

Contributions to Nonprofits and the Gift Tax as of June 9, 2011

Donors should be aware that some gifts (both money and property) to certain nonprofits may be subject to the federal gift tax. In many cases, however, a donor will not be required to pay any tax, due to various exceptions, deductions, and credits.

The IRS imposes a gift tax on transfers of property (including money) where there is no expectation of receiving something of equal value in return. Depending on the taxable amount, the tax rate currently ranges from 18% to 35%.

Certain transfers, such as those to 527 political organizations and 501(c)(3) organizations, are not subject to the gift tax, due to specific statutory exemptions. Gifts to other organizations, such as 501(c)(4) social welfare organizations¹, may be subject to tax—but only if a gift exceeds \$13,000 per year. The \$13,000 (\$26,000 for a husband and wife) annual exclusion is subject to cost-of-living increases and was last increased on January 1, 2009. A separate annual exclusion applies to each person or organization to which the donor makes a gift. This means that an individual donor may give a non-taxable gift of up to \$13,000 per year to as many recipients as the donor wishes.

Example: A donor contributes \$10,000 to a 501(c)(4) organization in one year and \$12,000 to the same 501(c)(4) the following year. Neither gift is subject to the gift tax because the contribution does not exceed the annual exclusion.

Example: A husband and a wife make a joint contribution of \$25,000 to a 501(c)(4) environmental organization and \$20,000 to a 501(c)(4) civil rights organization in the same year. Both gifts are below the \$26,000 annual exclusion available to a husband and wife.

Even if a gift is a taxable gift, and exceeds the annual exclusion of \$13,000 per year, a donor will not necessarily have to pay the gift tax. Each donor has a lifetime “unified credit,” currently \$5 million per individual, from which can be subtracted the amount of any gifts in excess of the applicable annual exclusions. Use of any of the unified credit in any year reduces the amount of credit the donor has over his or her lifetime and ultimately for estate tax purposes.

Do you owe gift tax?

To determine whether gift tax is owed, a donor must engage in a multi-step analysis of possible exceptions, exclusions, deductions, and credits. For more information about the gift tax, see IRS Publication 950, Introduction to Estate and Gift Taxes, <http://www.irs.gov/pub/irs-pdf/p950.pdf>.

Who pays the gift tax?

The donor is responsible for reporting the gift and paying the gift tax, if applicable, using IRS Form 709, which is due on April 15th following the year in which the gift is made.

The information contained in this fact sheet and any attachments is being provided for informational purposes only and not as part of an attorney-client relationship. The information is not a substitute for expert legal, tax, or other professional advice tailored to your specific circumstances, and may not be relied upon for the purposes of avoiding any penalties that may be imposed under the Internal Revenue Code. Alliance for Justice publishes plain-language guides on nonprofit advocacy topics, offers educational workshops on the laws governing the advocacy of nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact Alliance for Justice.

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¹ The IRS takes the position that 501(c)(4) organizations are subject to the gift tax, but not all tax advisors agree with this position. Recently, the IRS stated that it has “opened examinations of five donors who had not filed gift tax returns to determine if the donations were taxable gifts and if a gift tax return should have been filed.” Donors should consult with their tax advisors to understand the possible tax consequences before making large gifts to 501(c)(4) organizations.