

Estate and gift taxes

The lifetime estate and gift tax exemption for decedents who die in 2023 jumped from \$12,060,000 to \$12,920,000 million.

The special estate tax valuation of real estate also increases for 2023. For the estate of a person dying this year, up to \$1,310,000 million of farm or business real estate can receive a discount valuation (up to \$1,230,000 in 2022), letting the estate value the realty at its current use instead of fair market value.

More estate tax liability qualifies for an installment payment tax break, too. If one or more closely held businesses make up greater than 35% of a 2023 estate, as much as \$700,000 of tax can be deferred and the IRS will charge only 2% interest (up to \$656,000 for 2022).

Finally, the annual gift tax exclusion for 2023 rises from \$16,000 to \$17,000 per donee. So, you can give up to \$17,000 (\$34,000 if your spouse agrees) to each child, grandchild, or any other person in 2023 without having to file a gift tax return or tap your lifetime estate and gift tax exemption.

When to File

Generally, the estate tax return is due nine months after the date of death. A six month extension is available if requested prior to the due date and the estimated correct amount of tax is paid before the due date.

The gift tax return is due on April 15th following the year in which the gift is made.

For more information please see IRS link: <https://www.irs.gov/businesses/small-businesses-self-employed/estate-tax>

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Trusts & Estates

If Taxable Income Is Between:	The Tax Due Is:
\$0 - \$2,550	10% of taxable income
\$2,551 - \$9,150	\$255 + 24% of the amount over \$2,550
\$9,151 - \$12,500	\$1,839 + 35% of the amount over \$9,150
\$12,501 +	\$3,011.50 + 37% of the amount over \$12,500

After the net amount is computed, the value of lifetime taxable gifts (beginning with gifts made in 1977) is added to this number and the tax is computed. The tax is then reduced by the available unified credit.

Most relatively simple estates (cash, publicly traded securities, small amounts of other easily valued assets, and no special deductions or elections, or jointly held property) do not require the filing of an estate tax return. A filing is required if the gross estate of the decedent, increased by the decedent's adjusted taxable gifts and specific gift tax exemption, is valued at more than the filing threshold for the year of the decedent's death, as shown in the table below.

Filing Threshold for Year of Death

Year of Death	If Amount Described Above Exceeds:
2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000

Year of Death	If Amount Described Above Exceeds:
2016	\$5,450,000
2017	\$5,490,000
2018	\$11,180,000
2019	\$11,400,000
2020	\$11,580,000
2021	\$11,700,000
2022	\$12,060,000
2023	\$12,920,000
2024	\$13,610,000

Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exemption to the surviving spouse. This election is made on a timely filed estate tax return for the decedent with a surviving spouse. Note that simplified valuation provisions apply for those estates without a filing requirement absent the portability election.

What's the federal gift tax?

Generally, the federal gift tax applies to all gifts of property by an individual during the year. The tax is typically paid by the person who gives the gift, not the person who receives it. However, if the giver doesn't pay the tax, the recipient may

have to pay it. In addition, if the person giving the gift dies before the tax is paid, the estate is responsible for paying the tax.

It doesn't matter if the gift is made directly or indirectly. And the gift tax doesn't just apply to cash gifts, either. It applies whether the property given is real, personal, tangible, or intangible. So, for example, deeding a plot of land, giving a car, forgiving a debt, assigning the benefits of an insurance policy, or transferring stock could all trigger a federal gift tax bill. And if you're giving something other than cash, the gift amount for gift tax purposes is the property's "fair market value" on the date of the gift.

Note: Generally, a gift is deemed "given" for gift tax purposes if you transfer property to someone else and don't expect something of at least equal value in return.

Fortunately, several gift tax exemptions can be used to avoid paying the tax. The most well-known exemption is the annual gift tax exclusion. This is a set dollar amount you can give each year that isn't subject to the tax. (The amount is adjusted for inflation each year.) And you can give up to that amount to as many people during the year as you want. If you're married, your spouse can also give up to the same amount – even to the same people who receive a gift from you.

Other gift tax exemptions may apply, too. For example, the gift tax generally doesn't apply to gifts to:

- Your spouse;
- Charitable or religious organizations;
- Political organizations;
- Educational organizations as tuition for someone else; and

- Doctors or other health care providers as payment for the medical care of someone else.

What is the annual gift tax limit for 2023?

The tax-free gift limit (gift tax exclusion) for 2023 is \$17,000 (it was \$16,000 in 2022).

As a result, you can give up to \$17,000 to as many people as you want in 2023 without having to worry about paying the federal gift tax.

And, again, if you're married, your spouse can also give \$17,000 to the same people. Between you and your spouse, that's a total of \$34,000 per person in 2023.

In addition, if you stay under the gift tax limit for each gift recipient, you don't have to file a gift tax return for the year.

Here's an example: If you're married and have two married children and four grandchildren, you and your spouse can give up to \$34,000 in 2023 to each of your kids, their spouses, and all the grandchildren without even having to file a gift tax return or pay any tax. That's \$272,000 in tax-free gifts! Just remember that the \$17,000 (or \$34,000) limit is an annual limit. So, you have to make your gifts before December 31, 2023 (gift checks must also be deposited by that date).

What if you exceed the annual gifting limits?

If you give more than \$17,000 to anyone in 2023, and no exemption applies, you'll have to file a federal gift tax return (IRS Form 709). However, that doesn't necessarily mean you'll owe any tax. There's also a lifetime gift tax exclusion that

can shield your gifts from tax – and it's a high limit, so most people never end up having to pay any gift tax.

For 2023, the lifetime gift tax limit is \$12.92 million (I told you it was high!). That's up from \$12.06 million for 2022 (the figure is adjusted annually for inflation). Plus, if you're married, the lifetime limit is double, just like the annual limit. (The lifetime gift tax exemption is the same as the annual estate tax exemption.)

So, each year that you exceed the annual gift tax exclusion for any recipient, the excess amount is reported on Form 709 for that year. However, you don't have to pay gift tax unless and until the total amount reported on all your 709 forms throughout your life exceeds the lifetime gift tax limit for that year.

As a result, only wealthier Americans who are giving large sums of money or property away get hit with a gift tax bill. Most people don't have to worry.

Increased lifetime gift tax limit in 2026

The lifetime gift tax exclusion is scheduled to be cut in half in 2026. Estimates put the 2026 lifetime limit at around \$6.8 million. Congress could permanently adopt the current amount, but at this point, there's no reason to believe that will happen.

Fortunately, though, IRS regulations will allow the use of either the lifetime gift tax exclusion that applies when gifts are made or the exclusion amount applicable when the donor dies, whichever is greater. As a result, people who make large gifts before 2026 don't have to worry about losing the benefits of the higher gift tax exclusion amount after it's lowered.

About Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return

Use Form 709 to report:

- Transfers subject to the federal gift and certain generation-skipping transfer (GST) taxes and to figure the tax due, if any, on those transfers.
- Allocation of the lifetime GST exemption to property transferred during the transferor's lifetime.

All gift and GST taxes must be figured and filed on a calendar year basis. List all reportable gifts made during the calendar year on one Form 709. This means you must file a separate return for each calendar year a reportable gift is given (for example, a gift given in 2023 must be reported on a 2023 Form 709). Do not file more than one Form 709 for any 1 calendar year.

When To File Form 709 Gift Tax Return

Form 709 is an annual return.

Generally, you must file Form 709 no earlier than January 1, but not later than April 15, of the year after the gift was made. However, in instances when April 15 falls on a Saturday, Sunday, or legal holiday, Form 709 will be due on the next business day. See section 7503.

If the donor died during 2023, the executor must file the donor's 2023 Form 709 not later than the earlier of:

- The due date (with extensions) for filing the donor's estate tax return; or
- April 15, 2024, or the extended due date granted for filing the donor's gift tax return.

Extension of Time To File

There are two methods of extending the time to file the gift tax return. Neither method extends the time to pay the gift or GST taxes. If you want an extension of time to pay the gift or GST taxes, you must request that separately. See Regulations section 25.6161-1.

By extending the time to file your income tax return.

Any extension of time granted for filing your calendar year 2023 federal income tax return will also automatically extend the time to file your 2023 federal gift tax return. Income tax

extensions are made by using Form 4868, Application for Automatic Extension of Time To File U.S. Individual Income Tax Return, or Form 2350, Application for Extension of Time To File U.S. Income Tax Return. You may only use these forms to extend the time for filing your gift tax return if you are also requesting an extension of time to file your income tax return.

By filing Form 8892.

If you do not request an extension for your income tax return, use Form 8892, Application for Automatic Extension of Time To File Form 709 and/or Payment of Gift/Generation-Skipping Transfer Tax, to request an automatic 6-month extension of time to file your federal gift tax return. In addition to containing an extension request, Form 8892 also serves as a payment voucher (Form 8892-V) for a balance due on federal gift taxes for which you are extending the time to file. For more information, see Form 8892.

Who Must File

In general. If you are a citizen or resident of the United States, you must file a gift tax return (whether or not any tax is ultimately due) in the following situations.

- If you gave gifts to someone in 2023 totaling more than \$17,000 (other than to your spouse), you probably must file Form 709. But see [Transfers Not Subject to the Gift Tax](#) and [Gifts to Your Spouse](#), later, for more information on specific gifts that are not taxable.
- Certain gifts, called future interests, are not subject to the \$17,000 annual exclusion and you must file Form 709 even if the gift was under \$17,000. See [Annual Exclusion](#), later.
- Spouses may not file a joint gift tax return. Each individual is responsible to file a Form 709.
- You must file a gift tax return to split gifts with your spouse (regardless of their amount) as described in [Part 1—General Information](#), later.
- If a gift is of community property, it is considered made one-half by each spouse. For example, a gift of \$100,000 of community property is considered a gift of \$50,000 made by each spouse, and each spouse must file a gift tax return.
- Likewise, each spouse must file a gift tax return if they have made a gift of property held by them as joint tenants or tenants by the entirety.
- Only individuals are required to file gift tax returns. If a trust, estate, partnership, or corporation makes a gift, the individual beneficiaries, partners, or stockholders are considered donors and may be liable for the gift and GST taxes.
- The donor is responsible for paying the gift tax. However, if the donor does not pay the tax, the person receiving the gift may have to pay the tax.

- If a donor dies before filing a return, the donor's executor must file the return.

Who does not need to file.

If you meet all of the following requirements, you are not required to file Form 709.

- You made no gifts during the year to your spouse.
- You did not give more than \$17,000 to any one donee.
- All the gifts you made were of present interests.

Gifts to charities.

If the only gifts you made during the year are deductible as gifts to charities, you do not need to file a return as long as you transferred your entire interest in the property to qualifying charities. If you transferred only a partial interest, or transferred part of your interest to someone other than a charity, you must still file a return and report all of your gifts to charities.

Note.

If you are required to file a return to report noncharitable gifts and you made gifts to charities, you must include all of your gifts to charities on the return.

Transfers Subject to the Gift Tax

Generally, the federal gift tax applies to any transfer by gift of real or personal property, whether tangible or intangible, that you made directly or indirectly, in trust, or by any other means.

The gift tax applies not only to the free transfer of any kind of property, but also to sales or exchanges, not made in the ordinary course of business, where value of the money (or property) received is less than the value of what is sold or exchanged. The gift tax is in addition to any other tax, such as federal income tax, paid or due on the transfer.

The exercise or release of a general power of appointment may be a gift by the individual possessing the power. General powers of appointment are those in which the holders of the power can appoint the property under the power to themselves, their creditors, their estates, or the creditors of their estates. To qualify as a power of appointment, it must be created by someone other than the holder of the power.

The gift tax may also apply to forgiving a debt, to making an interest-free or below-market interest rate loan, to transferring the benefits of an insurance policy, to certain property settlements in divorce cases, and to giving up some amount of annuity in exchange for the creation of a survivor annuity.

Bonds that are exempt from federal income taxes are not exempt from federal gift taxes.

Sections 2701 and 2702 provide rules for determining whether certain transfers to a family member of interests in corporations, partnerships, and trusts are gifts. The rules of section 2704 determine whether the lapse of any voting or liquidation right is a gift.

Digital assets.

The gift tax applies to transfers of digital assets. Digital assets are any digital representations of value that are recorded on a cryptographically secured distributed ledger or any similar technology. For example, digital assets include non-fungible tokens (NFTs) and virtual currencies, such as cryptocurrencies and stablecoins. If a particular asset has the characteristics of a digital asset, it will be treated as a digital asset for federal transfer tax purposes.

Gifts to your spouse.

You must file a gift tax return if you made any gift to your spouse of a terminable interest that does not meet the exception described in [Life estate with power of appointment](#), later, or if your spouse is not a U.S. citizen and the total gifts you made to your spouse during the year exceed \$175,000.

You must also file a gift tax return to make the qualified terminable interest property (QTIP) election described under [Line 12. Election Out of QTIP Treatment of Annuities](#), later.

Except as described earlier, you do not have to file a gift tax return to report gifts to your spouse regardless of the amount of these gifts and regardless of whether the gifts are present or future interests.

Transfers Not Subject to the Gift Tax

Four types of transfers are not subject to the gift tax. These are:

- Transfers to political organizations,
- Transfers to certain exempt organizations,
- Payments that qualify for the educational exclusion, and
- Payments that qualify for the medical exclusion.