

Contributions to Nonprofits and the Gift Tax

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

The IRS imposes a gift tax on all 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 ranges from 18% to 45% through 2009. For 2010, the highest gift tax rate will be 35%.

The Annual Exclusion

Certain transfers, such as those to 527 political organizations, are not subject to the gift tax at all. Gifts to other organizations, such as 501(c)(4) social welfare organizations¹, are subject to tax—but only if a gift exceeds \$13,000 per year to any one individual or organization. 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 non-taxable gifts of up to \$13,000 per year to as many recipients as the donor wishes.

Example: A donor contributed \$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 taxable because neither gift exceeds the annual exclusion per year.

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. Neither gift is taxable because both gifts are below the \$26,000 annual exclusions available to a husband and wife.

Contributions to 501(c)(3) Public Charities

Donors can deduct charitable contributions from the total amount of gifts subject to tax. Therefore, no gift tax will be paid on transfers to 501(c)(3) organizations, even if the amount of the gift exceeds \$13,000 per year.

Example: A donor makes a \$50,000 gift to a 501(c)(3) environmental group. The entire amount is deductible as a charitable contribution, so there is no gift tax owed.

The Lifetime Credit

Even if a gift is a taxable gift, and exceeds the annual exclusion of \$13,000 per year, the donor will not necessarily have to pay the gift tax. Each donor has a lifetime “unified credit” of \$345,800 from which can be subtracted any gift tax the donor owes. Use of any of the unified credit against the gift tax in one year reduces the amount of credit the donor can use against her gift tax (and ultimately estate tax) in a later year. This means a donor can make gifts of \$1 million during her lifetime before being subject to the tax.

Example: A donor made a contribution of \$20,000 to a 501(c)(4) organization. This contribution exceeds the donor’s \$13,000 annual exclusion by \$7,000. That \$7,000 is a taxable gift (resulting in a \$1,260 tax, at the tax rate of 18% for taxable gifts up to \$10,000) but the donor can apply her \$345,800 unified credit by subtracting the amount of the gift tax from the unified credit amount, and

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. Donors may wish to consult with their tax advisors to understand the possible tax consequences before making large gifts to 501(c)(4) organizations.

the donor will not have to pay the \$1,260 gift tax. The amount of unified credit that the donor will have available in future years will now be \$344,540 (\$345,800 – \$1,260).

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. The steps are described in more detail below.

1. Determine **total transfers by gift** of real or personal property, whether gratuitous or for less than full value (not including transfers not subject to the gift tax at all, i.e., those to 527 political organizations, and certain medical and educational gifts).
2. Subtract **annual exclusion** (for 2009, \$13,000 per recipient; \$26,000 for a husband and wife; this annual exclusion applies to each recipient).
3. Deduct amount of **charitable contributions** (as well as other deductions).
4. Multiply taxable gift amount by donor's **applicable tax rate** (18% - 45%) to determine gift tax.
5. Apply **lifetime unified credit** to determine the amount of gift tax actually owed to IRS. Each taxpayer has a lifetime \$345,800 unified credit; amount used in one year reduces the amount of credit that can be applied in future years.

Who Pays the Gift Tax?

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

Gift Tax Consequences:

Gift Recipient	Gift Tax Consequence
501(c)(3) organizations	Gift tax will not apply, in practice, since the amount of the gift is deductible from the amount of gifts given that year
Most individuals and 501(c) organizations (except for 501(c)(3)s)	Gift tax applies, but only to gifts of greater than \$13,000 (\$26,000 for a husband and wife), and even then may not apply
527 organizations	Gift tax does not apply; donation excluded from the definition of a "gift"

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