

# RULES ALLOW YOU TO AVOID GIFT TAXES

The payment of a gift tax is a rarity. There are a number of reasons for this. Most gifts qualify for the \$10,000 annual exclusion or for the marital or charitable deduction. Thus, most gift tax planning involves how to legally avoid the payment of any gift tax.

There are some basic gift tax rules that result in the payment of a gift tax being so rare:

**1. A person who wants to make a gift can give any person he or she chooses up to \$10,000 per year, without having to report the gift or pay a gift tax.**

The gift must be an outright transfer with no strings attached to qualify for this annual exclusion.

Gifts in trust are subject to special rules before they can qualify for the exclusion. Most gifts are covered by the \$10,000 annual exclusion. The number of \$10,000 annual exclusions one donor can use is limited only by the donor's largesse. In addition, annual gifts in excess of \$10,000 are not subject to the gift tax if they are paid directly for the donee's tuition or medical expenses. Consider these examples:

- Joseph has a daughter, Susan, who is divorced and has a young son. Susan is a secretary and she struggles to support herself and her son on her salary. Joseph gives Susan \$1,000 each year to send Susan's son to camp and to pay for his sports and other activities. This gift is not subject to any gift tax.
- Marvin and Leah are financially secure. They are retired and have a difficult time spending all of their annual income. Each of them has a considerable amount of excess principal saved. They have two children and five grandchildren. Each year each of them can give \$70,000 (\$10,000 to each of their children and \$10,000 to each of their grandchildren), for a total of \$140,000. Each of them can make these separate gifts without having to file a gift tax return or pay a gift tax.

**2. A married donor can transfer an unlimited amount of property to his or her spouse, without having to pay a gift tax or file a gift tax return.**

Gifts in trust to a spouse are subject to complicated rules. This unlimited marital deduction for gift tax purposes is another reason that the payment of a gift tax return is so rare.

- Jim and Beth are married and own most of their property as tenants by the entireties. They have been advised to separate the ownership of some of their assets for estate tax purposes. Each can transfer as much property to the other as he or she wishes, without having to file a gift tax return or pay a gift tax.

**3. There is a charitable gift tax deduction.**

Most people are aware of the favorable income tax treatment for gifts to charities. Few think about the gift tax consequences when they make annual donations. Most gifts to charities qualify for the charitable gift tax deduction and do not result in the payment of a gift tax. Sometimes a gift tax return is required to be filed. Some donors employ trusts to either pay the income or a remainder interest to a charity. These trusts require significant planning and tax knowledge.

**4. There is a \$600,000.00 lifetime exemption for taxable gifts.**

Gifts that exceed or do not qualify for \$10,000 annual exclusion and that do not qualify for the marital or charitable deduction are considered "taxable gifts." Only taxable gifts can generate a gift tax. However, a gift tax will not be due until a donor makes taxable gifts totaling more than \$600,000 during his or her lifetime. This \$600,000 amount is a cumulative lifetime "exemption". The mechanics of this rule are very technical -- in fact, the \$600,000 "exemption" actually results from a tax credit of \$192,800. Most donors rarely make such a large gift in any one year. In fact, most donors do not make total taxable gifts over their lifetimes of \$600,000.

Because of all of these rules, gift taxes are rarely required to be paid.

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