Do you need to file a gift tax return?

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It's tax-filing season and you're likely focused on your income or business tax returns. But don't forget about another type of return. In 2020, if you made substantial gifts of wealth to family members you may have to file a gift tax return.

Filing a gift tax return

Generally, a federal gift tax return (Form 709) is required if you make gifts to or for someone during the year (with certain exceptions, such as gifts to U.S. citizen spouses) that exceed the annual gift tax exclusion ($15,000 per person for 2020 and 2021). While an unlimited amount can be gifted to a U.S. citizen spouse, there's a separate exclusion for gifts to a noncitizen spouse ($157,000 for 2020 and $159,000 for 2021).

Also, if you make gifts of *future* interests, even if they're less than the annual exclusion amount, a gift tax return is required. Finally, if you split gifts with your spouse, regardless of amount, you must file a gift tax return.

The return is due by April 15 of the year after you make the gift, so the deadline for 2020 gifts is coming up soon. But you can extend the deadline to October 15 by filing for an extension. (The IRS announced that the federal income tax filing and payment due date has been extended from April 15, 2021, to May 17, 2021. However, the IRS didn't specifically address the gift tax filing deadline. Additional IRS guidance is expected soon.)

Being required to file a form doesn't necessarily mean you owe gift tax. You'll owe tax only if you've already exhausted your lifetime gift and estate tax exemption ($11.58 million for 2020 and $11.7 million for 2021).

When a return isn't required

No gift tax return is required if you:

- Paid qualifying educational or medical expenses on behalf of someone else *directly* to an educational institution or health care provider;
- Made gifts of present interests that fell within the annual exclusion amount;
- Made outright gifts to a spouse who's a U.S. citizen, in any amount, including gifts to marital trusts that meet certain requirements; or
- Made charitable gifts and aren't otherwise required to file Form 709 — if a return is otherwise required, charitable gifts should also be reported.

If you transferred hard-to-value property, such as artwork or interests in a family-owned business, consider filing a gift tax return even if you're not required to. Adequate disclosure of the transfer in a return triggers the statute of limitations, generally preventing the IRS from challenging your valuation more than three years after you file.

In some cases, it's even advisable to file Form 709 to report *nongifts*. For example, suppose you sold assets to a family member or a trust. Again, filing a return triggers the statute of limitations and prevents the IRS from claiming, more than three years after you file the return, that the assets were undervalued and, accordingly, partially taxable.

Seek professional help

Estate tax rules and regulations can be complicated. If you need help determining whether a gift tax return needs to be filed, please contact us.

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