# *Evaluating Your Estate Plan:* Federal Gift Taxes

**Ag Decision Maker**

**File C4-23**

*Note: This article is a basic overview of concepts related to the federal gift tax and is intended to give individuals points to consider as they engage in the estate planning process. Do not consider this article to be exhaustive as the possible impact of federal gift tax will vary with each individual situation. This article is considered educational in nature and should not be considered legal advice. Consult with qualified legal and tax professionals who can provide expert advice on specific needs. Also consult with federal websites and publications that contain the most up-to-date information on federal gift tax law.*

A gift is generally defined as the voluntary transfer of property (including money) to another person completely free of payment or strings while both the giver (donor) and the recipient (donee) are still alive. Such lifetime gifts are treated differently from a gift made in a will, which is properly known as a bequest. To be a true, completed gift, there are three basic requirements: (1) the donor must intend to make a gift; (2) the donor must deliver the gift; and (3) the donee must accept the gift.

## Federal Gift Tax

In some circumstances, a federal gift tax is imposed on transfers of property made as gifts. Before gift tax can be imposed, the gift must be completed. A promise to make a gift is not enough. As noted above, the gift must be delivered and accepted. The donor must give up all control over the property. If the donor has the right to give the property to someone else or to take the property back, there is no true, completed gift.

## Why Consider Gifting Strategies?

Transferring assets to other persons during lifetime can reduce the taxable estate at the time of death. Gifts may also be a strategy to transfer tax obligations to another person (perhaps a child) who is in a lesser income tax bracket or to provide for charity and take a charitable deduction. Understand that for various purposes – such as eligibility for Medicaid or other government programs - there is a “look-back” period to be sure that an individual did not purposefully impoverish themselves to become eligible for government assistance.

## Valuation of Gifts

Generally, the value of a gift is determined by its fair market value (FMV) on the date it is given. Valuation is impacted in the case of an exchange where the donee gives the donor something at the time of the gift. This can cause the gift’s value to be less than FMV. The gift’s value may be less than FMV to the extent that the recipient (the donee) gives the donor something in return. It is also possible for a gift to be of value higher than its FMV when the donor retains rights in the property and gift tax may be imposed on the entire property’s value plus the value of the rights retained by the donor. Legal advice should be sought regarding such gifts.

## Annual and Lifetime Gift Exclusions

Unlimited gifts can be given to a spouse (the marital deduction) or to qualifying charities with no gift tax consequences. In regard to other gifts, each U.S. taxpayer may give $14,000 per year per donee (in 2014) without incurring federal gift tax liability. A taxpayer may give as many $14,000 gifts as the taxpayer chooses without gift tax liability. (The annual exclusion amount is indexed for inflation; a legal or tax professional can provide advice on the most current exclusionary amount.) This is true for married couples, so each spouse may give $14,000 in gifts to as many recipients as they choose. Individuals are not required

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to file a Form 709 each year if the gifts do not exceed the exclusionary amounts, but should maintain the form and a record of all gifts given during lifetime. Each person has a federal lifetime gift exclusion ($5,340,000 in 2014 with future indexing for inflation) and gifts given in excess of the annual exclusion reduce the individual's lifetime exempted amount. For example, if Grandpa Joe gives Grandson Tom a $48,000 gift in 2014, a taxable gift of $34,000 remains. ($48,000 minus $14,000 exclusion = $34,000 taxable gift). The $34,000 would then be deducted from Grandpa Joe's $5,340,000 lifetime exclusion – leaving $5,306,000 remaining for future gifts until the time of Grandpa Joe's death. No gift tax is paid until the total lifetime exclusion is depleted. However, a Form 709 gift tax return must be filed on gifts to individuals (other than the spouse) when the gift exceeds the annual exclusion. Tax would be due at death if the annual/lifetime gifts exceed the federal lifetime gift exclusion. At death, the gift amounts on an individual's Forms 709 are totaled. If there are amounts in excess of the annual or lifetime exclusions, these excess amounts are added back into the decedent's estate, increasing the size of the estate.

## Document Your Gifts

As noted previously, gifts should be documented on a Form 709 even when there is no requirement to file the form with the IRS during the year that the gift is made. A file of Forms 709 should be maintained through lifetime. However, there are other reasons to maintain documentation of gifts. Sometimes there are disputes within families or with tax authorities regarding whether a gift was intended or not. Therefore, when the true intention is to give a gift, a simple written document should be prepared stating that a gift was made, including a description of the gift (monetary or otherwise), a serial or model number (if applicable) and the value of the gift. If the donee is acquiring a basis in the gift, that should be noted. Both the donor and the donee should sign and date the document and have it notarized. If the gifted item is titled, the title should be transferred.

## Resources

*IRS Instructions for Form 709* - http://www.irs.gov/pub/irs-pdf/i709.pdf

*Frequently asked questions on gift taxes* - http://www.irs.gov/businesses/small/article/0,,id=108139,00.html

*IRS Publication 950, Introduction to Estate and Gift Taxes* - http://www.irs.gov/publications/p950/index.html

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