

Avoid pitfalls when splitting gifts with your spouse

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The annual gift tax exclusion allows you to transfer up to \$15,000 per beneficiary gift-tax-free for 2020, without tapping your lifetime gift and estate tax exemption. And you can double the exclusion to \$30,000 per beneficiary if you elect to split the gifts with your spouse.

It's important to understand the rules surrounding gift-splitting to avoid unintended — and potentially costly — consequences.

Understanding the pitfalls

Common mistakes made when splitting gifts include:

Failing to make the election. To elect to split gifts, the donor must file a gift tax return and the nondonor must consent by checking a box on the return and signing it or, if a gift exceeds \$30,000, filing his or her own gift tax return. Once you make the election, you must split *all* gifts to third parties for the year.

Splitting gifts with a noncitizen. To be eligible for gift-splitting, one spouse must be a U.S. citizen.

Divorcing and remarrying. To split gifts, you must be married at the time of the gift. You're ineligible for gift-splitting if you divorce and either spouse remarries during the calendar year in which the gift was made.

Gifting a future interest. Gift-splitting can be used only for present interests. So, a gift in trust qualifies only if the beneficiary receives a present interest — for example, by providing the beneficiary with so-called Crummey withdrawal rights.

Benefiting your spouse. Gift-splitting is ineffective if you make the gift to your spouse, rather than a third party; if you give your spouse a general power of appointment over the gifted property; or if your spouse is a potential beneficiary of the gift. For example, if you make a gift to a trust of which your spouse is a beneficiary, gift-splitting is prohibited unless the chances your spouse will benefit are extremely remote.

Be aware that, if you die within three years of splitting a gift, some of the tax benefits may be lost.

Extended gift tax return deadline is approaching

Remember that when you elect to split gifts with your spouse, you, the donor, must file a gift tax return and your spouse, the nondonor, must consent by checking a box on the return and signing it. Because of the COVID-19 pandemic, the IRS extended the gift tax filing deadline to July 15, 2020, so now is the time to act. Please contact us with any questions regarding making gifts.

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