

**GIFT TAX RETURNS:  
TOP TIPS FOR THE TRADE**

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Washington DC Estate Planning Council

**Sarah Moore Johnson, Esq.**  
*Birchstone Moore LLC*

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Sarah M. Johnson, Esq.  
Birchstone Moore LLC

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This outline is based in part on an outline that the author prepared in 2006 in conjunction with David Pratt, Alyssa R. Feder, and Jennifer E. Zakin. Much has changed in the last 10 years with respect to gift tax returns, but much has stayed the same. To the extent this outline is unchanged from its predecessor, the author gives credit to her original co-authors.

## I. WHO, WHEN, WHERE AND HOW TO FILE

### A. When NOT to File a Gift Tax Return

Code Section 6019 provides that the following transfers are not subject to gift tax and do not need to be reported on the gift tax return if no other reportable gifts are made in the year:

#### 1. Annual Exclusion Gifts

Transfers to a donee of a present interest in property totaling less than the annual exclusion amount under Section 2503(b) do not need to be reported.

- Annual Exclusion Amount: Section 2503(b) provides that in the case of present interest gifts made by a donor during the year, the first \$10,000 of each gift (indexed for inflation such that the amount is currently \$14,000) shall not be included in the total amount of gifts made during the year by the donor. Section 2523(i) of the Code substitutes \$100,000 (indexed for inflation and currently \$148,000) for the \$10,000 figure provided in Section 2503(b) of the Code when the donee spouse is a not a US citizen.
- Present Interest in Property: Gifts of future interests (such as a gift to an irrevocable trust where the terms of the trust do not give the trust beneficiaries a current right to withdraw) need to be reported even if the gift was under the annual exclusion amount.

#### 2. Tuition Payments and Medical Expenses

Payments that qualify for the educational or medical expense exclusion under Section 2503(e) do not need to be reported.

- Not a gift. Section 2503(e) provides that a “qualified transfer” shall not be treated as a transfer of property for gift tax purposes.

- Qualified Transfer. A qualified transfer is a transfer of tuition for the benefit of the donee paid directly to the educational institution or medical care provider.
  - Note that only the payment of tuition is considered a qualified transfer. Expenses for room, board, fees and supplies may also be included on the student's tuition bill but are still considered taxable gifts.
  - Payments to a medical care provider are limited by the income tax definition of "medical care" at Section 213(d) and include payments for health insurance. The income tax rules specifically exclude cosmetic surgery.

### 3. Certain Gifts to Charity

Transfers to political organizations or charities that qualify for the charitable deduction under Section 2522, but only if the donor transferred her entire interest in the property.

- Partial Interests Need to be Reported. If the donor transferred only a partial interest in property to charity and either retained an interest or transferred part of the property to a non-charitable recipient, this must be reported on the Form 709.
  - For example, a transfer to a charitable remainder trust, a charitable lead trust, or a "vertical slice" such as a tenants-in-common interest in property must be reported on the return.
- When Other Gifts Are Reported. The Instructions to the Form 709 state: "If you are required to file a return to report non-charitable gifts and you made gifts to charities, you must include all of your gifts to charities on the return."
  - What if charitable gifts are unknown or too numerous? The requirement to report all charitable gifts may be cumbersome and impractical if the gift tax return preparer is not also the income tax return preparer.
  - Incorporate Form 1040 by Reference: In this situation, it is best to at least acknowledge that the return preparer knows and understands the rules than to ignore the requirement altogether. A statement on Schedule A, Part I indicating "Taxpayer made gifts of cash and marketable securities to several charitable organizations qualifying for the charitable contribution deduction under IRC Section 2522, as reported on Donor's timely-filed 2015 Form 1040".
  - See **Exhibit B** for an example.

### 4. Certain Gifts to Spouse

Outright transfers between US citizen spouses do not need to be reported on a gift tax return, no matter the amount.

- Other Non-Reportable Gifts Between Spouses:
  - A transfer of title from one spouse to both spouses, as joint tenants or tenants by the entirety.<sup>1</sup>
  - A gift of a life estate with a general power of appointment in the donee spouse that meets the requirements of Section 2523(e).
  - A gift of \$148,000 or less to a non-citizen spouse.<sup>2</sup>
- Gifts to Spouse that need to be reported:
  - Any gift from a donor to his or her spouse of a terminable interest that does not meet the requirements of 2523(e), such as a gift to an inter vivos QTIP.
  - Gifts to a non-citizen spouse in excess of \$148,000 in 2016.

## **B. WHO Must File a Form 709?**

- The Donor.
  - Any individual citizen or resident of the United States who makes a transfer by gift must file a 709, unless such transfer meets an exception described in Section I.A, above. This person is referred to as the “donor”. I.R.C. §6019(a).
  - Under-Reported Gifts. The following is a list of events that should be reported on a gift tax return that are often omitted or disregarded by return preparers:
    - A sale or exchange that is not in the ordinary course of business, such as a sale of property to a family member in exchange for a sum that is less than the fair market value of such property;
    - The exercise or release of a general power of appointment that is not limited to \$5,000 or 5%;
    - Forgiveness of debt intended as gift;
    - An interest-free loan or below-market rate loan;
    - An assignment of ownership of an insurance policy where the policy has cash value;
    - A purchase of property with one person’s funds and taking title as joint tenants with a donee other than the purchaser’s spouse is a gift of one-half the value of the property; and
    - A contribution of property to a joint account, but not until the other account owner (if other than spouse) makes a withdrawal.

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<sup>1</sup> Section 2523(d).

<sup>2</sup> Section 2523(i).

- The Donor's Guardian. If a donor is legally incompetent, his guardian may file a 709 on his behalf. Treas. Reg. §25.6019-1(g).
- The Donor's Agent. An agent of the donor may file the 709 on behalf of the donor. In order for an agent to file on behalf of a donor, the donor must be unable to file for himself by reason of illness, absence, or non-residence, and such return must be ratified by the donor when he becomes able to do so. An agent may not sign on behalf of the donor as a matter of mere convenience. Treas. Reg. § 25.6019-1(h); Revenue Ruling 78-27, 1978-1 C.B. 387.
- The Donor's Personal Representative. If the donor is deceased, the executor of the deceased donor's estate may file the 709 on behalf of the donor for gifts made prior to the donor's death. Treas. Reg. §25.6019-1(g). In addition, the executor may elect to gift-split under Section 2513 of the Code on behalf of the donor.

### C. *WHEN to File the Form 709 – Due Date*

#### 1. If Donor is Living

- In General. Form 709 is due no earlier than January 1, but not later than April 15, of the year after the gift was made.<sup>3</sup> When April 15 falls on a Saturday, Sunday, or legal holiday, Form 709 will be due on the next business day.<sup>4</sup>
  - In 2016, the gift and individual income tax return deadline for 2015 returns will be Monday, April 18, 2016.
  - April 15, 2016 is Emancipation Day in Washington, D.C., and Rev. Rul. 2015-13 states that the term "legal holiday" includes a legal holiday observed by the District of Columbia.
    - Emancipation Day is normally celebrated on April 16th, but when April 16 falls on a Saturday, the preceding Friday is the observed legal holiday.
- Extensions. There are two ways of extending the due date of the gift tax return. Neither method extends the time to pay the gift or GST taxes. An extension of time to pay the gift or GST tax must be requested separately. Treas. Reg. § 25.6161-1.
  - **Form 4868**. If a taxpayer requests an extension of time for filing the taxpayer's income taxes, such request will also automatically extend the time to file the taxpayer's gift tax return. I.R.C. §6075(b)(2). Income tax extensions are made by using IRS Form 4868, which grants a six (6)-month extension to October 15th. Form 4868 may only be used to extend the time for filing a gift tax return if the taxpayer is also requesting an extension of time to file his or her income tax return.

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<sup>3</sup> Section 6075(b).

<sup>4</sup> Section 7503.

- US citizens and resident aliens living abroad file Form 2350 to request an extension instead of Form 4868. Form 2350 also extends the due date of Form 709.
- **Form 8892.** If the taxpayer is not requesting an extension of time to file his or her individual income tax return, or if the taxpayer owes gift or GST tax, the taxpayer must file IRS Form 8892 by April 15th. This filing of Form 8892 will extend the due date for the 709 until October 15th.
  - Form 8892 does not require a signature or an explanation of the need for an extension of time to file.
  - If the gift tax return preparer is uncertain whether an extension of the donor's income tax return has been filed, the preparer should file Form 8892 if an extension of time to file is needed. There is no harm in filing Form 8892 if a Form 4868 has already been filed. It is better to act with an abundance of caution, especially when the return preparer intends to make elections that can only be made on a timely-filed return.
  - Note: Form 8892 also serves as a payment voucher (Form 8892-V) for the balance due on federal gift taxes if you are extending the time to file.

## 2. If Donor Dies in Year of Gift.

- If the donor died during a year in which he or she also made reportable gifts, the Form 709 must be filed not later than the earlier of (i) the due date (with extensions) for filing the donor's estate tax return or (ii) April 15th, or the extended due date granted for filing the donor's gift tax return.
  - Thus, if the donor died prior to July 15th and made gifts in that year prior to her death, the donor's Form 709 will be due earlier than it would be had the donor survived – before April 15th with no extensions, and before October 15th with extensions.

## 3. Late Filing Penalties.

- Penalties. Section 6651 imposes penalties for both late filing of returns and late payment of tax unless the taxpayer has reasonable cause for the delay.
- Reasonable Cause Determination. If the taxpayer or preparer receives a notice about penalties after the Form 709 is filed, send an explanation at that time and the IRS will determine if the reasonable cause criteria has been met.
  - Do **not** attach an explanation when you file Form 709.<sup>5</sup>

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<sup>5</sup> Instructions to Form 709, page 5.



## **D. WHERE to File the Form 709**

### **1. By Mail**

As with an income tax return, if a Form 709 is timely mailed, it is considered timely filed. One can use regular mail postmarked on or before the filing due date, or a private delivery service. When filing the Form 709 by mail, use certified mail with return receipt requested, and send it to:

Department of the Treasury  
Internal Revenue Service Center  
Cincinnati, OH 45999

### **2. By Private Delivery Service**

You can use certain private delivery services designated by the IRS to meet the “timely mailing as timely filing/paying” rule for tax returns and payments. These private delivery services include only the following:

- Federal Express (FedEx): FedEx First Overnight, FedEx Priority Overnight, FedEx Standard Overnight, FedEx 2Day, FedEx International Next Flight Out, FedEx International Priority, FedEx International First, and FedEx International Economy.
- United Parcel Service (UPS): UPS Next Day Air Early AM, UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express.
- If using one of these services, submit the Form 709 to:

Internal Revenue Service  
201 West Rivercenter Boulevard  
Covington, KY 41011

## **E. HOW to File the Form 709**

### **1. Importance of Presentation**

The IRS disassembles the Form 709 upon receipt, so the easier it is for the Service to disassemble the return, the better. Use 3-ring binders or pressboard binders, and not spiral binding.

- If the return will not fit in one binder, label the binders (1 of 3, 2 of 3, etc.)
- The neater the assembly of the return and the presentation of the attachments and exhibits, the more kindly the IRS examiner or attorney will view the return on screening, classification and audit.

## 2. Put Both Spouses' Returns in Same Envelope

If the gift splitting election is made, or if both spouses made returns in the same year, the spouses' gift tax returns should be submitted to the IRS in the same envelope to avoid follow up correspondence from the IRS.

## II. GIFT-SPLITTING

A threshold decision for a married taxpayer in completing the Form 709 is whether to elect to have the gifts made by the taxpayer to third parties considered as gifted one-half ( $\frac{1}{2}$ ) by the taxpayer and one-half ( $\frac{1}{2}$ ) by the taxpayer's spouse. This section will first describe the mechanics associated with split gifts, and then will discuss planning opportunities and pitfalls associated with gift splitting.

### A. Mechanics of Gift Splitting

#### 1. Section 2513 Requirements

- U.S. citizenship or residency. At the time of the gift, each spouse must be a U.S. citizen or a U.S. resident.
- Married at time of gift. At the time of the gift, the spouses must be married. If during the same year the gift was made, the couple divorces, they may still elect to split gifts made while they were married, provided neither of them remarry during the same calendar year.
- Consent by both spouses. Both the donor spouse and the non-donor (consenting) spouse must signify their consent to the election to gift-split.

#### 2. Non-Donor Spouse Must File His or Her Own Return

- The consenting spouse must also file his or her own 709 in order to report one-half ( $\frac{1}{2}$ ) of the gifts made by his or her spouse. The returns of both spouses should be mailed to the IRS in the same envelope.
  - Exception #1: If only one spouse made gifts during the year, AND the total value of such gifts to each donee was less than two times the annual exclusion amount AND the gifts were of present interests, then the consenting spouse does not have to file his or her own return. The consenting spouse will signify consent on the gifting spouse's Form 709.
  - Exception #2: If only one spouse made gifts during the year to a donee that totaled more than the annual exclusion amount but less than two times the annual exclusion amount AND the other spouse's gifts were to different donees and did not total more than the annual exclusion amount per donee AND all of the gifts by both spouses were of present interests, then the consenting spouse does not have to file his or her own

return. The consenting spouse will signify consent on the gifting spouse's Form 709.

### 3. Consent of Spouse

- Pursuant to Treas. Reg. § 25.2513-2(a)(1), consent may be signified in one of three ways on Line 18:
  - Criss-Cross – The consent of the Spouse 1 may be signified on Spouse 2's 709 and the consent of the Spouse 2 may be signified on Spouse 1's 709;
  - Straight-Lines – The consent of each spouse may be signified on his or her own 709; or
  - Doubling-Up – The consent of both spouses may be signified on one of the returns.
- The “criss-cross” signing technique is the most commonly used, as it is the technique directed in the Instructions to the Form 709.
- The “doubling-up” technique should be used if one of the exceptions to the rule requiring the consenting spouse to file a return applies such that only the donor spouse files a Form 709. In that case, Treas. Reg. §25.2513-2(a)(1) requires that the consent of both spouses be signified on the donor spouse's 709.
- If the non-donor spouse is deceased or incapacitated, the executor, attorney-in-fact or guardian can sign to consent on behalf of the non-donor spouse.
  - Elections made by Executor. An election to gift-split may be made on behalf of a deceased donor by such donor's executor. However, the gift must have been made while the donor spouse was still living. Treas. Reg. § 25.2513-1(b)(1). See Rev. Rul. 73-207, 1973-1 C.B. 409.
  - Elections made by Agent. An election to gift-split may also be made by an agent of the spouse pursuant to Section 25.6019-1(d) of the Gift Tax Regulations. Such regulation provides that a return may only be made by an agent if by reason of illness, absence or nonresidence, the person liable for the return is unable to make it within the time prescribed. The regulation further provides that if by reason of illness, absence or nonresidence, a return is made by an agent, the return must be ratified by the donor or other person liable for its filing within a reasonable time after such person becomes able to do so.

### 4. Time for Consent

Treas. Reg. § 25.2513-2(b)(1) states that consent to gift-splitting may be signified at any time following the close of the calendar year in which the gift was made (even on a late return), subject to these limitations:

- If Spouse 1 files a gift tax return before April 15<sup>th</sup> of the year following the year in which the gift was made, the gift-splitting election may still be changed by

Spouse 2's return if Spouse 2's return is filed on or before April 15<sup>th</sup>. After April 15<sup>th</sup>, both spouses are locked into the election made on Spouse 1's Form 709 and cannot be changed by a late-filed or extended return.

- If either spouse receives a notice of deficiency with respect to gift tax for the year in which the gift was made, consent to split may not be signified after the notice of deficiency has been sent. In other words, a late gift-splitting election cannot be used to mitigate a tax deficiency.

## 5. Revocation of Consent

- If consent was made on or before April 15<sup>th</sup> of the year following the year in which the gift was made, the consent may be revoked on or before April 15<sup>th</sup> of such year.
- The revocation may be made by either spouse filing in duplicate a signed statement of revocation. Such statement must be filed on or before April 15<sup>th</sup> of the year following the year in which the gift was made.
- If consent is signified after April 15<sup>th</sup> of the year following the year in which the gift was made, it may not be revoked. Treas. Reg. §25.2513-3.

## 6. Reporting Split Gifts on Schedule A

- The Instructions to Form 709 explicitly require, in the case of gift-splitting, that the entire value of every gift made during the calendar year while married be entered on the donor spouse's Schedule A. Apparently, this is true for gifts to any one donee valued at less than \$14,000 before gift-splitting, even though the same gifts would not have to be reported on a return where gift-splitting was not elected.
- Tip: If donor made gifts of small amounts to multiple individuals, it is probably OK to lump those smaller gifts together with a generic statement on Schedule A to the effect of:

Ten different individuals, names and addresses available upon request.

Various gifts to friends and family totaling \$25,000. The most given to any one individual was \$7,000.

## B. Planning with Gift-Splitting

The laws surrounding gift splitting are complex. An election to gift-split, or the failure to properly gift-split, could cause unintended adverse tax consequences. When practicing in the field of estate and gift taxation, a practitioner should have a complete understanding of the requirements that must be met in order for a married couple to elect to gift-split, as well as the effects of such an election. For example, once an election under Section 2513 of the Code has been made, the taxpayers may not choose

which gifts they will split. Instead, the election is applicable to all gifts made during the calendar year. Moreover, after April 15<sup>th</sup> of the year following the year of the gifts, the election to split gifts is irrevocable.

## 1. Limitations as to Which Gifts May Be Split

- Gifts to spouse. A couple may not elect to split gifts to each other.
- Spouse with power of appointment. A gift by the donor spouse cannot be split where the donor spouse created in the non-donor spouse a general power of appointment as defined in Section 2514(c) of the Code. I.R.C. §2513(a)(1).
- Interest gifted to third party must be ascertainable. If a donor spouse transfers property so that a portion of the property interest is gifted to a third party and a portion of the interest is gifted to his or her spouse, in order for the portion gifted to a third party to be eligible for gift-splitting, such interest must be ascertainable at the time of the gift and hence severable from the interest transferred to the non-donor spouse.
  - **Rev. Rul. 56-439**, 1956-2 CB 605, was one of the Service's earliest pronouncements that a transfer to a wholly discretionary trust in which the consenting spouse has an interest is not eligible for gift-splitting. The trust in Rev. Rul. 56-439 permitted any part of the income or principal to be distributed to or among the spouse of the donor and any lineal descendants of the donor at such times and in such proportions as the trustee would determine in the trustee's sole discretion. The Ruling concluded that the gift to the spouse was not severable from the gifts to the other beneficiaries. Accordingly, the gift could not be considered to any extent as made one-half by the donor and one-half by the spouse.
  - **Wang v. Commissioner**, T.C. Memo 1972-143 (June 29, 1972) is the leading case on whether a spouse's interest in a transfer in trust is severable from the interest of third parties. The non-donor spouse had an income interest for life, and the trustee could distribute principal for spouse's health, support or in the event of an emergency. At non-donor spouse's death, the trust property was distributed to the couple's three children. The Tax Court held the interest of the non-donor spouse was not ascertainable because of the Trustee's ability to distribute for "emergencies". Thus, the value of the remainder interest was not eligible for gift-splitting.
  - **PLR 200345038** is a rare ruling where the Service held the non-donor spouse's interest in a trust to be ascertainable and thus eligible for gift-splitting over the portion passing to the third party. Donor spouse established three irrevocable trusts with identical terms, one for the benefit of each of donor's three children. The non-donor spouse was included as a lifetime beneficiary of each trust. The trustee was to pay to

the beneficiaries as much of the trust's income and principal as they deemed necessary or appropriate for the beneficiaries' health, maintenance, education and support. The donor spouse transferred assets to such trusts and the donor spouse and the non-donor spouse filed 709s to report such gifts, and elected to gift-split, but failed to allocate the proper amount of GST tax exemption. The taxpayers submitted a private letter ruling request for an extension of time to allocate their GST tax exemptions to such transfers. In the private letter ruling, the IRS discussed the issue of whether the transfer to the third parties was ascertainable and, thus, eligible for gift-splitting. The Service concluded that because the trust provided that income and principal could be paid to the non-donor spouse for such spouse's health, maintenance, education and support, the interest transferred to the children was ascertainable and, thus, eligible for gift-splitting.

- **To be safe**, if the non-donor spouse is to have an interest in a trust, it is easiest to provide the non-donor spouse with a wholly-discretionary interest, and then avoid the gift-splitting election when making gifts to the trust. Otherwise, the donor will be faced with both proving and valuing the spouse's ascertainable and severable interest, and gift-splitting will still not be permitted over the spouse's ascertainable interest, only the interest belonging to third parties.

## 2. Gifts to Trusts with *Crummey* Withdrawal Rights.

There are multiple gift-splitting issues that arise when attempting to split gifts to a trust that has *Crummey* withdrawal rights.

- Two Times the Annual Exclusion? Does the trust agreement give the beneficiary the right to withdraw more than one annual exclusion amount?
  - Some trust documents do not give the beneficiary the power to withdraw more than the contributor's annual exclusion amount.
  - If so, any contribution in excess of one spouse's annual exclusion amount will not be a present interest gift, and will use a portion of each spouse's lifetime gift tax exemption if gifts are split.
- Spouse's Withdrawal Right. If the trust agreement gives the spouse a withdrawal right, it is usually limited to the greater of \$5,000 or 5% of the value of the trust assets as permitted by Section 2514(e), so that the non-donor spouse (who is often a beneficiary and/or trustee of the ILIT), will not be treated as a contributor to the trust. If the spouses elect gift-splitting, the donor's \$5,000 present interest gift to the spouse cannot be split. Thus, the donor will have made \$5,000 more in gifts during the year than donor's spouse.
  - See **Exhibit A** for an example.

- Gifts in Excess of Withdrawal Rights. As discussed above, if the non-donor spouse has a beneficial interest in the trust (such as an irrevocable life insurance trust (“ILIT”) or a spousal lifetime access trust (“SLAT”)), gift-splitting is only effective if the value of the non-donor spouse’s beneficial right is ascertainable and severable. Thus, in most cases, any gifts in excess of the annual exclusion gifts to the withdrawal right beneficiaries will not be eligible for gift-splitting. Gift-splitting may still be elected, but this particular gift may not be split.
- Example: Wife makes a gift of \$1,000,000 to a SLAT where husband has a right to withdraw the first \$5,000, and the couple’s two children have the ability to withdraw \$28,000 each. Husband and children are all discretionary beneficiaries, and distributions are not subject to an ascertainable standard.
  - \$56,000 is eligible for gift-splitting (the annual exclusion gifts to the daughters);
  - \$5,000 annual exclusion gift to husband is not eligible for gift-splitting;
  - \$939,000 gift in excess of annual exclusion gifts is not eligible for gift-splitting.

### 3. Community Property and Joint Accounts

- Community Property. Gifts from community property are treated as being made ½ by each spouse, so gift-splitting is not needed for community property gifts.
- Joint Accounts. The treatment of joint accounts is less clear. The Instructions to Form 709 imply that a gift from a joint account will be treated as made one-half by each spouse:

“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.”

Some practitioners believe that the person signing the check drawn on the joint account is treated as making the entire gift.<sup>6</sup> Others believe that payments from a joint bank account consisting of funds contributed otherwise than equally by both spouses is attributable to the person who contributed the funds.<sup>7</sup> Both positions find support in the Code and Regulations. Given this uncertainty, the joint account gift may backfire on the taxpayer in one of two ways:

- *Intent to Make Both Spouses Donors*. If the intent is to avoid filing a gift tax return by making gifts in excess of the annual exclusion amount from a joint account, the Service may treat the gift as being made 100% by the

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<sup>6</sup> See Deborah L. Jacobs, “Gift Tax Returns: What You Need to Know”, Forbes online (April 9, 2014) quoting attorney Carol A. Harrington as saying of gifts from joint accounts, “the person who writes the check is considered to be making the gift”.

<sup>7</sup> Diana S.C. Zeydel, “Gift-Splitting: A Boondoggle or a Bad Idea? A Comprehensive Look at the Rules”, Journal of Taxation (June 2007).

spouse who contributed to the joint account or the spouse who signed the check. In this case a return should be filed to elect gift-splitting in order to clarify the intent, and the spouse who signed the check drawn on the joint account should be listed as the donor spouse.

- *Intent to Make Only One Spouse a Donor.* On the other hand, if the intent is to have Spouse A be the sole donor of a gift because the gifted amounts will be in trust for the benefit of Spouse B and others, don't rely on the fact that Spouse A signed the check or is the sole contributor to the joint account, because the Service could treat the gift as being made half by Spouse A and half by Spouse B even though no gift-splitting election was made.
  - Ideally, Spouse A will make the gift from an account titled solely in Spouse A's name.
  - If that is not possible, have the spouses sign a Transmutation or Marital Property Agreement whereby the spouses agree that 50% of the property in the joint account is the separate property of each of them, and any gift of less than 50% of the account value by one spouse is a gift from the separate property of that spouse alone.
  - Alternatively (or additionally), file a gift tax return showing Spouse A as the donor of 100% of the gift.

#### **4. Joint and Several Liability**

- Pursuant to Section 2513(d) of the Code and Section 25.2513-4 of the Gift Tax Regulations, when spouses elect to gift-split, the entire gift tax liability of each spouse for that tax year is joint and several.
  - In CCA 200205027, the IRS held that although the gift tax liability was joint and several, fraud on the part of the donor spouse could not cause the statute of limitations to remain open with respect to the 709 filed by the non-donor spouse.

#### **5. Allocation of GST tax exemption**

- 2652(a)(2) of the Code. If an election to gift-split is made under Section 2513 of the Code, then such gift shall also be treated as if made one-half by each spouse for purposes of the GST tax.
- PLR 200422051 and Section 26.2652-1(a)(4) of the Generation-Skipping Transfer Tax Regulations. If A transferred property to a trust for the benefit of his wife, B, during her life and for the benefit of a third party following her death, and A and B want to elect to split the gift of the remainder interest (assuming it was ascertainable and severable from the wife's interest in the trust), the spouses



would each allocate GST tax exemption in amount equal to one-half of the value of the property transferred to the trust. Although the spouses may not split the gift attributable to the interest transferred to the non-donor spouse, Section 26.2652-1(a)(4) of the Regulations provides that the non-donor spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the non-donor spouse is actually deemed to have transferred under Section 2513 of the Code.

- GST tax exemption allocation when split-gift subject to an ETIP. If a gift is made subject to an estate tax inclusion period (“ETIP”) and such gift is split by the donor spouse and non-donor spouse pursuant to Section 2513 of the Code, no allocation of GST tax exemption is made at the time the gift is reported. As discussed in a later section, the GST tax exemption will be allocated at the close of the ETIP. If the non-donor spouse dies prior to the close of the ETIP, such spouse’s executor may allocate GST tax exemption to such transfer up to the amount of which the non-donor spouse is treated as the transferor. The allocation will not be effective until the close of the ETIP. Treas. Reg. Section 26.2632-1(c)(5), Example 3.
  - Thus, if the non-donor spouse dies prior to the close of the ETIP, the donor spouse will either have to file a Notice of Allocation to allocate GST tax exemption equal to the difference between 50% of the trust value at the time of non-donor spouse’s death and 50% of the trust value at the time of the close of the ETIP, or the Trust will have an inclusion ratio between zero and one.
  - If gift-splitting spouses divorce during the ETIP period, presumably the non-donor spouse will still be responsible for allocating GST tax exemption at the close of the ETIP period because the gift-splitting election is irrevocable.

## **6. Impact on Three-Year Clawback Rule**

- Section 2035. This Section provides that if a decedent made a transfer (by trust or otherwise) of an interest in any property, or relinquished a power with respect to any property, during the 3-year period ending on the date of the decedent’s death, and the value of such property (or any interest therein) would have been included in the decedent’s gross estate under Sections 2036, 2037, 2038 or 2042 of the Code if such transferred interest or relinquished power had been retained by the decedent on the date of his death, the value of the gross estate shall include the value of any property (or interest therein) which would have been so included. Section 2035(b) provides that the amount of any gift tax paid by the decedent or his estate on any gift made by the decedent or his spouse, during the 3-year period ending on the date of decedent’s death, shall also be included in the decedent’s gross estate.

- Lifetime Disadvantage to Non-Donor Spouse. If the donor spouse dies and the full value of the split gift is included in the donor spouse's gross estate under the three-year rule of Section 2035, the non-donor spouse must continue to include his or her half of the taxable split gift when computing any future gift tax liability. When the non-donor spouse dies, the taxable split gift will not be included in adjusted taxable gifts when computing his or her tax liability.
  - See Revenue Rulings 81-85, 1981-1 C.B. 452 and 82-198, 1982-2 C.B. 206.
- Transfers to QPRTs/GRATs/GRITs. Gift-splitting should not be elected when one spouse gifts assets to a QPRT, GRAT or GRIT. If the donor spouse dies during the term of the trust, the entire value of the assets gifted will be included in the gross estate of the donor spouse and the non-donor spouse will receive no credit for such inclusion upon his or her death. The result is that the gift tax exemption of the non-donor spouse could be wasted. In the case of a gift to a "zeroed out" GRAT, it shouldn't make a difference whether gift-splitting is elected.

## 7. No Estate Inclusion for Consenting Spouse

- A split gift is not deemed to have created in the non-donor spouse an interest in the property transferred that would make any part of such property includable in the gross estate of the consenting spouse.<sup>8</sup> The gifted property is "considered as made one-half by" the non-donor spouse for gift tax purposes, but the non-donor spouse is not treated as the transferor of the property for estate tax purposes. This rule has been supported in multiple contexts:
  - The application of Section 2035 to include split gifts in only the donor spouse's estate, as discussed above.
  - If the non-donor spouse is the custodian of property in a UTMA account, the UTMA account is not included in the non-donor spouse's estate. See Rev. Rul. 74-556, 1974 C.B. 300.

## III. VALUATION DISCOUNTS AND ADEQUATE DISCLOSURE REQUIREMENTS

### A. Reporting Valuation Discounts on Schedule A

The taxpayer must indicate in question A, located at the top of Schedule A, whether the value of any gift reported on Schedule A reflects a discount of any kind. If so, the taxpayer must attach an explanation giving the basis for taking such discounts and showing the amount of the discounts taken. Valuation discounts include but are not limited to discounts for lack of marketability, a minority interest, a fractional interest in real estate, blockage or market absorption.

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<sup>8</sup> Revenue Ruling 54-246.

## **B. Adequate Disclosure Rules of Section 6501**

### **1. Statute of Limitations for Gift Tax Returns**

- Section 6501(a) of the Code provides that the statute of limitations for assessment of tax is generally three years from the time the tax return is filed.
  - If a return is filed before April 15<sup>th</sup>, it is treated as having been filed on April 15<sup>th</sup> (or the due date of the return that year, if different) for purposes of determining the end of the statute of limitations period.
  - If the return is filed late, the three-year period begins to run from the date the return is filed.
- 6501(c) provides exceptions to such rule, such as filing a false return, fraud and, in the case of 709s, where a gift is not adequately disclosed in a manner adequate to apprise the Secretary of the nature of such item. In those instances, a proceeding may be brought by the IRS to challenge the inadequately disclosed gift at any time.
- Under Section 6501(e)(2) of the Code, if the taxpayer omits from the total amount of gifts for the year an amount in excess of 25% of the gifts reported in the return, the statute of limitations as provided in Section 6501(a) of the Code is increased to six years.
  - See CCA 200221010 for an example of where the IRS applied Section 6501(e)(2).
- Value Finally Determined for Gift and Estate Tax Purposes. If the statute of limitations period has run, the value of the gift is deemed to be finally determined.
  - **Section 2504(c)**. Section 2504(c) provides that if the statute of limitations has expired under Section 6501, prior gifts are deemed to be finally determined for purposes of calculating gift tax in future years.
  - **Section 2001(f)(2)**. This Section provides that if the gifted value is not contested by the IRS within the applicable statute of limitations under Section 6501, the value is deemed finally determined for purposes of calculating the estate tax.

### **2. Shortening the Statute of Limitations During Estate Administration**

- Estate Tax Return Closing Letter. If a taxpayer makes a taxable gift in the year of or the year before death and an estate tax return is subsequently filed, the estate may receive an estate tax return closing letter before the statute of limitations period has run on the gift tax return. The closing letter can give the estate some comfort that the Form 709 was accepted as filed, but it is not dispositive.
  - Presumably, if all of the gift tax returns were attached with the estate tax return, the gift tax returns would have been reviewed by the IRS Estate Tax Attorney at the same time as the Form 706. Given that any change to the

Form 709 on audit would likely impact the Form 706, it is hard to imagine that a Closing Letter for the estate tax return would be issued if an issue had been discovered with a gift tax return.

- Note that the IRS has announced that, for estate tax returns filed on or after June 1, 2015, estate tax closing letters will be issued only upon request by the taxpayer.
- Request for Prompt Assessment. The statute of limitations period can be shortened if the executor files a “request for prompt assessment” under Section 6501(d). The IRS has 18 months from the time the request is filed to assess any tax or begin any proceeding on the gift tax return.
  - The executor can also file a “request for discharge of executor from personal liability for a decedent’s income and gift taxes” under Section 6905(a). The Service has 9 months after receipt of the request to notify the executor of the amount of any taxes. After that point, if a deficiency is claimed, the executor will not be held personally liable.

### **3. Special Disclosure Rules for Section 2701 and 2702 Transfers**

- Transfers to qualified personal residence trusts (QPRTs), grantor retained annuity trusts (GRATs), a partnership freeze and other planning vehicles under Section 2701 or 2702 of the Code are subject to special disclosure rules set forth under Treas. Reg. §301.6501(c)-1(e). To commence the 3-year statute of limitations, the following must be disclosed:
  - A description of the transaction, including a description of transferred and retained interests and the method (or methods) used to value each.
  - The identity of, and relationship between, the transferor, transferee, all other persons participating in the transaction and all parties related to the transferor holding an equity interest in any entity involved in the transaction; and
  - A detailed description (including all actuarial factors and discount rates used) of the method used to determine the amount of the gift arising from the transfer (or taxable event), including, in the case of an equity interest that is not actively traded, the financial and other data used in determining value.
    - Financial data should generally include balance sheets and statements of net earnings, operating results, and dividends paid for each of the 5 years immediately before the valuation date.
    - **Exhibit B** includes an attachment complying with the adequate disclosure rules for a gift to a QPRT.

#### 4. All Other Gifts and the Adequate Disclosure Rules

- The Taxpayer Relief Act of 1997 amended the regulations under Section 6501 of the Code such that all transfers, not just those valued under Sections 2701 and 2702 of the Code, must be adequately disclosed on a Form 709 in order to commence the statute of limitations. Treas. Reg. 301.6501(c)-1(f) provides that the following information must be reported in order to adequately disclose a gift:
  - i. A description of the transferred property and any consideration received by the transferor;
  - ii. The identity of, and relationship between, the transferor and each transferee;
  - iii. If the property is transferred in trust, the trust's tax identification number and a brief description of the terms of the trust, or in lieu of a brief description of the trust terms, a copy of the trust instrument.
  - iv. Unless a qualified appraisal is attached, there must also be a detailed description of the method used to determine the fair market value of property transferred, including any financial data (for example, balance sheets, etc. with explanations of any adjustments) that were utilized in determining the value of the interest, any restrictions on the transferred property that were considered in determining the fair market value of the property, and a description of any discounts, such as discounts for blockage, minority or fractional interests, and lack of marketability, claimed in valuing the property.
    - *Actively Traded Stock.* In the case of a transfer of an interest that is actively traded on an established exchange, such as the New York Stock Exchange, the American Stock Exchange, the NASDAQ National Market, or a regional exchange in which quotations are published on a daily basis, including recognized foreign exchanges, recitation of the exchange where the interest is listed, the CUSIP number of the security, and the mean between the highest and lowest quoted selling prices on the applicable valuation date will satisfy all of the adequate disclosure requirements.
    - *Interests in Privately Traded Businesses.* In the case of the transfer of an interest in an entity (for example, a corporation or partnership) that is not actively traded, a description must be provided of any discount claimed in valuing the interests in the entity or any assets owned by such entity.
      - *Show 100% NAV of entity.* If the value of the entity or of the interests in the entity is properly determined based on the net value of the assets held by the entity, a statement

must be provided regarding the fair market value of 100% of the entity (determined without regard to any discounts in valuing the entity or any assets owned by the entity), the *pro rata* portion of the entity subject to the transfer, and the fair market value of the transferred interest as reported on the 709.

- If 100% of the value of the entity is not disclosed, the taxpayer bears the burden of demonstrating that the fair market value of the entity is properly determined by a method other than a method based on the net value of the assets held by the entity.
- If the entity that is the subject of the transfer owns an interest in another non-actively traded entity (either directly or through ownership of an entity), the information required herein must be provided for each entity if the information is relevant and material in determining the value of the interest.
  - Notably, the listing of financial data required for “all other gifts” (non-2701 or 2702 transfers) does not specifically requires 5 years of data.
- v. Finally, there must also be a statement describing any position taken that is contrary to any proposed, temporary or final Treasury Regulations or revenue rulings published at the time of the transfer.
- In lieu of all of the information required by Treas. Reg. 301.6501(c)-1(f)(2)(iv), the taxpayer may submit a qualified appraisal showing the value of the transferred interest. The qualified appraisal is discussed below.
- **Exhibit C** includes a Notice of Adequate Disclosure Statement reporting a gift of an LLC interest with a discounted value.

## 5. Adequate Disclosure of Non-Gift Transactions

Every non-gift transaction between family members also require adequate disclosure to avoid an IRS challenge after the limitations period has run. These transactions are divided into two groups: (1) ordinary course of business transfers and (2) all other completed transfers.

- Ordinary Course of Business Transfers. Completed transfers to members of the transferor’s family that are made in the ordinary course of operating a business are deemed to be adequately disclosed under Treas. Reg. 301.6501(c)-1(f)(2) if the transfer is properly reported by all parties for income tax purposes. In that event, the non-gift transaction does not need to be reported on a gift tax return.

- **Example:** A salary paid to a family member employed in a family–owned business will be treated as adequately disclosed for gift tax purposes if the item is properly reported by the business and the family member on their income tax returns.
- A member of the transferor’s family is defined in Section 2032A(e)(2) of the Code and includes a parent, grandparent, spouse, descendant, step-descendants, siblings, nieces and nephews and the spouses of any of those people (except spouses of ancestors).
  - This definition is much more broad than the definition of people who are related under Section 672(c) or for purposes of Sections 2701 and 2702
- All Other Transfers Between Family Members. Any other transfer between family members that is reported, in its entirety, as not constituting a transfer by gift will be considered adequately disclosed if the following information is attached to a Form 709:
  - A description of the transferred property and any consideration received by the transferor;
  - The identity of, and relationship between, the transferor and each transferee;
  - If the property is transferred in trust, the trust’s tax identification number and a brief description of the terms of the trust, or in lieu of a brief description of the trust terms, a copy of the trust instrument;
  - Finally, there must also be a statement describing any position taken that is contrary to any proposed, temporary or final Treasury Regulations or revenue rulings published at the time of the transfer; and
  - An explanation of why the transfer is not a transfer by gift.
- Notably, the valuation requirement is missing from this list of required items, but perhaps it is implied by the last requirement to show adequate consideration.

## 6. Qualified Appraisals

The requirements in the Regulations for explaining the methodology used to value an interest in a closely held business are cumbersome, and they are subjective. Whether the adequate disclosure rules have been met may be in the eye of the beholder. Thankfully, the Regulations provide a safe harbor. The adequate disclosure rules of Treas. Reg. 301.6501(c)-1(f)(2)(iv) will be considered satisfied if the donor submits a qualified appraisal valuing the transferred interest.

- Qualified Appraiser. A qualified appraisal starts with a qualified appraiser who meets the following requirements:

- The appraiser is an individual who holds himself or herself out to the public as an appraiser or performs appraisals on a regular basis;
  - Because of the appraiser's qualifications, as described in a section of the appraisal that details the appraiser's background, experience, education, and membership, if any, in professional appraisal associations, the appraiser is qualified to make appraisals of the type of property being valued; and
  - The appraiser is not the donor or the donee of the property or a member of the family of the donor or donee, as defined in Section 2032A(e)(2), or any person employed by the donor, the donee, or a member of the family of either.
    - **TIP:** The appraiser should not be the donor's tax return preparer or the auditor of the company being transferred.
- Qualified Appraisal. To meet the safe harbor rules, the appraisal must contain the following information:
- The date of the transfer, the date on which the transferred property was appraised, and the purpose of the appraisal;
  - A description of the property;
  - A description of the assumptions, hypothetical conditions, and any limiting conditions and restrictions on the transferred property that affect the analyses, opinions, and conclusions;
  - The information considered in determining the appraised value, including in the case of an ownership interest in a business, all financial data that was used in determining the value of the interest that is sufficiently detailed so that another person can replicate the process and arrive at the appraised value;
  - The appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions;
  - The valuation method utilized, the rationale for the valuation method, and the procedure used in determining the fair market value of the asset transferred; and
  - The specific basis for the valuation, such as specific comparable sales or transactions, sales of similar interests, asset-based approaches, merger-acquisition transactions, etc.
- **TIP:** Ask the appraiser to include a summary of the adequate disclosure requirements and indicate the location in the report where each requirement is satisfied.



## IV. GIFTS TO QUALIFIED TUITION PROGRAMS

### A. Types of Plans

Qualified tuition programs (“QTPs”) are offered by states, universities and colleges as an income-tax preferred way to save for qualified educational expenses at a post-secondary educational institution. QTPs come in two basic formats: pre-paid tuition plans and higher education savings accounts. Contributions to a QTP are invested and managed by private financial institutions on behalf of the student-beneficiary. Because the contributions are not made directly to the education institution for tuition, they do not qualify for the gift tax tuition exclusion under Section 2503(e) and must be reported on a gift tax return to the extent the contributions exceed \$14,000 for any one beneficiary.

#### 1. Pre-Paid Tuition Plan

Prepaid plans allow one to purchase tuition credits at today's rates to be used in the future. Therefore, performance is based upon tuition inflation. Prepaid plans may be administered by states or by higher education institutions.

#### 2. Higher Education Savings Accounts

Usually referred to as “529 Plans”, savings plans are different in that all growth is based upon market performance of the underlying investments, which typically consist of mutual funds. Savings plans may be administered by states only.

### B. Reporting Gifts to QTPs on Schedule A

- 5-Year Election. If a taxpayer gifted cash to a QTP under Section 529 of the Code in excess of the annual exclusion amount (\$14,000 in 2015 and 2016) on behalf of any individual beneficiary, he or she may elect to treat up to five times the annual exclusion amount (\$70,000 in 2015 and 2016) of such contribution as made ratably over a 5-year period, beginning in the year of the contribution. If the taxpayer elects to do so, he or she must check the box in question B, located at the top of Schedule A.
  - If the amount contributed is more than \$14,000 and less than \$70,000 and the 5-year election is made, then divide the amount contributed by 5 and report the use of 20% in year 1.
  - If the donor is also making gifts to a life insurance trust of which the QTP beneficiary is also a *Crummey* withdrawal right beneficiary, the donor should take these annual gifts into consideration in planning how much to contribute to the 529 plan.
    - For example, grandfather makes annual gifts to an ILIT of \$18,000 to pay insurance premiums. His one child and two grandchildren each have a right to withdraw \$6,000. He has \$8,000 of annual

exclusion amount left per grandchild, so grandfather can make a gift of \$40,000 to 529 plans for his grandchildren in one year and elect to treat the contribution as made ratably over a 5-year period. After filing a gift tax return in year 1, gift tax returns should not be needed in years 2 through 5 if no other gifts to the grandchildren are made.

- Reporting the Gift. For each of the 5 years, report in Part 1 or 2 of Schedule A one-fifth (20%) of the amount for which you made the election. In column E, list the date of the gift as the calendar year for which you are deemed to have made the gift (that is, the year of the current Form 709 you are filing). Do not list the actual year of contribution for subsequent years.
  - However, if in any of the last 4 years of the election, you did not make any other gifts that would require you to file a Form 709, you do not need to file Form 709 to report that year's portion of the election amount.
  - The Instructions to Form 709 state that you should also attach an explanation that includes the following.
    - The total amount contributed per individual beneficiary.
    - The amount for which the election is being made.
    - The name of the individual for whom the contribution was made.

It seems to the author that if all of this information is included in Part 1 or 2, the additional attachment should not be necessary.

- *Grandchild as Beneficiary*. The portion of a contribution to a 529 account that qualifies for annual exclusion treatment (either normally, or with the 5-year election) also satisfies the requirements of Code Section 2642(c)(2) and, likewise, is excludible for purposes of the generation-skipping transfer tax.
  - The Instructions to Form 709 indicate that all 5-year election gifts should be reported on Part 1 of Schedule A, but the examples given are for a contribution to a QTP for a son and a niece, not a grandchild.
  - This author believes the contribution to a QTP for grandchild should be reported on Part 2 of Schedule A. The Proposed Treasury Regulations for Section 529 clarify that a contribution to a QTP for a skip person in excess of the annual exclusion amount (or in excess of five times the annual exclusion amount if the 5-year election is made) will be a direct skip and subject to GST tax.
- See **Exhibit A** for an example of a 5-year election made with respect to a QTP contribution for the benefit of a grandchild.

- Gift-Splitting and the 5-year Election. The Instructions to Form 709 state: “If you are electing gift splitting, apply the gift-splitting rules before applying the QTP rules. Each spouse would then decide individually whether to make this QTP election.” The IRS position that the split gift election comes first and is made only in Year 1 has some interesting consequences.
  - One spouse could elect 5-year averaging and the other could not.
  - The portion of the gift attributable to one spouse in any future year would itself be split if a gift-splitting election was made for that year. So, if both spouses elect five-year averaging in Year 1 and then elect to split gifts again in Year 2, the portion of the gift reported in Year 2 effectively will be split twice and reported in four places on the Form 709 (husband’s gifts, gifts made by spouse on husband’s return, wife’s gifts and gifts made by spouse on wife’s return).
  - If the couple divorced and one spouse remarried during the five-year period, the new husband or wife could absorb some of the gift made by the first husband or wife if gift splitting is elected by the newlyweds.

## V. SCHEDULE A OF FORM 709

In 2003, the 709 was changed so that only gifts subject to gift tax, and having no chance of being subject to GST tax at a later date, are reported in Part 1 of Schedule A. Prior to 2003, indirect skips (such as a transfer to a GST trust) were also reported on Part 1. Unfortunately, some tax return preparers are still more than a decade behind the times, often resulting in negative GST consequences for taxpayers.

### A. Schedule A, Part 1 – Gifts Subject Only to Gift Tax

#### 1. Anatomy of the Return

- Ordering the Gifts. Gifts reported on Part 1 should be grouped in four categories, and then listed in chronological order (earliest to latest) within each category:
  - Gifts made to your spouse.
  - Gifts made to third parties that are to be split with your spouse.
  - Charitable gifts (if you are not splitting gifts with your spouse).
  - Other gifts.
- If a transfer results in gifts to two or more individuals (such as a life estate to one with remainder to the other), list the gift to each separately.
- A separate item number should be assigned to each transfer listed on Schedule A.

- Column B. Gifts must be reported in chronological order. Working from the earliest gift in the year to the latest, the taxpayer must identify the donee's name and address, the relationship of the donee to the donor and a description of the gift. If a security was gifted, such as a stock or bond, the taxpayer must provide the CUSIP number for such security.
- Column C. Column C is not applicable in Part 1 of Schedule A.
- Column D. In column D, the taxpayer includes his or her basis in the gifted property.
  - Generally, this means cost plus improvements, less applicable depreciation, amortization, and depletion.
  - **Tip:** It is very helpful to share the basis information with the beneficiary of the asset, as this will be the beneficiary's basis in the asset as well.
- Column E. The taxpayer must disclose the date the gift was made to the donee. If gifts were made to a donee on a monthly basis, it is permissible to state "Various" as the date of the gift.
- Column F. The taxpayer must disclose the fair market value of the gifted property as of the date of the gift. If a valuation discount was taken, the discounted value is reflected in column F and the taxpayer must indicate that a valuation discount was taken, as discussed above, by answering yes to question A, located at the top of Schedule A. The taxpayer should disclose the requisite information and attach the appropriate documentation to the Form 709, as provided for in Section 6501 of the Code.
- Column G. The taxpayer discloses one-half of the value reported in column F in cases in which the taxpayer has elected to split gifts with his or her spouse under Section 2513 of the Code.
  - If the taxpayer is filing a 709 to report gifts of his or her spouse for which a gift-splitting election was made, and the taxpayer did not make any gifts of his or her own during that year, there will be no transfers listed in the top half of Part 1; the bottom half of Part 1 would include the full value of the taxpayer's spouse's gift in Column F, and one-half the value in Column G.
- Column H. In column H, the taxpayer indicates the net transfer. If the taxpayer elects to split his gifts with his spouse under Section 2513 of the Code, the gift is reduced by one-half of his gifts (this one-half is reported in Column G, as described above).

## 2. Do Trusts Have a Place on Part 1?

Most traditional trusts will be reported on Part 3 of Schedule A. A trust will only be reported on Part 1 if it is (1) a *non-skip person* that is (2) not a *GST Trust*. Following is a sampling of trusts that would be reported on Part 1:

- 2503(c) Trust for a Non-Skip Person. A 2503(c) trust (discussed in the next section) created for the grantor's child, niece, nephew or other non-skip person is properly reported on Part 1.
- General Power of Appointment Trusts for Non-Skip Persons. A trust for the lifetime benefit of one or more children or other non-skip persons that will either be included in the non-skip person's estate through a general power of appointment or that will be left to charity at the death of all non-skip persons.
  - An example would be a "family support trust" that benefits siblings, nieces and nephews until the last of them dies, and then passes to the family foundation.
- ETIP Trusts. The original transfer to a trust subject to the estate tax inclusion period ("ETIP") rules of 2642(f) should be reported on Part 1 regardless of whether the beneficiaries are skip persons or not. Any direct or indirect skip is deemed to be made at the close of the ETIP period. In the gift tax return filed for the year in which the ETIP closes, the then-value of the trust will be reported on Part 1, Part 2 or Part 3 of Schedule A, as appropriate.

### B. Schedule A, Part 2 – Direct Skips

All gifts that are subject to both GST tax and gift tax (direct skips) are reported on Part 2 of Schedule A, in chronological order.

#### 1. Direct Skip Defined.

A direct skip is any transfer subject to estate or gift tax of an interest in property to a skip person, which may be an individual or certain trusts. I.R.C. §2612(c).

- An individual is a skip person if he or she is two or more generations below the transferor's generation. I.R.C. §2613(a)(1).
- A trust is a skip person if (1) all interests in the trust are held by skip persons, or (2) no person holds an interest in the trust and at no time after the transfer may a distribution be made to a person who is not a skip person. I.R.C. §2613(a)(2).

#### 2. Election Out of Automatic Allocation

Section 2632(b) of the Code provides that an individual's GST tax exemption will be automatically allocated to direct skips so that the inclusion ratio of such property is zero.

- Electing out of automatic allocation for a direct skip gift will necessitate the payment of GST tax.
- To opt-out of the automatic allocation of GST tax exemption to direct skips, an “X” will be placed in Column C of Part 2 of Schedule A. An explanation must be attached to the 709 clearly describing the transaction and the extent to which the automatic allocation of GST tax exemption should not apply.

### 3. What Gets Reported

- Outright Gifts. Gifts of cash, stock or other property to a grandchild or other skip person.
- Contributions to QTPs. A contribution to a QTP for a grandchild or other skip person.
- Skip Person Trusts. If a trust is a skip person, the GST occurs when the trust is established and funded (i.e., it is a direct skip). Therefore, there will be no taxable distributions when distributions are made to trust beneficiaries, and there will be no taxable termination when the trust terminates.

### 4. Skip Person Trusts

If a gift is made to a Skip Person Trust that exceeds the annual exclusion amount (or if the trust does not qualify for the annual exclusion for GST purposes, then GST tax is due at the funding of the trust unless GST exemption is available to be allocated.

- 2503(c) Trust for Grandchildren. If a taxpayer creates a 2503(c) trust for a grandchild or other skip person, that trust should be reported on Part 2. Features of a 2503(c) trust:
  - A 2503(c) trust has one beneficiary who is under age 21 at the time of creation. The trust must provide that the trustee may pay net income and principal to or for the benefit of the minor until age 21.
  - At the beneficiary’s 21<sup>st</sup> birthday, the trust must either be distributed to the beneficiary, or the beneficiary may be given a limited withdrawal window, such as 30 days, to compel distribution. If the right is not exercised, the trust may continue to a later age. Rev. Rul. 74-43.
  - If the beneficiary does not exercise the right to compel distribution and the trust continues after the beneficiary’s 21<sup>st</sup> birthday, the beneficiary becomes the grantor of the trust for income tax purposes after the 21<sup>st</sup> birthday.
  - At the beneficiary’s death, the trust must provide the beneficiary with a general power of appointment or require distribution to the beneficiary’s estate.

- An annual exclusion for both gift and GST tax purposes can be taken for any contribution to a 2503(c) trust up to the beneficiary's 21<sup>st</sup> birthday, even when the beneficiary does not have a *Crummey* withdrawal right.
- 2642(c) Trust for Grandchildren.
  - A 2642(c) trust is similar to a 2503(c) trust in that it must have one individual beneficiary. This beneficiary is usually a skip person as to the grantor, so a grandparent typically creates a 2642(c) trust to make annual exclusion gifts to a grandchild.
  - Similarly, the 2642(c) trust must be distributed to the beneficiary's estate or give the beneficiary a general power of appointment.
  - Unlike a 2503(c) trust, there is no requirement that the beneficiary receive the trust corpus or a right to compel distribution of the corpus at age 21. The trust may continue for as long as the beneficiary lives. As a result, a 2642(c) trust offers much better creditor protection than a 2503(c) trust.
  - In order to receive annual exclusion treatment for gifts to the 2642(c) trust for both gift and GST purposes, the beneficiary must be given a *Crummey* right to withdraw the annual exclusion amount.
- Practice Pointer for Gifts to Skip Person Trusts. Most people who create a skip person trust do so with the intent of contributing only the annual exclusion amount to the trust each year. If so, the taxpayer should not opt out of automatic allocation of the GST exemption. This way, if there is any challenge to or mistake in valuation of the property contributed to the trust, the taxpayer would not owe GST tax, interest and penalties.

### **C. Schedule A, Part 3 – Indirect Skips**

Many gifts made to trusts are subject only to gift tax at the time of the transfer but later may be subject to GST tax. The GST tax could apply either at the time of a distribution from the trust, at the termination of the trust, or both.

List in chronological order in Part 3 those gifts that are indirect skips as defined in section 2632(c) or may later be subject to GST tax. This includes indirect skips for which any 2632(c) election will be made.

#### **1. Definitions.**

- Indirect Skip. An indirect skip is any transfer of property (that is not a direct skip) subject to the gift tax that is made to a "GST Trust." I.R.C. §2632(c)(3)(A).
- GST Trust. A GST Trust is any trust that could have a generation-skipping transfer with respect to the transferor, subject to certain exceptions. I.R.C. §2632(c)(3)(B).

## 2. 2632(c) Elections

For transfers made in 2001 or later, Section 2632(c) of the Code provides that an individual's GST tax exemption will be automatically allocated to transfers to GST trusts. Section 2632(c)(5) sets forth the three elections a taxpayer can make to alter this result:

- One-year Opt Out. A taxpayer may elect to opt out of automatic allocation for any single indirect skip transfer.
- Permanently Opting Out. A taxpayer may elect to opt out of automatic allocation for any and all transfers made by such individual for a particular trust. This effectively sets the GST inclusion ratio of the trust at one (1), assuming there are no other transferors to the trust.
  - A taxpayer may wish to opt-out of automatic allocation if he or she is the grantor of an irrevocable life insurance trust and such trust owns a term life insurance policy. If the policy expired while in the trust and GST tax exemption was allocated to such trust, the taxpayer's GST exemption would be wasted. In this case, a permanent opt-out election should be made in the year the trust was created and initially funded.
  - The taxpayer may also want to opt out for transfers to any other trust that is intended to be for the primary benefit of children or other non-skip persons and that terminates during the child's lifetime (at a certain age or ages, for example). Even though grandchildren or skip persons could benefit if the child died prematurely, if the odds are that the property will not ultimately pass to skip persons, then consider opting out of automatic allocation.
  - If a taxpayer makes a transfer subject to the ETIP rules, consider making a permanent election out of automatic allocation for transfers to the ETIP trust. This way, an affirmative decision whether to allocate GST can be made when the ETIP closes, rather than allowing GST exemption to be automatically allocated at the close of the ETIP.
- Permanently Opting In. A taxpayer may elect to treat any trust as a GST trust to ensure that automatic allocation rules will apply to all current and future transfers to that particular trust.
  - There are several exceptions to the definition of GST trust, and many of them are not intuitive. If there is any question whether a trust is a GST trust or not, the best course is to elect to treat the trust as a GST trust.
  - This is especially true if the taxpayer wants to ensure that automatic allocation rules will apply to transfers to the trust.



### 3. Transfers to Which the 2632(c) Elections May Be Made

With respect to electing out of automatic allocation of the GST exemption to indirect skips, the Regulations permit the election to apply for the following transfers:

- One or more prior-year transfers subject to Section 2642(f) of the Code [regarding estate tax inclusion periods (“ETIPs”)] made by the transferor to a specified trust or trusts;
- One or more (or all) current-year transfers made by the transferor to a specified trust or trusts;
- One or more (or all) future transfers made by the transferor to a specified trust or trusts;
- All future transfers made by the transferor to all trusts (whether or not in existence at the time of the election out); or
- Any combination of the above. Treas. Reg. §26.2632-1(b)(2)(iii)(A).

### 4. Manner of Making a 2632(c) Election

- How to Opt Out. Any 2632(c) election can be made on the Form 709 by marking an “X” in column C of Part 3 of Schedule A and attaching an explanation describing the desired election and the transfers and trusts to which it will apply.
- When to Opt Out. The deadline for making any 2632(c) election is the due date (including extensions) of the Form 709 for the year the original transfer occurs. Treas. Reg. 26.2632-1(a).
- Election-Out Statement. The taxpayer must attach an “election out statement” to a timely filed 709 (whether or not a 709 is otherwise required). The election out statement must:
  - Identify the trust by its name and tax ID number (unless such trust is not in existence at the time of the election out);
  - Identify the transfers to which the election out shall apply;
  - State that the taxpayer is electing out of the automatic allocation rules with respect to the transfer(s) described therein.
  - Identify any prior year transfer subject to Section 2642(f) of the Code (ETIPs). Treas. Reg. §26.2632-1(b)(2)(iii)(B).
  - In addition, unless the election out is made for all transfers made to the trust in the current year and/or in all future years, the current-year transfers and/or future transfers to which the election out is to apply must be specifically described or otherwise identified in the election out statement.

- Election to Treat a Trust as a GST Trust. A taxpayer may elect to treat a trust, which is not a GST trust or to which there is uncertainty as to GST trust status, as a GST trust (regardless of whether such trust is subject to an ETIP), so that the automatic allocation rules of Section 2632(c) will apply to current transfers, selected future transfers, all future transfers made to such trust, or any combination thereof. Treas. Reg. §26.2632-1(b)(3)(i)(A-D).
  - The taxpayer must attach a statement, referred to in the Regulations as a “GST Trust Election Statement,” to a timely filed 709 for the year of the transfer (whether or not a 709 is otherwise required to be filed for such year) identifying the trust, describing the transfer, and specifically providing that the taxpayer is electing to have the trust treated as a GST trust.
  - This election may be terminated by filing a timely filed 709 for the year in which the taxpayer wants the election to terminate. §26.2632-1(b)(3)(iv). The taxpayer must attach a statement to the 709 identifying the trust, describing the transfer and providing that the prior election to treat the trust as a GST trust as provided is terminated. *Id.*
- Termination Statement. If a taxpayer wants to terminate an election to not have the automatic allocation rules apply to any transfers made to a specific trust, the termination may be done on a timely filed 709 for the year in which the taxpayer wants the election to terminate (whether or not a 709 is otherwise required to be filed for such year). Treas. Reg. §26.2632-1(b)(2)(iii)(E).
  - *Termination Statement.* A statement, referred to in the Regulations as a “termination statement,” must be attached to the 709 identifying the trust, describing the prior election that is being terminated and specifically providing that such election out is being terminated, and either describe the extent to which the prior election out is being terminated or describe any current-year transfers to which the prior election is not to apply.
  - *Other elections not affected.* A termination of an election out does not affect any transfer, or any other election out, that is not described on the termination statement.
- Reporting Gifts in Subsequent Years to 2632(c) Election Trusts. If an election to permanently opt out of or permanently opt-in to automatic allocation has been made, there is no need to check column C for gifts to the same trust in subsequent years. To avoid any confusion, it is wise to note that the prior election has been made in column B. For example, under the description of the gift and trust in column B, state:
 

“On Taxpayer’s 2012 Form 709, taxpayer made an election under Treas. Reg. 26.2632-1(b)(2)(iii) to have automatic allocation rules not apply for all future transfers to this trust.”

## VI. ISSUES REGARDING CERTAIN GIFTS REPORTED ON SCHEDULE A

### A. *Crummey* Withdrawal Rights

#### 1. Background

- The *Crummey* trust (so named after *Crummey v. Commissioner*, 397 F.2d 82 (9th Cir. 1968), and subsequently accepted by the IRS in Rev. Rul. 73-405) allows contributions to trusts to satisfy the present interest requirement and therefore qualify for annual exclusion gifts.
- The beneficiary's withdrawal power is a general power of appointment, as the beneficiary has a right to appoint the amount eligible for withdrawal to himself or herself.
- Grandchildren as *Crummey* Powerholders. When grandchildren or other skip persons are designated as *Crummey* powerholders, there likely will be a disconnect between the gift tax annual exclusion and the GST tax annual exclusion.
  - The GST tax annual exclusion generally will only apply if the trust is a 2642(c) trust, discussed above.
  - If the trust is not a 2642(c) trust, then the donor's GST tax exemption should be automatically applied to the full value of the donor's contribution to the trust. If this is not the desired result, an election to opt-out of automatic allocation should be made.

#### 2. Reporting Gifts to *Crummey* Trusts.

- Item Number 1, Column B of Schedule A will list the total amount of cash gifted to the trust, the trust name and tax ID number. If the total amount contributed exceeds the *Crummey* withdrawal rights, report that excess amount in Column F of the same item.
- Then, report the gifts to the *Crummey* withdrawal right beneficiaries, with a separate item number for each beneficiary. Example:

Item 1: Cash gift of \$20,000 to the John Doe Insurance Trust, EIN: 11-2345678. A copy of the Trust is attached as Exhibit A. [report a gift of \$6,000 in Column F.]

Notices of the right to withdraw property from the John Doe Insurance Trust were provided to the beneficiaries listed below.

Item 2: Johnny Doe, Jr.

Address

Son

Cash [report a gift of \$14,000 in Column F.]

- See **Exhibit A** for an example of a gift of cash to a *Crummey* trust in excess of the annual exclusion amount.

## **B. Gifts of Partnership or LLC Interests and the Annual Exclusion**

- A return preparer may be subject to penalties under Section 6694 if they take a position on a return without having substantial authority for that position. Substantial authority is determined under Treas. Reg. 1.6662-4(d)(3) and generally means the weight of authority supporting the claimed treatment must be substantial in relation to the weight of authority supporting contrary treatment.

### **1. Annual Exclusion Treatment Questionable**

- When a taxpayer makes a gift of a limited partner or limited liability company member interest to a donee and the donee's interest is subject to certain restrictions under the partnership agreement or operating agreement, the IRS may challenge whether the gifted interest was a present interest. This has an impact on whether the annual exclusion should be taken when the gifted property is a partnership or LLC interest.<sup>9</sup>

### **2. Factors Affecting Present Interest Treatment**

- If the partnership agreement restricts the partners' ability to sell or transfer their interests, annual exclusion gifts may be challenged.
- If the partnership agreement gives the partners the right to transfer their interests, even if subject to a right of first refusal by the other partners, annual exclusion gifts are more likely to be accepted.
- Another factor will be the extent to which distributions of net cash flow are restricted, and the history of cash flow distributions made to the partners.
  - If the partners are traditionally receiving healthy net cash flow distributions, the annual exclusion gift is more likely to be allowed.
  - Where distributions are left completely to the general partner or manager's discretion and distributions have not traditionally been made, the annual exclusion gift may be challenged.

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<sup>9</sup> For an extensive discussion of cases and rulings, see Sarah M. Johnson and Hannah W. Mensch, "The Fisher-Price Aftermath: Toying around with Annual Exclusion Gifts of FLP and LLC Interests", ABA Section of Taxation May Meeting (2011).

## C. Formula Clauses and Defined Value Clauses

### 1. Overview

- When a taxpayer gifts or sells an asset that is difficult to value, an adjustment clause is often utilized. The purpose of such a clause is to prevent the imposition of additional gift tax if the IRS later revalues the asset transferred and determines that such value exceeds the value reported on the 709.
- *Commissioner v. Procter*, 142 F.2d 824 (4th Cir. 1944) was the first case to address (and reject) the use of a formula clause.
  - Taxpayer gifted property to his children but added a savings clause stating that if it was finally determined for federal gift tax purposes that any part of the transfer was subject to gift tax, such part would be deemed not to be included in the transfer and would remain the property of the donor.
  - The Court refused to honor the clause because it created a condition subsequent, changing the result of a completed transaction by returning property to the donor, and it was against public policy in that it discouraged collection of tax.

### 2. Cases Permitting Formula Clauses

- In *Estate of Petter v. Commissioner*, T.C. Memo 2009-280, the Tax Court upheld gifts and sales to grantor trusts that were defined by dollar amounts “as finally determined for federal gift tax purposes,” with the excess directed to two charitable community foundations.
  - On appeal, the government did not delve into the “public policy” Procter argument, and the Ninth Circuit affirmed the taxpayer-friendly decision. 653 F.3d 1012 (9th Cir. 2011).
  - A *Petter* type formula has “gift-over” to charity on the back end. “I transfer that number of units having a value equal to my remaining applicable exclusion amount, as finally determined for federal tax purposes to Trust A, remainder to charity B”.
  - Some practitioners use a *Petter* type formula with a zeroed-out gift on the back end, such as a gift to a GRAT or an inter vivos QTIP.
- In *Wandry v. Commissioner*, T.C. Memo 2012-88, the donors, husband and wife, each defined their gifts as follows:

“I hereby assign and transfer as gifts, effective as of January 1, 2004, a sufficient number of my Units as a Member of Norseman Capital, LLC, a Colorado limited liability company, so that the fair market value of such Units for federal gift tax purposes shall be as

follows: [Here each donor listed children and grandchildren with corresponding dollar amounts.]

Although the number of Units gifted is fixed on the date of the gift, that number is based on the fair market value of the gifted Units, which cannot be known on the date of the gift but must be determined after such date based on all relevant information as of that date.

- The Tax Court then compared the Wandrys' gifts with the facts in *Petter* and determined that the Wandrys' gifts complied.
- Unresolved. Following the decision in *Wandry*, the IRS filed an appeal with the 10<sup>th</sup> Circuit but in October 2012 withdrew it without explanation. In the Action on Decision, the IRS reiterated its long-held position that "the final determination of value for federal gift tax purposes is an occurrence beyond the taxpayers' control." A gift is complete for federal tax purposes when the donor parts with dominion and control and any power to change its disposition, the IRS said, citing Regs. Sec. 25.2511-2(b). IRB 2012-46 (November 13, 2012).

### 3. Reporting on Schedule A

- If you use a formula clause, make sure you file a gift tax return that reports the gift using the formula. Following is an example of a *Wandry*-type formula that would be properly reported (assuming substantial authority exists):

Son, address

That number of units having the value listed in Column "F" of this Schedule A. Based on the appraisal attached as Exhibit \_\_, the taxpayer has allocated X units to recipient, but such number of units will change if the value of a unit changes on audit."

- If charity does receive a gift-over interest, the value will be deductible for income tax purposes. Consider filing a protective claim for a refund on the client's income tax returns, and also on the FLP's partnership tax return.
- If a GRAT or inter-vivos QTIP receives the gift-over interest, be sure to include on the gift tax return either (i) the potential gift to the GRAT and opt out of automatic allocation of GST to the GRAT (consider ETIP period) or (ii) the potential gift to the inter vivos QTIP and make a QTIP election for the trust.

### D. Transfers Using 7520 Rate

This section is not meant to be a comprehensive review of the laws related to Section 7520. Rather, this section will highlight two issues regarding Section 7520 pertaining to 709s.

## 1. Charitable Trusts.

- The remainder interest of a charitable remainder trust and lead interest of a charitable lead trust is valued for gift tax purposes under the actuarial tables of Section 7520 of the Code. The practitioner has a choice of using the rate in effect for the month of the transfer or the rate in effect for either of the two months preceding the transfer. Treas. Reg. §25.7520-2(a)(2).
- Statement attached to 709. In order to use the rate in effect for either of the two months preceding the transfer, the taxpayer must elect to do so as provided for in the Regulations. Accordingly, the taxpayer should attach a statement to the 709 stating that the election is being made. In addition, such statement should describe the interest being valued, provide the valuation date, identify the beneficiaries and the parties whose lives were used to calculate the value of the discount.
  - See Exhibit C for a sample statement.
- Note that if any of the measuring lives are terminally ill, the taxpayer should disclose such fact on the statement and provide an explanation as to how the illness impacted the valuation of the remainder interest. Lastly, a computation of the deduction should be included.
- Time period in which to make the election. The election should be made on the first return on which the taxpayer takes the charitable deduction (income or gift). In addition, the taxpayer may file an amended 709 to make the election, provided that the return is filed within 24 months after the later of the date the original return for the year was filed or the due date for filing the return. Treas. Reg. §25.7520-2(b)(1).
- Revocability of election. The taxpayer may revoke such election by filing an amended return within 24 months after the later of the date the original return was filed or the due date for filing the return. Treas. Reg. §25.7520-2(b)(3).

## 2. Terminally Ill Donors.

- Regulations. Section 25.7520-3(b)(3) of the Gift Tax Regulations provides that the mortality component described in Section 7520 of the Code may not be used to determine the present value of an annuity, income, remainder interest, or reversionary interest if an individual who is a measuring life is terminally ill at the time of the gift.
- Definition of terminally ill. The regulation further provides that the individual who is known to have an incurable illness or other deteriorating physical condition is considered terminally ill if there is at least a 50% probability that the individual will die within one year. Treas. Reg. §25.7520-3(b)(3). If the individual survives for eighteen months or longer after the transfer, that individual shall be

presumed to have not been terminally ill at the date of the transfer unless the contrary is established by clear and convincing evidence. *Id.*

- Applicable rate. When a donor is terminally ill, the rates provided for in the tables under Section 7520 may not be used. *Id.* Instead, a special rate accounting for the donor's actual life expectancy must be calculated. Revenue Ruling 96-3, 1996-1 C.B. 348.

## VII. THE REST OF THE RETURN

### A. Schedule A, Part 4 – Taxable Gift Reconciliation

#### 1. Calculation of Taxable Gifts

- On line 1 of Part 4, the taxpayer must provide the total amount of gifts as provided for in column H of Parts 1 through 3 of Schedule A.
- On line 2, the total amount of gifts which qualifies for the annual exclusion is subtracted from the total amount of gifts subject to gift tax.
  - Always double check this entry to make sure that gifts to one donee of less than the annual exclusion are not treated as a gift of the full annual exclusion amount, and multiple gifts to one donee are not double-counted.
  - If a spouse has a \$5,000 or 5% withdrawal right over gifted assets, you should include this as an annual exclusion gift.
    - A *Crummey* withdrawal right granted to a spouse is a nondeductible terminable interest and does not qualify for the gift tax marital deduction, although it should qualify for the annual gift tax exclusion under Code § 2503(b). Code § 2523(b).
- Line 3 contains the total amount of includible gifts.

#### 2. Deductions

- The taxpayer accounts for any deductions applicable to the includible gifts on lines 4 through 8 of Part 4. For example, gifts which qualify for the gift tax marital deduction (such as *inter vivos* QTIPs, discussed in paragraph 3, below) would be subtracted on line 4.

#### 3. QTIP Marital Deduction

- In general, a taxpayer cannot take the marital deduction for gifts of terminable interests, where someone other than the donee will have an interest in the property following the termination of the donee spouse's interest, unless the interest meets the following requirements:



- Donee spouse is entitled to all income for life;
  - Income is paid at least annually;
  - Donee spouse has a general power of appointment; and
  - No part of the interest is subject to another person's power of appointment.
- If the donee spouse does not have a general power of appointment over the interest, the taxpayer may elect QTIP treatment so that the transfer qualifies for the marital deduction. The QTIP election is made by (1) listing the trust on Schedule A and (2) entering the value of the transferred property on line 4 of Part 4 of Schedule A. Note that, as with a testamentary QTIP trust, a partial QTIP election can be made.

#### **4. Joint and Survivor Annuities**

- Section 2523(f)(6) of the Code provides that in the case of a joint and survivor annuity in which only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die, the donor spouse is treated as electing QTIP treatment, unless he or she elects otherwise.
- Accordingly, if a taxpayer purchased a joint and survivor annuity for a spouse (and only the donor spouse and donee spouse have the right to receive payments before the death of the last spouse to die) and such gift was reported on Schedule A by the donor spouse, the donor spouse could indicate on Line 13 that he or she wishes to opt out of having such annuity automatically treated as QTIP property.

### ***B. Schedule B – Gifts from Prior Periods***

#### **1. Manner of Reporting Prior Gifts**

The taxpayer reports gifts from prior periods on Schedule B.

- In column A, the taxpayer lists the year of the prior gift.
- In column B, the taxpayer lists the IRS office where the 709 was filed.
- In column C, the taxpayer lists the amount of applicable credit used for such gift for gifts made after December 31, 1976.
  - The Form 709 Instructions include a worksheet to help you determine the credit allowable from prior periods that takes into account the use of any available DSUE amount and changes in gift tax rates over the years.
- In column D, the taxpayer lists the amount of specific exemption used for gifts made before January 1, 1977.
- In column E, the taxpayer lists the amount of the taxable gifts for the corresponding year.

- The total amount of taxable gifts from prior periods is then carried over to line 2 of Part 2 on Page 1 of the 709.

## **2. When Prior Gifts Are Unknown**

- If the return preparer is new to representation of the taxpayer, he or she may not have access to prior returns. If it is suspected that gift tax returns were filed, but the information concerning prior gifts cannot be found after a diligent search, the best course of action is to submit to the IRS a Form 4506 (Request for Copy of a Tax Return).
- On a Form 4506, you can request up to 8 prior years' returns on one form, and the cost is \$50.
- If no response has been received from the IRS by the due date of the gift tax return, file the Form 709 and indicate on Schedule B that a Form 4506 has been submitted and the return will be amended if and when prior gift tax return information is obtained.

### ***C. Schedule C – Deceased Spousal Unused Exclusion (DSUE) Amount***

Commonly referred to as “portability”, Section 303 of the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 authorized estates of decedents dying on or after January 1, 2011, to elect to transfer any unused exclusion to the surviving spouse.

The amount received by the surviving spouse is called the deceased spousal unused exclusion (“DSUE”) amount. If the executor of the decedent's estate elects the transfer, or portability, of the DSUE amount, the surviving spouse can apply the DSUE amount received from the estate of his or her last deceased spouse (defined later) against any tax liability arising from subsequent lifetime gifts and transfers at death.

#### **1. Last Deceased Spouse Limitation**

- The last deceased spouse is the most recently deceased person who was married to the surviving spouse at the time of that person's death.
  - The identity of the last deceased spouse is determined as of the day a taxable gift is made and is not impacted by whether the decedent's estate elected portability or whether the last deceased spouse had any DSUE amount available.
  - Remarriage also does not affect the designation of the last deceased spouse and does not prevent the surviving spouse from applying the DSUE amount to taxable transfers.
- When a taxable gift is made, the DSUE amount received from the last deceased spouse is applied before the surviving spouse's basic exclusion amount.

- A surviving spouse who has more than one predeceased spouse is not precluded from using the DSUE amount of each spouse in succession.
- A surviving spouse may not use the sum of DSUE amounts from multiple predeceased spouses at one time nor may the DSUE amount of a predeceased spouse be applied after the death of a subsequent spouse.
- When a surviving spouse applies the DSUE amount to a lifetime gift, the IRS may examine any return of a predeceased spouse whose executor elected portability to verify the allowable DSUE amount.
  - The DSUE may be adjusted or eliminated as a result of the examination; however, the IRS may make an assessment of additional tax on the return of a predeceased spouse only within the applicable limitations period under section 6501.

## 2. Completing Schedule C

Complete Schedule C if the donor is a surviving spouse who received a DSUE amount from one or more predeceased spouses.

- Schedule C requests information on all DSUE amounts received from the donor's last deceased spouse and any previously deceased spouses. Each line in the chart should reflect a different predeceased spouse.
- Part 1 –DSUE Received from the Last Deceased Spouse. In this Part, include information about the DSUE amount from the donor's most recently deceased spouse (whose date of death is after December 31, 2010).
  - In column E, enter the total of the amount in column D that the donor has applied to gifts in previous years and is applying to gifts reported on this return.
  - A donor may apply DSUE only to gifts made after the DSUE arose.
- Part 2 – DSUE Received from Other Predeceased Spouse(s). Enter information about the DSUE amount from the spouse(s), if any, who died prior to the donor's most recently deceased spouse (but not before January 1, 2011) if the prior spouse's executor elected portability of the DSUE amount. In column D, indicate the amount of DSUE received from the estate of each predeceased spouse.
  - In column E, enter the portion of the amount of DSUE shown in column D that was applied to prior lifetime gifts or transfers.
  - Any remaining DSUE from a predeceased spouse cannot be applied against tax arising from lifetime gifts if that spouse is not the most recently deceased spouse on the date of the gift.
  - This rule applies even if the last deceased spouse had no DSUE amount or made no valid portability election, or if the DSUE amount from the last deceased spouse has been fully applied to gifts in previous periods.

- Determining the Applicable Credit Amount Including DSUE. On line 1, enter the donor's basic exclusion amount. For 2015, this amount is \$5,430,000; for 2016, the amount is \$2,450,000.
  - Add the amounts listed in column E from Parts 1 and 2 and enter the total on line 2.
  - On line 3, enter the total of lines 1 and 2.
  - Using the Table for Computing Gift Tax (found in the Instructions to Form 709), determine the donor's applicable credit by applying the appropriate tax rate to the amount on line 3. Enter this amount on line 4 and on line 7 of Part 2—Tax Computation.

***D. Schedule D, Part 2 – GST Exemption Reconciliation***

Because this presentation is more concerned with gift taxes than GST taxes, the reader is directed to the Form 709 Instructions that explain how to compute the GST tax in Parts 1 and 3 of Schedule D. Part 2 is addressed below.

**1. Line 1 – Maximum Allowable Exemption**

- Every donor is allowed a lifetime GST exemption. For transfers made through 1998, the GST exemption was \$1 million. The exemption amounts for 1999 through 2016 are as follows.

Year	Amount
1999	\$1,010,000
2000	\$1,030,000
2001	\$1,060,000
2002	\$1,100,000
2003	\$1,120,000
2004 and 2005	\$1,500,000
2006, 2007, and 2008	\$2,000,000
2009	\$3,500,000
2010 and 2011	\$5,000,000
2012	\$5,120,000
2013	\$5,250,000
2014	\$5,340,000
2015	\$5,430,000
2016	\$5,450,000

- In general, each annual increase can only be allocated to transfers made (or appreciation occurring) during or after the year of the transfer.
  - *Example.* A donor made \$1,750,000 in direct skips through 2005, and allocated all \$1,500,000 of the exemption to those transfers. In 2015, the donor makes a \$207,000 taxable generation-skipping transfer. The donor can allocate \$207,000 of exemption to the 2015 transfer but cannot allocate the \$3,723,000 of unused 2015 exemption to pre-2015 transfers.
  - However, if in 2005, the donor made a \$1,750,000 transfer to a trust that was not a direct skip, but from which generation-skipping transfers could be made in the future, the donor could allocate the increased exemption to the trust, even though no additional transfers were made to the trust.
    - See Regulations section 26.2642-4 for the redetermination of the applicable fraction when additional exemption is allocated to the trust.
- Enter on line 1 of Part 2 the maximum GST exemption you are allowed.
- Special QTIP election. If you elect QTIP treatment for any gifts in trust listed on Schedule A, then on Schedule D you may also elect to treat the entire trust as non-QTIP for purposes of the GST tax. The election must be made for the entire trust that contains the particular gift involved on this return. Be sure to identify the item number of the specific gift for which you are making this special QTIP election.

## 2. Lines 2 Through 4

- Line 2 – Total Exemption Used for Prior Periods. If you inherit gift tax returns prepared by uninformed tax return preparers and they have incorrectly reported automatic allocations or have reported GST exemption as being used when the taxpayer had previously made a permanent election out of automatic allocation, Line 2 is the return preparer's opportunity to correct prior mistakes.
- Line 4. Line 4 will report GST exemption that was allocated to direct skips reported on Part 2 of Schedule A. DO NOT list any exemption allocated to Schedule A, Part 3 here.

## 3. Line 5 – Automatic Allocation to Indirect Skips

- Enter the amount of GST exemption that is being automatically applied to transfers reported in Part 3 of Schedule A.

## 4. Line 6 – Notice of Allocation

- If you have opted out of automatic allocation and want to manually allocate GST to a transfer, you will report this manually allocated amount on Line 6.

- This is also where late allocations of GST exemption are reported.
- Any use of GST exemption listed on Line 6 requires a Notice of Allocation to be attached to the Form 709. The Notice of Allocation must contain the following for each trust or other transfer:
  - Clear identification of the trust, including the trust EIN, if known.
  - If it is a late allocation, the year the transfer was reported on Form 709.
  - The value of the trust assets at the effective date of the allocation.
  - The amount of GST exemption allocated to each gift (or a statement that you are allocating exemption by means of a formula such as “an amount necessary to produce an inclusion ratio of zero”).
  - The inclusion ratio of the trust after the allocation.
  - Total the exemption allocations and enter this total on line 6.

# EXHIBIT A

## 709 FOR ADAM AND EVE CLIENT

Part 2: 5-Year election for contribution to QTP (Section 529 College Savings Plan) for granddaughter

Part 2: Gift to Direct Skip 2642(c) Trust with *Crummey* withdrawal right in excess of annual exclusion amount

Part 3: Gift to ILIT with spouse as *Crummey* beneficiary and election out of automatic allocation

Attachment to Schedule B: Prior returns are unknown

Attachment: Section 2632(c) election out statement

# EXHIBIT A

Form **709**

## United States Gift (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0020

Information about Form 709 and its separate instructions is at [www.irs.gov/form709](http://www.irs.gov/form709).

(For gifts made during calendar year 2015)

# 2015

Department of the Treasury  
Internal Revenue Service

**See instructions.**

**Part 1—General Information**

<b>1</b> Donor's first name and middle initial Adam	<b>2</b> Donor's last name Client	<b>3</b> Donor's social security number 000-00-0000
<b>4</b> Address (number, street, and apartment number) 200 Lakeview Drive		<b>5</b> Legal residence (domicile) Imagination County
<b>6</b> City or town, state or province, country, and ZIP or foreign postal code Imagination, FL 12345		<b>7</b> Citizenship (see instructions) USA
<b>8</b> If the donor died during the year, check here <input type="checkbox"/> and enter date of death _____		<b>Yes</b> <b>No</b>
<b>9</b> If you extended the time to file this Form 709, check here <input type="checkbox"/>		<input type="checkbox"/>
<b>10</b> Enter the total number of donees listed on Schedule A. Count each person only once	8	
<b>11a</b> Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b		X
<b>b</b> Has your address changed since you last filed Form 709 (or 709-A)?		X
<b>12</b> <b>Gifts by husband or wife to third parties.</b> Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (see instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. <b>If the answer is "No," skip lines 13–18.</b> )		
<b>13</b> Name of consenting spouse	Eve Client	<b>14</b> SSN 111-11-1111
<b>15</b> Were you married to one another during the entire calendar year? (see instructions)		
<b>16</b> If 15 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/deceased, and give date (see instructions)		
<b>17</b> Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)		
<b>18</b> <b>Consent of Spouse.</b> I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.		
<b>Consenting spouse's signature</b>		<b>Date</b>
<b>19</b> Have you applied a DSUE amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If "Yes," complete Schedule C		

**Part 2—Tax Computation**

<b>1</b> Enter the amount from Schedule A, Part 4, line 11	<b>1</b>	4,000.00
<b>2</b> Enter the amount from Schedule B, line 3	<b>2</b>	0.00
<b>3</b> Total taxable gifts. Add lines 1 and 2	<b>3</b>	4,000.00
<b>4</b> Tax computed on amount on line 3 (see <i>Table for Computing Gift Tax</i> in instructions)	<b>4</b>	720.00
<b>5</b> Tax computed on amount on line 2 (see <i>Table for Computing Gift Tax</i> in instructions)	<b>5</b>	0.00
<b>6</b> Balance. Subtract line 5 from line 4	<b>6</b>	720.00
<b>7</b> Applicable credit amount. If donor has DSUE amount from predeceased spouse(s), enter amount from Schedule C, line 4; otherwise, see instructions	<b>7</b>	2,117,800.00
<b>8</b> Enter the applicable credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	<b>8</b>	0.00
<b>9</b> Balance. Subtract line 8 from line 7. Do not enter less than zero	<b>9</b>	2,117,800.00
<b>10</b> Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977 (see instructions)	<b>10</b>	0.00
<b>11</b> Balance. Subtract line 10 from line 9. Do not enter less than zero	<b>11</b>	2,117,800.00
<b>12</b> Applicable credit. Enter the smaller of line 6 or line 11	<b>12</b>	720.00
<b>13</b> Credit for foreign gift taxes (see instructions)	<b>13</b>	0.00
<b>14</b> Total credits. Add lines 12 and 13	<b>14</b>	720.00
<b>15</b> Balance. Subtract line 14 from line 6. Do not enter less than zero	<b>15</b>	0.00
<b>16</b> Generation-skipping transfer taxes (from Schedule D, Part 3, col. H, Total)	<b>16</b>	0.00
<b>17</b> Total tax. Add lines 15 and 16	<b>17</b>	0.00
<b>18</b> Gift and generation-skipping transfer taxes prepaid with extension of time to file	<b>18</b>	0.00
<b>19</b> If line 18 is less than line 17, enter <b>balance due</b> (see instructions)	<b>19</b>	0.00
<b>20</b> If line 18 is greater than line 17, enter <b>amount to be refunded</b>	<b>20</b>	0.00

<b>Sign Here</b>	Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.					
	Signature of donor Adam Client	Date	May the IRS discuss this return with the preparer shown below (see instructions)? <input checked="" type="checkbox"/> <b>Yes</b> <input type="checkbox"/> <b>No</b>			
<b>Attach check or money order here.</b>	<b>Paid Preparer Use Only</b>	Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
	Firm's name	Birchstone Moore LLC			Firm's EIN	
	Firm's address	5335 Wisconsin Avenue NW Suite 640 Washington, DC 20015			Phone no. (202) 686-4842	

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see the instructions for this form.

Form **709** (2015)



**SCHEDULE A Computation of Taxable Gifts (Including transfers in trust) (see instructions)**

**A** Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation . . . . . Yes  No

**B**  Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

**Part 1—Gifts Subject Only to Gift Tax.** Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)

Gifts made by spouse — *complete only if you are splitting gifts with your spouse and he/she also made gifts.*

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**Total of Part 1.** Add amounts from Part 1, column H . . . . . **0.00**

**Part 2—Direct Skips.** Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	SEE SCHEDULE ATTACHED						

Gifts made by spouse — *complete only if you are splitting gifts with your spouse and he/she also made gifts.*

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**Total of Part 2.** Add amounts from Part 2, column H . . . . . **32,000.00**

**Part 3—Indirect Skips.** Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	SEE SCHEDULE ATTACHED						

Gifts made by spouse — *complete only if you are splitting gifts with your spouse and he/she also made gifts.*

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**Total of Part 3.** Add amounts from Part 3, column H . . . . . **40,000.00**

(If more space is needed, attach additional statements.)

SCHEDULE A -- Part 2  
 Direct Skips

A	B	C	D	E	F	G	H
Item no.	Donee's name, relationship to donor, address, and description	2632(b) election out	Donor's adj. basis	Date of gift	Value at date of gift	1/2 of column F	Net transfer
1	The Adam Client Irrevocable Trust dated April 1, 2012 EIN: 11-1111111		8,000.00	1/1/15	8,000.00	4,000.00	4,000.00

Eve Client, Trustee  
 200 Lakeview Drive  
 Imagination, FL 12345

CASH: \$36,000

[See copy of the Adam Client Irrevocable Trust dated April 1, 2012 attached hereto as Exhibit 1. This trust qualifies as a 2642(c) trust.]

A Notice of the Right to Withdraw Property from the Adam Client Irrevocable Trust dated April 1, 2012 was provided to the beneficiary listed below:

Allison Client (Great-niece) 15 Riverland Circle Giftland, NY	28,000.00	1/1/15	28,000.00	14,000.00	14,000.00
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2 Sally Jones (Granddaughter)	140,000.00	2015	28,000.00	14,000.00	14,000.00
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Donor gifted \$140,000 to a qualified state tuition program (529 plan) for the benefit of Sally Jones (Granddaughter).

Donor elects pursuant to Section 529(c)(2)(B) of the Internal Revenue Code of 1986, as amended, to treat the gift as having been made ratably over a 5-year period.

20% of the total contribution is \$28,000.

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32,000.00

SCHEDULE A -- Part 3  
 Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
1	The Adam Client Insurance Trust dated April 1, 2015 EIN: 00-0000000	X					
	Eve Client, Trustee 200 Lakeview Drive Imagination, FL 12345						
	[See copy of the Adam Client Insurance Trust dated April 1, 2015 attached hereto as Exhibit 2.]						
	CASH: \$75,000						
	Notices of the Right to Withdraw Property from the Adam Client Insurance Trust dated April 1, 2015 were provided to the beneficiaries listed below:						
	Eve Client (Spouse) 200 Lakeview Drive Imagination, FL 12345	X	5,000.00	1/1/15	5,000.00		5,000.00
	Mark Client (Son) 10 Gardenview Drive Imagination, FL 12345	X	14,000.00	1/1/15	14,000.00	7,000.00	7,000.00
	Susan Client (Daughter) 11 Timber Drive Faraway, NV	X	14,000.00	1/1/15	14,000.00	7,000.00	7,000.00
	Jennifer Client (Granddaughter) 10 Gardenview Drive Imagination, FL 12345	X	14,000.00	1/1/15	14,000.00	7,000.00	7,000.00
	Michael Client (Grandson) 10 Gardenview Drive Imagination, FL 12345	X	14,000.00	1/1/15	14,000.00	7,000.00	7,000.00
	Kevin Client (Grandson) 10 Gardenview Drive Imagination, FL 12345	X	14,000.00	1/1/15	14,000.00	7,000.00	7,000.00
							40,000.00

**Part 4—Taxable Gift Reconciliation**

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	72,000.00
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	68,000.00
3	Total included amount of gifts. Subtract line 2 from line 1	3	4,000.00
<b>Deductions</b> (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	0.00
5	Exclusions attributable to gifts on line 4	5	0.00
6	Marital deduction. Subtract line 5 from line 4	6	0.00
7	Charitable deduction, based on item nos. _____ less exclusions	7	0.00
8	Total deductions. Add lines 6 and 7	8	0.00
9	Subtract line 8 from line 3	9	4,000.00
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. H, Total)	10	0.00
11	<b>Taxable gifts.</b> Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	4,000.00

**Terminable Interest (QTIP) Marital Deduction.** (see instructions for Schedule A, Part 4, line 4)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

- a. The trust (or other property) is listed on Schedule A, and
- b. The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4,

then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon his or her death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, he or she will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the instructions.

**12 Election Out of QTIP Treatment of Annuities**

Check here if you elect under section 2523(f)(6) **not** to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election \_\_\_\_\_

**SCHEDULE B Gifts From Prior Periods**

If you answered "Yes" on line 11a of page 1, Part 1, see the instructions for completing Schedule B. If you answered "No," skip to the Tax Computation on page 1 (or Schedules C or D, if applicable). Complete Schedule A before beginning Schedule B. See instructions for recalculation of the column C amounts. Attach calculations.

A Calendar year or calendar quarter (see instructions)	B Internal Revenue office where prior return was filed	C Amount of applicable credit (unified credit) against gift tax for periods after December 31, 1976	D Amount of specific exemption for prior periods ending before January 1, 1977	E Amount of taxable gifts
2014	SEE ATTACHED	0.00		0.00
1 Totals for prior periods		1 0.00	0.00	0.00
2 Amount, if any, by which total specific exemption, line 1, column D is more than \$30,000			2 0.00	
3 Total amount of taxable gifts for prior periods. Add amount on line 1, column E and amount, if any, on line 2. Enter here and on page 1, Part 2—Tax Computation, line 2			3 0.00	

(If more space is needed, attach additional statements.)

Adam Client  
SSN: 000-00-0000

**SCHEDULE B - GIFTS FROM PRIOR PERIODS**

Taxpayer has submitted Form 4506 requesting prior year's Form 709s and will amend this return if and when prior 709 information is obtained.

**SCHEDULE C Deceased Spousal Unused Exclusion (DSUE) Amount**

Provide the following information to determine the DSUE amount and applicable credit received from prior spouses. Complete Schedule A before beginning Schedule C.

A Name of Deceased Spouse (dates of death after December 31, 2010 only)	B Date of Death	C Portability Election Made?		D If "Yes," DSUE Amount Received from Spouse	E DSUE Amount Applied by Donor to Lifetime Gifts (list current and prior gifts)	F Dates of Gift(s) (enter as mm/dd/yy for Part 1 and as yyyy for Part 2)
		Yes	No			
<b>Part 1 – DSUE RECEIVED FROM LAST DECEASED SPOUSE</b>						
<b>Part 2 – DSUE RECEIVED FROM PREDECEASED SPOUSE(S)</b>						
<b>TOTAL</b> (for all DSUE amounts applied from column E for Part 1 and Part 2)						

1 Donor's basic exclusion amount (see instructions) . . . . .	<b>1</b>	
2 Total from column E, Parts 1 and 2 . . . . .	<b>2</b>	
3 Add lines 1 and 2 . . . . .	<b>3</b>	
4 Applicable credit on amount in line 3 (See <i>Table for Computing Gift Tax</i> in the instructions). Enter here and on line 7, Part 2 – Tax Computation . . . . .	<b>4</b>	

**SCHEDULE D Computation of Generation-Skipping Transfer Tax**

**Note.** Inter vivos direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule D.

**Part 1—Generation-Skipping Transfers**

A Item No. (from Schedule A, Part 2, col. A)	B Value (from Schedule A, Part 2, col. H)	C Nontaxable Portion of Transfer	D Net Transfer (subtract col. C from col. B)
1	18,000.00	14,000.00	4,000.00
2	14,000.00	14,000.00	0.00
Gifts made by spouse (for gift splitting only)			

(If more space is needed, attach additional statements.)  
 VEA 709-4 Gillett Publishing (11/6/2015)

**Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election**

Check here  if you are making a section 2652(a)(3) (special QTIP) election (see instructions)

Enter the item numbers from Schedule A of the gifts for which you are making this election \_\_\_\_\_

1	Maximum allowable exemption (see instructions) . . . . .	1	5,430,000.00
2	Total exemption used for periods before filing this return . . . . .	2	0.00
3	Exemption available for this return. Subtract line 2 from line 1 . . . . .	3	5,430,000.00
4	Exemption claimed on this return from Part 3, column C total, below . . . . .	4	4,000.00
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. (see instructions) . . . . .	5	0.00
6	Exemption allocated to transfers not shown on line 4 or 5, above. <b>You must attach a "Notice of Allocation."</b> (see instructions) . . . . .	6	0.00
7	Add lines 4, 5, and 6 . . . . .	7	4,000.00
8	Exemption available for future transfers. Subtract line 7 from line 3 . . . . .	8	5,426,000.00

**Part 3—Tax Computation**

A Item No. (from Schedule D, Part 1)	B Net Transfer (from Schedule D, Part 1, col. D)	C GST Exemption Allocated	D Divide col. C by col. B	E Inclusion Ratio (Subtract col. D from 1.000)	F Maximum Estate Tax Rate	G Applicable Rate (multiply col. E by col. F)	H Generation-Skipping Transfer Tax (multiply col. B by col. G)
1	4,000.00	4,000.00	1.000	0.000	40% (.40)	0.0000%	0.00
2	0.00	0.00	0.000	0.000	40% (.40)	0.0000%	0.00
					40% (.40)		
					40% (.40)		
					40% (.40)		
Gifts made by spouse (for gift splitting only)							
					40% (.40)		
					40% (.40)		
					40% (.40)		
					40% (.40)		
Total exemption claimed. Enter here and on Part 2, line 4, above. May not exceed Part 2, line 3, above . . . . .		4,000.00	<b>Total generation-skipping transfer tax.</b> Enter here; on page 3, Schedule A, Part 4, line 10; and on page 1, Part 2 – Tax Computation, line 16 . . . . .				0.00

(If more space is needed, attach additional statements.)

**NOTICE OF ELECTION UNDER IRC §2632(c)**  
**Election Out of Automatic Allocation of GST Exemption Under IRC §2632(c)**

Trust name: The Adam Client Insurance Trust  
dated April 1, 2015

Trust EIN: 00-0000000

Item 1, Part 3, Schedule A

The taxpayer hereby elects out of treatment as a GST trust for the above trust and elects not to have the automatic allocation provisions of IRC §2632(c) apply to all transfers made (or deemed to have been made as a result of gift-splitting) by the taxpayer to the trust in 2015 and in all future years.



## EXHIBIT B

### 709 FOR BOB CLIENT

Part 1: Gifts of cash to children

Part 1: Original gift to QPRT for granddaughter

Part 1: Gifts to charities

# EXHIBIT B

Form **709**

## United States Gift (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0020

Information about Form 709 and its separate instructions is at [www.irs.gov/form709](http://www.irs.gov/form709).

(For gifts made during calendar year 2015)

# 2015

Department of the Treasury  
Internal Revenue Service

**See instructions.**

**Part 1—General Information**

<b>1</b> Donor's first name and middle initial <b>Bob</b>	<b>2</b> Donor's last name <b>Client</b>	<b>3</b> Donor's social security number <b>555-55-5555</b>
<b>4</b> Address (number, street, and apartment number) <b>50 Water Street</b>		<b>5</b> Legal residence (domicile) <b>Clark County</b>
<b>6</b> City or town, state or province, country, and ZIP or foreign postal code <b>Bigtown, IN 12345</b>		<b>7</b> Citizenship (see instructions) <b>USA</b>
<b>8</b> If the donor died during the year, check here <input type="checkbox"/> and enter date of death _____	<b>Yes</b>	<b>No</b>
<b>9</b> If you extended the time to file this Form 709, check here <input type="checkbox"/>		
<b>10</b> Enter the total number of donees listed on Schedule A. Count each person only once <b>5</b>		
<b>11a</b> Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b		<b>X</b>
<b>b</b> Has your address changed since you last filed Form 709 (or 709-A)?		
<b>12</b> <b>Gifts by husband or wife to third parties.</b> Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (see instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. <b>If the answer is "No," skip lines 13–18.</b> )		<b>X</b>
<b>13</b> Name of consenting spouse	<b>14</b> SSN	
<b>15</b> Were you married to one another during the entire calendar year? (see instructions)		
<b>16</b> If 15 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/deceased, and give date (see instructions)		
<b>17</b> Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)		
<b>18</b> <b>Consent of Spouse.</b> I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.		

**Consenting spouse's signature**

**Date**

<b>19</b> Have you applied a DSUE amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If "Yes," complete Schedule C		<b>X</b>
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**Part 2—Tax Computation**

<b>1</b> Enter the amount from Schedule A, Part 4, line 11	<b>1</b>	472,950.00
<b>2</b> Enter the amount from Schedule B, line 3	<b>2</b>	0.00
<b>3</b> Total taxable gifts. Add lines 1 and 2	<b>3</b>	472,950.00
<b>4</b> Tax computed on amount on line 3 (see <i>Table for Computing Gift Tax</i> in instructions)	<b>4</b>	146,603.00
<b>5</b> Tax computed on amount on line 2 (see <i>Table for Computing Gift Tax</i> in instructions)	<b>5</b>	0.00
<b>6</b> Balance. Subtract line 5 from line 4	<b>6</b>	146,603.00
<b>7</b> Applicable credit amount. If donor has DSUE amount from predeceased spouse(s), enter amount from Schedule C, line 4; otherwise, see instructions	<b>7</b>	2,117,800.00
<b>8</b> Enter the applicable credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	<b>8</b>	0.00
<b>9</b> Balance. Subtract line 8 from line 7. Do not enter less than zero	<b>9</b>	2,117,800.00
<b>10</b> Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977 (see instructions)	<b>10</b>	0.00
<b>11</b> Balance. Subtract line 10 from line 9. Do not enter less than zero	<b>11</b>	2,117,800.00
<b>12</b> Applicable credit. Enter the smaller of line 6 or line 11	<b>12</b>	146,603.00
<b>13</b> Credit for foreign gift taxes (see instructions)	<b>13</b>	0.00
<b>14</b> Total credits. Add lines 12 and 13	<b>14</b>	146,603.00
<b>15</b> Balance. Subtract line 14 from line 6. Do not enter less than zero	<b>15</b>	0.00
<b>16</b> Generation-skipping transfer taxes (from Schedule D, Part 3, col. H, Total)	<b>16</b>	0.00
<b>17</b> Total tax. Add lines 15 and 16	<b>17</b>	0.00
<b>18</b> Gift and generation-skipping transfer taxes prepaid with extension of time to file	<b>18</b>	0.00
<b>19</b> If line 18 is less than line 17, enter <b>balance due</b> (see instructions)	<b>19</b>	0.00
<b>20</b> If line 18 is greater than line 17, enter <b>amount to be refunded</b>	<b>20</b>	0.00

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

May the IRS discuss this return with the preparer shown below (see instructions)?  **Yes**  **No**

Signature of donor **Bob Client** Date \_\_\_\_\_

**Attach check or money order here.**  
**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name <b>Birchstone Moore LLC</b>	Firm's EIN			
Firm's address <b>5335 Wisconsin Avenue Suite 640 Washington, DC 20015</b>	Phone no. <b>(202) 686-4842</b>			

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see the instructions for this form.

Form **709** (2015)

**SCHEDULE A Computation of Taxable Gifts** (Including transfers in trust) (see instructions)

**A** Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation . . . . . Yes  No

**B**  Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

**Part 1—Gifts Subject Only to Gift Tax.** Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
SEE SCHEDULE ATTACHED							
Gifts made by spouse — <i>complete only if you are splitting gifts with your spouse and he/she also made gifts.</i>							

**Total of Part 1.** Add amounts from Part 1, column H . . . . . **534,950.00**

**Part 2—Direct Skips.** Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
Gifts made by spouse — <i>complete only if you are splitting gifts with your spouse and he/she also made gifts.</i>							

**Total of Part 2.** Add amounts from Part 2, column H . . . . . **0.00**

**Part 3—Indirect Skips.** Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
Gifts made by spouse — <i>complete only if you are splitting gifts with your spouse and he/she also made gifts.</i>							

**Total of Part 3.** Add amounts from Part 3, column H . . . . . **0.00**

(If more space is needed, attach additional statements.)

**SCHEDULE A -- Part 1**  
**Gifts Subject Only to Gift Tax**

A Item no.	B Donee's name, relationship to donor, address, and description	C	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
<b>CHARITABLE GIFTS</b>							
1	Various Charitable Contributions		20,000.00	Various	20,000.00		20,000.00
	Taxpayer made gifts of cash to several charitable organizations qualifying for the charitable contribution deduction under IRC Section 2522, as reported on taxpayer's timely filed 2015 Form 1040.						
<b>OTHER GIFTS</b>							
2	Daniel Client (Son) 25 Pinehurst Avenue Bigtown, IN 12345		14,000.00	1/1/15	14,000.00		14,000.00
	Cash: \$14,000						
3	Laurie Client (Daughter) 13 Elm Street Bigtown, IN 12345		14,000.00	1/1/15	14,000.00		14,000.00
	CASH: \$14,000						
4	Michelle Client (Daughter) 65 Stream Court Bigtown, IN 12345		14,000.00	1/1/15	14,000.00		14,000.00
	CASH: \$14,000						

SCHEDULE A -- Part 1  
Gifts Subject Only to Gift Tax

A Item no.	B Donee's name, relationship to donor, address, and description	C	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
5	The Bob Client Qualified Personal Residence Trust dated March 1, 2015 EIN: 22-2222222		50,000.00	3/1/15	472,950.00		472,950.00

Judy Client, Trustee  
50 Water Street  
Bigtown, Indiana 12345

An undivided interest in real property located at 50 Water Street, Bigtown, Indiana 12345, described as follows:

Lot 5, Block T, Bigtown Estates, according to Plat Book 5, page 65, recorded in the Public Records of Clark County, Indiana

[The value of the gift has been determined pursuant to the valuation rules under Section 7520 of the Internal Revenue Code of 1986 (the "Code") and the regulations promulgated thereunder. Attached as Exhibit No. 1 is a computation of the gift, including actuarial factors and discount rate used to determine the amount of the gift. This disclosure is made pursuant to Section 6501 of the Code and Treas. Reg. Section 301.6501(c) - 1(f).]

[See copy of the Bob Client Qualified Personal Residence Trust dated March 1, 2015 attached hereto as Exhibit 2.]

[A copy of the appraisal of the real property is attached hereto as Exhibit 3.]

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534,950.00

**Part 4—Taxable Gift Reconciliation**

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	534,950.00
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	42,000.00
3	Total included amount of gifts. Subtract line 2 from line 1	3	492,950.00
<b>Deductions</b> (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	0.00
5	Exclusions attributable to gifts on line 4	5	0.00
6	Marital deduction. Subtract line 5 from line 4	6	0.00
7	Charitable deduction, based on item nos. <u>1</u> less exclusions	7	20,000.00
8	Total deductions. Add lines 6 and 7	8	20,000.00
9	Subtract line 8 from line 3	9	472,950.00
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. H, Total)	10	0.00
11	<b>Taxable gifts.</b> Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	472,950.00

**Terminable Interest (QTIP) Marital Deduction.** (see instructions for Schedule A, Part 4, line 4)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

- a. The trust (or other property) is listed on Schedule A, and
- b. The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4,

then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon his or her death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, he or she will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the instructions.

**12 Election Out of QTIP Treatment of Annuities**

Check here if you elect under section 2523(f)(6) **not** to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election \_\_\_\_\_

**SCHEDULE B Gifts From Prior Periods**

If you answered "Yes" on line 11a of page 1, Part 1, see the instructions for completing Schedule B. If you answered "No," skip to the Tax Computation on page 1 (or Schedules C or D, if applicable). Complete Schedule A before beginning Schedule B. See instructions for recalculation of the column C amounts. Attach calculations.

A	B	C	D	E	
Calendar year or calendar quarter (see instructions)	Internal Revenue office where prior return was filed	Amount of applicable credit (unified credit) against gift tax for periods after December 31, 1976	Amount of specific exemption for prior periods ending before January 1, 1977	Amount of taxable gifts	
1	Totals for prior periods	1	0.00	0.00	0.00
2	Amount, if any, by which total specific exemption, line 1, column D is more than \$30,000	2			0.00
3	Total amount of taxable gifts for prior periods. Add amount on line 1, column E and amount, if any, on line 2. Enter here and on page 1, Part 2—Tax Computation, line 2	3			0.00

(If more space is needed, attach additional statements.)

**SCHEDULE C Deceased Spousal Unused Exclusion (DSUE) Amount**

Provide the following information to determine the DSUE amount and applicable credit received from prior spouses. Complete Schedule A before beginning Schedule C.

A Name of Deceased Spouse (dates of death after December 31, 2010 only)	B Date of Death	C Portability Election Made?		D If "Yes," DSUE Amount Received from Spouse	E DSUE Amount Applied by Donor to Lifetime Gifts (list current and prior gifts)	F Dates of Gift(s) (enter as mm/dd/yy for Part 1 and as yyyy for Part 2)
		Yes	No			
<b>Part 1 – DSUE RECEIVED FROM LAST DECEASED SPOUSE</b>						
<b>Part 2 – DSUE RECEIVED FROM PREDECEASED SPOUSE(S)</b>						
<b>TOTAL</b> (for all DSUE amounts applied from column E for Part 1 and Part 2)						

1 Donor's basic exclusion amount (see instructions) . . . . .	<b>1</b>	
2 Total from column E, Parts 1 and 2 . . . . .	<b>2</b>	
3 Add lines 1 and 2 . . . . .	<b>3</b>	
4 Applicable credit on amount in line 3 (See <i>Table for Computing Gift Tax</i> in the instructions). Enter here and on line 7, Part 2 – Tax Computation . . . . .	<b>4</b>	

**SCHEDULE D Computation of Generation-Skipping Transfer Tax**

**Note.** Inter vivos direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule D.

**Part 1—Generation-Skipping Transfers**

A Item No. (from Schedule A, Part 2, col. A)	B Value (from Schedule A, Part 2, col. H)	C Nontaxable Portion of Transfer	D Net Transfer (subtract col. C from col. B)
Gifts made by spouse (for gift splitting only)			

(If more space is needed, attach additional statements.)  
 VEA 709-4 Gillett Publishing (11/6/2015)

**Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election**

Check here  if you are making a section 2652(a)(3) (special QTIP) election (see instructions)

Enter the item numbers from Schedule A of the gifts for which you are making this election \_\_\_\_\_

1	Maximum allowable exemption (see instructions) . . . . .	1	5,430,000.00
2	Total exemption used for periods before filing this return . . . . .	2	0.00
3	Exemption available for this return. Subtract line 2 from line 1 . . . . .	3	5,430,000.00
4	Exemption claimed on this return from Part 3, column C total, below . . . . .	4	0.00
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. (see instructions) . . . . .	5	0.00
6	Exemption allocated to transfers not shown on line 4 or 5, above. <b>You must attach a "Notice of Allocation."</b> (see instructions) . . . . .	6	0.00
7	Add lines 4, 5, and 6 . . . . .	7	0.00
8	Exemption available for future transfers. Subtract line 7 from line 3 . . . . .	8	5,430,000.00

**Part 3—Tax Computation**

A Item No. (from Schedule D, Part 1)	B Net Transfer (from Schedule D, Part 1, col. D)	C GST Exemption Allocated	D Divide col. C by col. B	E Inclusion Ratio (Subtract col. D from 1.000)	F Maximum Estate Tax Rate	G Applicable Rate (multiply col. E by col. F)	H Generation-Skipping Transfer Tax (multiply col. B by col. G)
					40% (.40)		
					40% (.40)		
					40% (.40)		
					40% (.40)		
					40% (.40)		
Gifts made by spouse (for gift splitting only)							
					40% (.40)		
					40% (.40)		
					40% (.40)		
					40% (.40)		
Total exemption claimed. Enter here and on Part 2, line 4, above. May not exceed Part 2, line 3, above . . . . .		0.00	<b>Total generation-skipping transfer tax.</b> Enter here; on page 3, Schedule A, Part 4, line 10; and on page 1, Part 2 – Tax Computation, line 16 . . . . .				0.00

(If more space is needed, attach additional statements.)



**DISCLOSURE**

Treas. Reg. Section 301.6501 (c)-1(e)(2)  
Qualified Personal Residence Trust  
(The Bob Client Qualified Personal Residence Trust)

Bob Client (the "Taxpayer")  
555-55-5555 (Taxpayer's TIN)  
Attachment to Form 709 for the calendar year 2015

Taxpayer transferred an undivided interest in his personal residence located at 50 Water Street, Bigtown, Indiana 12345 to JUDY CLIENT, as Trustee, under a trust indenture dated March 1, 2015, a copy of which is attached. The trust qualifies as a qualified personal residence trust. Under the trust, Taxpayer retains the right to use the personal residence for a term of fifteen (15) years. If the taxpayer dies before the end of the fifteen (15) year term, the personal residence reverts to his estate, if Taxpayer so appoints by a validly executed Last Will and Testament. In default of such appointment, the trust will be distributed to the Bob Client Revocable Trust dated February 19, 2002. If Taxpayer is alive at the end of the fifteen (15) year trust term, the trust principal will be held in further trust for the benefit of Taxpayer's living granddaughter, SUSAN CLIENT.

On March 1, 2015, Taxpayer's age to the nearest birthday was 65. The interest rate in effect under Section 7520 of the Internal Revenue Code on the date of the transfer (March 1, 2015) was 1.8%. Taxpayer's interest in the personal residence had a value of \$1,000,000 as determined by a qualified appraisal, a copy of which is attached.

Taxpayer calculated his gift to the remainderman as \$472,950. This calculation was made using a 1.8% discount rate, \$1,000,000 as the value of the Taxpayer's interest in the personal residence, the LN values for age 65 from Table 90CM in Treas. Reg. Section 20.2031-7(c) and the computer program NUMBER CRUNCHER '15 by Stephan R. Leimberg and Robert T. LeClair, of which an applicable computer printout is attached hereto, to calculate the gift.

GRIT and Qualified Personal Residence Trust

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Transfer Date: 3/2015  
 §7520 Rate: 1.80%  
 Principal: \$1,000,000  
 Grantor's Current Age: 65  
 Term of Trust: 15  
 After-Tax Growth: 4.00%  
 Comb. Death Tax Bracket: 50.00%  
 With Reversion? Yes

Grantor's Age When Trust Term Ends: 80  
 Value of Nontaxable Interest Retained by Grantor: \$527,050  
 Taxable Gift (Present Value of Remainder Interest): \$472,950  
 Property Value After 15 Years: \$1,800,944

Potential Death Tax Savings: \$663,997  
 (Combined Bracket times [Value of Property minus Taxable Gift])

Qualified Annuity that Must be Paid Annually  
 if Entire Trust Ceases to be a QPRT: \$47,767

	<u>Reversion</u>	<u>Total Income Interest</u>	<u>Income Interest With Reversion</u>	<u>Remainder</u>
Factor:	0.32844	0.19861	0.52705	0.47295
Value:	\$328,440	\$198,610	\$527,050	\$472,950

## EXHIBIT C

### 709 FOR CHARLES AND JANE CLIENT

Part 1: Gift of FLP interests to children where valuation discount was taken

Part 1: Gift to Charitable Remainder Unitrust with Election under 7520(a) to use earlier 7520 rate

Part 3: Gift to *Crummey* trust where 2632(c) election made in prior year that applies to future years

Attachment: Adequate Disclosure Statement

Attachment: 7520(a) Election Statement

# EXHIBIT C

Form **709**

## United States Gift (and Generation-Skipping Transfer) Tax Return

OMB No. 1545-0020

Information about Form 709 and its separate instructions is at [www.irs.gov/form709](http://www.irs.gov/form709).

(For gifts made during calendar year 2015)

# 2015

Department of the Treasury  
Internal Revenue Service

**See instructions.**

**Part 1—General Information**

<b>1</b> Donor's first name and middle initial <b>Charles</b>	<b>2</b> Donor's last name <b>Client</b>	<b>3</b> Donor's social security number <b>444-44-4444</b>
<b>4</b> Address (number, street, and apartment number) <b>34 Breeze Drive</b>		<b>5</b> Legal residence (domicile) <b>Imagination County</b>
<b>6</b> City or town, state or province, country, and ZIP or foreign postal code <b>Imagination, FL 12345</b>		<b>7</b> Citizenship (see instructions) <b>USA</b>
<b>8</b> If the donor died during the year, check here <input type="checkbox"/> and enter date of death _____		<b>Yes</b> <b>No</b>
<b>9</b> If you extended the time to file this Form 709, check here <input type="checkbox"/>		<input type="checkbox"/>
<b>10</b> Enter the total number of donees listed on Schedule A. Count each person only once <b>6</b>		<input type="checkbox"/>
<b>11a</b> Have you (the donor) previously filed a Form 709 (or 709-A) for any other year? If "No," skip line 11b		<input checked="" type="checkbox"/>
<b>b</b> Has your address changed since you last filed Form 709 (or 709-A)?		<input type="checkbox"/>
<b>12</b> <b>Gifts by husband or wife to third parties.</b> Do you consent to have the gifts (including generation-skipping transfers) made by you and by your spouse to third parties during the calendar year considered as made one-half by each of you? (see instructions.) (If the answer is "Yes," the following information must be furnished and your spouse must sign the consent shown below. <b>If the answer is "No," skip lines 13–18.</b> )		<input checked="" type="checkbox"/>
<b>13</b> Name of consenting spouse <b>Jane Client</b>	<b>14</b> SSN <b>777-77-7777</b>	<input type="checkbox"/>
<b>15</b> Were you married to one another during the entire calendar year? (see instructions)		<input checked="" type="checkbox"/>
<b>16</b> If 15 is "No," check whether <input type="checkbox"/> married <input type="checkbox"/> divorced or <input type="checkbox"/> widowed/deceased, and give date (see instructions)		<input type="checkbox"/>
<b>17</b> Will a gift tax return for this year be filed by your spouse? (If "Yes," mail both returns in the same envelope.)		<input checked="" type="checkbox"/>
<b>18</b> <b>Consent of Spouse.</b> I consent to have the gifts (and generation-skipping transfers) made by me and by my spouse to third parties during the calendar year considered as made one-half by each of us. We are both aware of the joint and several liability for tax created by the execution of this consent.		
<b>Consenting spouse's signature</b>		<b>Date</b>
<b>19</b> Have you applied a DSUE amount received from a predeceased spouse to a gift or gifts reported on this or a previous Form 709? If "Yes," complete Schedule C		<input type="checkbox"/>

**Part 2—Tax Computation**

<b>1</b> Enter the amount from Schedule A, Part 4, line 11	<b>1</b>	350,000.00
<b>2</b> Enter the amount from Schedule B, line 3	<b>2</b>	0.00
<b>3</b> Total taxable gifts. Add lines 1 and 2	<b>3</b>	350,000.00
<b>4</b> Tax computed on amount on line 3 (see <i>Table for Computing Gift Tax</i> in instructions)	<b>4</b>	104,800.00
<b>5</b> Tax computed on amount on line 2 (see <i>Table for Computing Gift Tax</i> in instructions)	<b>5</b>	0.00
<b>6</b> Balance. Subtract line 5 from line 4	<b>6</b>	104,800.00
<b>7</b> Applicable credit amount. If donor has DSUE amount from predeceased spouse(s), enter amount from Schedule C, line 4; otherwise, see instructions	<b>7</b>	2,117,800.00
<b>8</b> Enter the applicable credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	<b>8</b>	0.00
<b>9</b> Balance. Subtract line 8 from line 7. Do not enter less than zero	<b>9</b>	2,117,800.00
<b>10</b> Enter 20% (.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977 (see instructions)	<b>10</b>	0.00
<b>11</b> Balance. Subtract line 10 from line 9. Do not enter less than zero	<b>11</b>	2,117,800.00
<b>12</b> Applicable credit. Enter the smaller of line 6 or line 11	<b>12</b>	104,800.00
<b>13</b> Credit for foreign gift taxes (see instructions)	<b>13</b>	0.00
<b>14</b> Total credits. Add lines 12 and 13	<b>14</b>	104,800.00
<b>15</b> Balance. Subtract line 14 from line 6. Do not enter less than zero	<b>15</b>	0.00
<b>16</b> Generation-skipping transfer taxes (from Schedule D, Part 3, col. H, Total)	<b>16</b>	0.00
<b>17</b> Total tax. Add lines 15 and 16	<b>17</b>	0.00
<b>18</b> Gift and generation-skipping transfer taxes prepaid with extension of time to file	<b>18</b>	0.00
<b>19</b> If line 18 is less than line 17, enter <b>balance due</b> (see instructions)	<b>19</b>	0.00
<b>20</b> If line 18 is greater than line 17, enter <b>amount to be refunded</b>	<b>20</b>	0.00

**Sign Here**

Under penalties of perjury, I declare that I have examined this return, including any accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than donor) is based on all information of which preparer has any knowledge.

May the IRS discuss this return with the preparer shown below (see instructions)?  **Yes**  **No**

Signature of donor **Charles Client** Date \_\_\_\_\_

**Attach check or money order here.**

**Paid Preparer Use Only**

Print/Type preparer's name	Preparer's signature	Date	Check <input type="checkbox"/> if self-employed	PTIN
Firm's name <b>Birchstone Moore LLC</b>	Firm's EIN			
Firm's address <b>5335 Wisconsin Avenue Suite 640 Washington, DC 20015</b>	Phone no. <b>(202) 686-4842</b>			

For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see the instructions for this form.

Form **709** (2015)

**SCHEDULE A Computation of Taxable Gifts (Including transfers in trust) (see instructions)**

**A** Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation . . . . . Yes  No

**B**  Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

**Part 1—Gifts Subject Only to Gift Tax.** Gifts less political organization, medical, and educational exclusions. (see instructions)

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	SEE SCHEDULE ATTACHED						

Gifts made by spouse — *complete only if you are splitting gifts with your spouse and he/she also made gifts.*

	SEE SCHEDULE ATTACHED						
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**Total of Part 1.** Add amounts from Part 1, column H . . . . . **722,270.24**

**Part 2—Direct Skips.** Gifts that are direct skips and are subject to both gift tax and generation-skipping transfer tax. You must list the gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(b) election out	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)

Gifts made by spouse — *complete only if you are splitting gifts with your spouse and he/she also made gifts.*

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**Total of Part 2.** Add amounts from Part 2, column H . . . . . **0.00**

**Part 3—Indirect Skips.** Gifts to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
	SEE SCHEDULE ATTACHED						

Gifts made by spouse — *complete only if you are splitting gifts with your spouse and he/she also made gifts.*

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**Total of Part 3.** Add amounts from Part 3, column H . . . . . **70,000.00**

(If more space is needed, attach additional statements.)

**SCHEDULE A -- Part 1**  
**Gifts Subject Only to Gift Tax**

A Item no.	B Donee's name, relationship to donor, address, and description	C	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
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**GIFTS SPLIT WITH SPOUSE**

1	Jason Client (Son) 45 Palm Drive Imagination, FL 12345		250,000.00	1/1/15	350,000.00	175,000.00	175,000.00
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On January 1, 2015, Donor gifted 10 limited partnership units in the Client Family Limited Partnership, L.P., with a value of \$350,000, as determined by a qualified appraisal.

[See copy of the appraisal of the limited partnership units attached hereto as Exhibit 1.]

2	Sara Client (Daughter) 689 West Lakeview Street Imagination, FL 12345		250,000.00	1/1/15	350,000.00	175,000.00	175,000.00
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On January 1, 2015, Donor gifted 10 limited partnership units in the Client Family Limited Partnership, L.P., with a value of \$350,000, as determined by a qualified appraisal.

[See copy of the appraisal of the limited partnership units attached hereto as Exhibit 1.]

**SCHEDULE A -- Part 1**  
**Gifts Subject Only to Gift Tax**

A Item no.	B Donee's name, relationship to donor, address, and description	C	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
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**GIFTS MADE BY SPOUSE**

3	The Jane Client Charitable Remainder Unitrust dated February 12, 2015 EIN: 12-3456789		100,000.00	2/12/15			372,270.24
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Jane Client, Trustee  
 34 Breeze Drive  
 Imagination, FL 12345

10,000 shares of Apple, Inc.  
 CUSIP 037833100  
 Fair Market Value on date of transfer:  
 \$126.53 per share

Taxpayer transferred 10,000 shares of Apple, Inc. to the Jane Client Charitable Remainder Unitrust, dated February 12, 2015, with a fair market value of \$1,265,300.00.

[See copy of the Jane Client Charitable Remainder Unitrust, dated February 12, 2015, attached hereto as Exhibit 3.]

[See calculation of charity's remainder interest using the computer program NUMBER CRUNCHER '15 by Stephan R. Leimberg and Robert T. LeClair, attached hereto as Exhibit 4.]

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722,270.24

SCHEDULE A -- Part 3  
Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
1	The Charles Client Irrevocable Trust dated December 31, 2011 EIN: 11-1111111						
	Jane Client, Trustee 34 Breeze Drive Imagination, FL 12345						
	CASH: \$140,000						
	[See copy of the Charles Client Irrevocable Trust dated December 31, 2011 attached hereto as Exhibit 2.]						
	Note: On taxpayer's 2011 Form 709, taxpayer made an election under Treas. Reg. section 26.2632-1(b)(2)(iii) to have automatic allocation rules not apply for all future transfers to this trust.						
	Notices of the Right to Withdraw Property from the Charles Client Irrevocable Trust dated December 31, 2011 were provided to the beneficiaries listed below:						
	Jason Client (Son) 45 Palm Drive Imagination, FL 12345		28,000.00	6/1/15	28,000.00	14,000.00	14,000.00
	Sara Client (Daughter) 689 West Lakeview Street Imagination, FL 12345		28,000.00	6/1/15	28,000.00	14,000.00	14,000.00
	Ashley Client (Granddaughter) 45 Palm Drive Imagination, FL 12345		28,000.00	6/1/15	28,000.00	14,000.00	14,000.00
	Elizabeth Client (Granddaughter) 45 Palm Drive Imagination, FL 12345		28,000.00	6/1/15	28,000.00	14,000.00	14,000.00
	Robert Client (Grandson) 45 Palm Drive Imagination, FL 12345		28,000.00	6/1/15	28,000.00	14,000.00	14,000.00
							70,000.00



**Part 4—Taxable Gift Reconciliation**

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	792,270.24
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	70,000.00
3	Total included amount of gifts. Subtract line 2 from line 1	3	722,270.24
<b>Deductions</b> (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	0.00
5	Exclusions attributable to gifts on line 4	5	0.00
6	Marital deduction. Subtract line 5 from line 4	6	0.00
7	Charitable deduction, based on item nos. <u>3</u> less exclusions	7	372,270.24
8	Total deductions. Add lines 6 and 7	8	372,270.24
9	Subtract line 8 from line 3	9	350,000.00
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. H, Total)	10	0.00
11	<b>Taxable gifts.</b> Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	350,000.00

**Terminable Interest (QTIP) Marital Deduction.** (see instructions for Schedule A, Part 4, line 4)

If a trust (or other property) meets the requirements of qualified terminable interest property under section 2523(f), and:

- a. The trust (or other property) is listed on Schedule A, and
- b. The value of the trust (or other property) is entered in whole or in part as a deduction on Schedule A, Part 4, line 4,

then the donor shall be deemed to have made an election to have such trust (or other property) treated as qualified terminable interest property under section 2523(f).

If less than the entire value of the trust (or other property) that the donor has included in Parts 1 and 3 of Schedule A is entered as a deduction on line 4, the donor shall be considered to have made an election only as to a fraction of the trust (or other property). The numerator of this fraction is equal to the amount of the trust (or other property) deducted on Schedule A, Part 4, line 6. The denominator is equal to the total value of the trust (or other property) listed in Parts 1 and 3 of Schedule A.

If you make the QTIP election, the terminable interest property involved will be included in your spouse's gross estate upon his or her death (section 2044). See instructions for line 4 of Schedule A. If your spouse disposes (by gift or otherwise) of all or part of the qualifying life income interest, he or she will be considered to have made a transfer of the entire property that is subject to the gift tax. See *Transfer of Certain Life Estates Received From Spouse* in the instructions.

**12 Election Out of QTIP Treatment of Annuities**

Check here if you elect under section 2523(f)(6) **not** to treat as qualified terminable interest property any joint and survivor annuities that are reported on Schedule A and would otherwise be treated as qualified terminable interest property under section 2523(f). See instructions. Enter the item numbers from Schedule A for the annuities for which you are making this election \_\_\_\_\_

**SCHEDULE B Gifts From Prior Periods**

If you answered "Yes" on line 11a of page 1, Part 1, see the instructions for completing Schedule B. If you answered "No," skip to the Tax Computation on page 1 (or Schedules C or D, if applicable). Complete Schedule A before beginning Schedule B. See instructions for recalculation of the column C amounts. Attach calculations.

A Calendar year or calendar quarter (see instructions)	B Internal Revenue office where prior return was filed	C Amount of applicable credit (unified credit) against gift tax for periods after December 31, 1976	D Amount of specific exemption for prior periods ending before January 1, 1977	E Amount of taxable gifts
2011	CINCINNATI, OH	0.00		0.00
1 Totals for prior periods		1 0.00	0.00	0.00
2 Amount, if any, by which total specific exemption, line 1, column D is more than \$30,000		2		0.00
3 Total amount of taxable gifts for prior periods. Add amount on line 1, column E and amount, if any, on line 2. Enter here and on page 1, Part 2—Tax Computation, line 2		3		0.00

(If more space is needed, attach additional statements.)

**SCHEDULE C Deceased Spousal Unused Exclusion (DSUE) Amount**

Provide the following information to determine the DSUE amount and applicable credit received from prior spouses. Complete Schedule A before beginning Schedule C.

A Name of Deceased Spouse (dates of death after December 31, 2010 only)	B Date of Death	C Portability Election Made?		D If "Yes," DSUE Amount Received from Spouse	E DSUE Amount Applied by Donor to Lifetime Gifts (list current and prior gifts)	F Dates of Gift(s) (enter as mm/dd/yy for Part 1 and as yyyy for Part 2)
		Yes	No			
<b>Part 1 – DSUE RECEIVED FROM LAST DECEASED SPOUSE</b>						
<b>Part 2 – DSUE RECEIVED FROM PREDECEASED SPOUSE(S)</b>						
<b>TOTAL</b> (for all DSUE amounts applied from column E for Part 1 and Part 2)						

1 Donor's basic exclusion amount (see instructions) . . . . .	<b>1</b>	
2 Total from column E, Parts 1 and 2 . . . . .	<b>2</b>	
3 Add lines 1 and 2 . . . . .	<b>3</b>	
4 Applicable credit on amount in line 3 (See <i>Table for Computing Gift Tax</i> in the instructions). Enter here and on line 7, Part 2 – Tax Computation . . . . .	<b>4</b>	

**SCHEDULE D Computation of Generation-Skipping Transfer Tax**

**Note.** Inter vivos direct skips that are completely excluded by the GST exemption must still be fully reported (including value and exemptions claimed) on Schedule D.

**Part 1—Generation-Skipping Transfers**

A Item No. (from Schedule A, Part 2, col. A)	B Value (from Schedule A, Part 2, col. H)	C Nontaxable Portion of Transfer	D Net Transfer (subtract col. C from col. B)
Gifts made by spouse (for gift splitting only)			

(If more space is needed, attach additional statements.)  
 VEA 709-4 Gillett Publishing (11/6/2015)

**Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election**

Check here  if you are making a section 2652(a)(3) (special QTIP) election (see instructions)

Enter the item numbers from Schedule A of the gifts for which you are making this election \_\_\_\_\_

1	Maximum allowable exemption (see instructions) . . . . .	1	5,430,000.00
2	Total exemption used for periods before filing this return . . . . .	2	0.00
3	Exemption available for this return. Subtract line 2 from line 1 . . . . .	3	5,430,000.00
4	Exemption claimed on this return from Part 3, column C total, below . . . . .	4	0.00
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. (see instructions) . . . . .	5	0.00
6	Exemption allocated to transfers not shown on line 4 or 5, above. <b>You must attach a "Notice of Allocation."</b> (see instructions) . . . . .	6	0.00
7	Add lines 4, 5, and 6 . . . . .	7	0.00
8	Exemption available for future transfers. Subtract line 7 from line 3 . . . . .	8	5,430,000.00

**Part 3—Tax Computation**

A Item No. (from Schedule D, Part 1)	B Net Transfer (from Schedule D, Part 1, col. D)	C GST Exemption Allocated	D Divide col. C by col. B	E Inclusion Ratio (Subtract col. D from 1.000)	F Maximum Estate Tax Rate	G Applicable Rate (multiply col. E by col. F)	H Generation-Skipping Transfer Tax (multiply col. B by col. G)
					40% (.40)		
					40% (.40)		
					40% (.40)		
					40% (.40)		
					40% (.40)		
Gifts made by spouse (for gift splitting only)							
					40% (.40)		
					40% (.40)		
					40% (.40)		
					40% (.40)		
Total exemption claimed. Enter here and on Part 2, line 4, above. May not exceed Part 2, line 3, above . . . . .		0.00	<b>Total generation-skipping transfer tax.</b> Enter here; on page 3, Schedule A, Part 4, line 10; and on page 1, Part 2 – Tax Computation, line 16 . . . . .				0.00

(If more space is needed, attach additional statements.)

Charles Client  
SSN: 444-44-4444

ATTACHMENT TO SCHEDULE A  
Disclosure of Property Reported as Gifts

The following description is intended to comply with the disclosure requirements set forth in Treas. Reg. § 301.6501(c)-1(f)(2):

Description of the Transferred Property:

Charles Client transferred ten (10) limited partnership units in the Client Family Limited Partnership, L.P. (the "Partnership"), to each of Jason Client and Sara Client.

[INCLUDE DESCRIPTION OF PARTNERSHIP BUSINESS].

Prior to the transfers described herein, Charles Client owned 100% of the limited partnership units in the Partnership.

Consideration Received: No consideration was received by Charles Client in exchange for the property.

Identity of Transferor and Transferees:

The transferor is Charles Client, the father of each of the transferees, Jason Client and Sara Client.

Method of Determining Value:

The value of 10 limited partnership units in the Partnership is subject to a combined valuation discount of 30% for lack of control and lack of marketability, as shown in the appraisal of the limited partnership units, a copy of which is attached as Exhibit 1 and which meets the requirements of Treas. Reg. § 301.6501(c)-1(f)(3).

## EXHIBIT D

# ADEQUATE DISCLOSURE STATEMENT FOR NON-GIFT TRANSFER

Jack Client ("Taxpayer")

SSN: 333-33-3333

Attachment to Form 709 for the calendar year 2015

Transfers Reported for Informational Purposes Only

### **DISCLOSURE**

Treas. Reg. Section 301.6501(c)-1(f)(4)

On December 7, 2015, Taxpayer sold 50 membership units in Client Investment LLC (the "LLC") to the Jack Client 2012 Trust, dated December 28, 2012 (the "Trust"). The sales price was \$3,000,000. The Trust paid for the LLC interests with a cash payment of \$300,000 and a Promissory Note in the amount of \$2,700,000, payable to the grantor. The Note is an interest-only note for 9 years, with interest payable annually at a rate of 1.68%. Principal is due at the end of the Note term. The following adjustment clause was included in the Purchase Agreement:

"This transaction is intended to be an arm's length transaction. Accordingly, if, after the close of this transaction, the Internal Revenue Service determines that the fair market value of the membership units of the LLC is greater or less than the value determined by the appraisal used to establish the purchase price of the membership units, the purchase price will be adjusted to the fair market value as finally determined for Federal gift tax purposes."

A copy of the appraisal of the membership units of the LLC is attached hereto as Exhibit 1. The appraiser applied a combined 36% discount for lack of control and lack of marketability.