,000	(the $\frac{1}{5}$ portion from the election)
<hr/>	
\$32,000	the total gift to A listed in Part 1 of Schedule A for 2023

In 2024, D gives a gift of \$20,000 cash to B and no other gifts. On 2024 Form 709, D reports in Part 1 of Schedule A the \$20,000 gift to B and a \$17,000 gift to A (the one-fifth portion of the 2023 gift that is treated as made in 2024). In column E of Part 1

(Schedule A), D lists “2024” as the date of the gift.

D makes no gifts in 2025, 2026, or 2027. D is not required to file Form 709 in any of those years to report the one-fifth portion of the QTP gift because D is not otherwise required to file Form 709.

You make the election by checking the box on line B at the top of Schedule A. The election must be made for the calendar year in which the contribution is made. Also attach an explanation that includes the following.

- The total amount contributed per individual beneficiary.
- The amount for which the election is being made.
- The name of the individual for whom the contribution was made.

If you are electing gift splitting, apply the gift-splitting rules before applying the QTP

rules. Each spouse would then decide individually whether to make this QTP election.



*Contributions to QTPs do not qualify for the education exclusion.*

## **How To Complete Parts 1, 2, and 3**

After you determine which gifts you made in 2023 that are subject to the gift tax, list them on Schedule A. You must divide these gifts between:

1. Part 1—those subject only to the gift tax (gifts made to nonskip persons—see Part 1—Gifts Subject Only to Gift Tax, later),
2. Part 2—those subject to both the gift and GST taxes (gifts made to skip persons—see Gifts Subject to Both Gift and GST Taxes and Part 2—Direct Skips, later), and



3. Part 3—those subject only to the gift tax at this time but which could later be subject to GST tax (gifts that are indirect skips—see Part 3—Indirect Skips and Other Transfers in Trust, later).

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



*Use the following guidelines when entering gifts on Schedule A.*

- Enter a gift only once—in Part 1, Part 2, or Part 3.
- Do not enter any gift or part of a gift that qualified for the political organization, educational, or medical exclusion.
- Enter gifts under “Gifts made by spouse” only if you have chosen to split gifts with your spouse and your spouse is required to file a Form 709 (see Part 1—General Information, Lines 12–18. Split Gifts, earlier).

- In column F, enter the full value of the gift (including those made by your spouse, if applicable). If you have chosen to split gifts, that one-half portion of the gift is entered in column G.

## **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.

**Gift splitting not elected.** If the total gifts of present interests to any donee are more than \$17,000 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 \$17,000 or less, you need not enter on Schedule A any gifts (except gifts of future interests) that you made to that donee. Enter these gifts in the top half of Part 1, 2, or 3, as applicable.

**Gift splitting elected.** 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 \$17,000 after it is split in column G of Part 1, 2, or 3 of Schedule A.

**Gifts made by spouse.** If you elected gift splitting and your spouse made gifts, list those gifts in the space below "Gifts made by spouse" in Part 1, 2, or 3. Report these gifts in the same way you report gifts you made.

## **Gifts to Your Spouse**

Except for the gifts described below, you do not need to enter any of your gifts to your spouse on Schedule A.

**Terminable interests.** Terminable interests are defined in the instructions for Part 4, line 4. If all the terminable interests you gave to your spouse qualify as life estates with power of appointment (defined under *Life estate*

with power of appointment, later), 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.

**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. See section 2523(g)(1). For definitions and rules concerning these trusts, see section 2056(b)(8)(B).

**Future interest.** Generally, you should not report a gift of a future interest to your spouse unless the future interest is also a terminable interest that is required to be reported as described earlier. 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*, later, to determine whether to enter the gift on Schedule A, Part 1, 2, or 3.

**Spouses who are not U.S. citizens.** If your spouse is not a U.S. citizen and you gave your spouse 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 \$175,000 and all gifts in excess of \$17,000 would qualify for a marital deduction if your spouse were a U.S. citizen (see the instructions for Schedule A, Part 4, line 4). If

the gifts exceed \$175,000, you must report all of the gifts even though some may be excluded.

## **Gifts Subject to Both Gift and GST Taxes**

### **Definitions**

**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 transfer that is:

- Subject to the gift tax,
- Of an interest in property, and
- 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. However, if you make a nontaxable gift (which is a direct skip) to a trust for the benefit of an individual, this transfer is 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 died immediately after the transfer, see Transfers Subject to an Estate Tax Inclusion Period (ETIP), earlier.

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, a *trust* includes not only an ordinary trust, but also any other arrangement (other than an estate) that although not explicitly a trust, has substantially the same effect as a trust. For example, a *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



(for example, 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*, later.

A donee that 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.

**Nonskip person.** A *nonskip 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.

A person who is not assigned to a generation according to (1), (2), (3), or (4) above is assigned to a generation based on the person's birth date as follows.

1. A person who was born not more than  $12\frac{1}{2}$  years after the donor is in the donor's generation.
2. A person born more than  $12\frac{1}{2}$  years, but not more than  $37\frac{1}{2}$  years, after

the donor is in the first generation younger than the donor.

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

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

If an estate, trust, partnership, corporation, or other entity (other than governmental entities and certain charitable organizations and trusts, described in sections 511(a)(2) and 511(b)(2), as discussed later) 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.