



Introduction to Transfer Taxes

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A close-up photograph of a person's hands pointing at a document with various charts and graphs. Another hand is holding a pen over the document. The background is blurred, showing a window with blinds. A semi-transparent dark grey banner is overlaid across the middle of the image, containing the text "Federal Estate Tax".

Federal Estate Tax

Introduction

- A transfer tax is a tax on your right to transfer property.
- A transfer tax is different from an inheritance tax, which is a tax levied on the right to receive property.
- Reasons for transfer taxes:
 - Raise revenue
 - Sentiment that wealth should be earned
 - Equal opportunity for current generations
 - Government protection is required to allow orderly transfer of property
 - Prevent dynasties of wealth

Transfer Taxes

- Federal
 - Estate Tax – Tax upon transfer of assets upon death
 - Gift Tax – Tax upon transfer of assets during life
 - GST Tax – Separate transfer tax intended to prevent tax avoidance through generation skipping

- MA
 - Estate Tax

Transfer Taxes (continued)

- Please note:
 - Federal Estate Tax and Gift Taxes are unified, meaning that their tax rates and their exclusion amounts are integrated and the same
 - No MA Gift Tax or GST Tax

Federal Estate Tax

- Form 706 is the US estate tax return.
- A Form 706 must be filed for the estate of every citizen or resident of the US whose gross estate exceeds the exemption amount on the date of death.
- The exemption amount for 2019 is \$11.4 M.
- The exemption amount for 2020 is \$11.58 M.
- The marginal rate for the federal estate tax is 40% on amounts over the exemption amount.
- Exemption amount scheduled to sunset back to \$5.7M in 2026.

Historical Exemption Amounts

Historical Gift Tax Exemption Amounts (Per Person)		
Year	Estate Tax Exemption	Top Estate Tax Rate
1997	\$600,000	55%
1998	\$625,000	55%
1999	\$650,000	55%
2000	\$675,000	55%
2001	\$675,000	55%
2002	\$1,000,000	50%
2003	\$1,000,000	49%
2004	\$1,500,000	48%
2005	\$1,500,000	47%
2006	\$2,000,000	46%
2007	\$2,000,000	45%
2008	\$2,000,000	45%
2009	\$3,500,000	45%
2010	\$5,000,000 or \$0	35% or 0%
2011	\$5,000,000	35%
2012	\$5,120,000	35%
2013	\$5,250,000	40%
2014	\$5,340,000	40%
2015	\$5,430,000	40%
2016	\$5,450,000	40%
2017	\$5,490,000	40%
2018	\$11,180,000	40%
2019	\$11,400,000	40%
The Tax Cut And Jobs Act expires in 2025		
Source: IRS, FinancialSamurai.com		



Who must file and pay?

- The Personal Representative of the decedent's estate is required to file the Form 706.
- If there is no Personal Representative, the person who has possession of the decedent's property is responsible for the Form 706.
- The Personal Representative is obligated to pay the estate tax due with the return.
- Unless the Will provides otherwise, the Personal Representative has a right to equitable contribution from recipients of estate property.

When is federal estate tax return due?

- Generally the Form 706 is due 9 months after the date of death.
- The Personal Representative may file a Form 4768 - Application for Extension of Time to File a Return and/or Pay Estate Taxes.
- Application must be filed by the original due date for the Form 706.

When is federal estate tax return due (continued)?

- Six month extension of time to file is automatically granted upon request.
- An Application for Extension of Time to Pay must provide a written statement why is it impossible or impractical to pay.
- An Extension of Time to Pay does not toll the running of interest.

Gross estate - IRC 2033 – 2046

- The gross estate generally includes all assets in which the decedent had an interest or control over at the time of death.
- The values used for the gross estate are the fair market value of the assets as of the date of death.
- Can be valued as of the alternate valuation date six months after death.

Gross estate - IRC 2033 – 2046 (continued)

- What about these assets?
 - Assets in decedent's individual name
 - Property transferred by decedent during life, if decedent retained the income from or possession of such property for life
 - Life insurance
 - Joint assets (50/50 if held with US citizen spouse and created on or after 1977, otherwise all except as originally contributed by other joint owner)
 - General power of appointment

Gross Estate Schedules

- Schedule A – Real Estate
- Schedule B – Stocks and Bonds
- Schedule C – Mortgages, Notes and Cash
- Schedule D – Life Insurance
- Schedule E – Jointly Owned Property
- Schedule F – Other Miscellaneous Property
- Schedule G – Transfers During Life (such as a revocable trust)
- Schedule H – Powers of Appointment
- Schedule I - Annuities

Deductions

- Deductions are deducted from the Gross Estate to arrive at the Taxable Estate.
- The Taxable Estate is then adjusted to take into account taxable gifts and gift tax payments to arrive at the Gross Estate Tax (prior to credits).

Deductions (continued)

- Schedules:
 - Schedule J – Funeral Expenses and Administration Expenses
 - Schedule K – Debts of Decedent
 - Schedule L – Net Losses
 - Schedule M – Marital Deduction
 - Schedule O – Charitable Deduction

Schedule J – Funeral Expenses and Administrative Expenses (IRC 2053)

- Funeral Expenses
- Administrative expenses
 - Personal Representative Fees
 - Attorney Fees
 - Accountant Fees

- Administrative expenses (continued)
 - Miscellaneous expenses:
 - Management expenses: Incurred in connection with the investment, preservation, or maintenance of assets during a reasonable period of administration
 - Transmission expenses: necessarily incurred because of the decedent's death and the consequent necessity of collecting the assets, paying the debts and death taxes, and distributing the property
- Note:
 - Estate administration expenses may be deductible on the estate's income tax return
 - Title to MA real estate passes at death, so expenses of selling real estate are not administrative expenses unless the will directs the sale

Schedule K - Debts of the Decedent (IRC 2053)

- Debts of Decedent.
- Personal obligations of the decedent that are not secured by property.
- Must be existing at the time of the decedent's death.
- Can include medical expenses, income and gift taxes prior to death, etc.
- Mortgages and Liens.
- The value of the property must be included in the value of the gross estate.

Schedule L - Net Losses

- Net Losses during Administration (IRC 2054):
 - Losses incurred during the settlement of the estate, such as fire, storm, shipwreck, or other casualty, or theft

Schedule L - Net Losses (continued)

- Expenses Incurred in Administering Property Not Subject to Claims (IRC 2053(b)):
 - Expenses arising as a consequence of the decedent's death and incurred in settling an interest in property not subject to estate claims
 - Example of such property: inter vivos trust that is explicitly not liable for debts of the decedent, specifically devised MA real property, joint interests, life insurance, or annuities

Schedule M - Marital Deduction (IRC 2056)

- Transfers to a United State citizen spouse receive a deduction from estate and gift taxes.
- Generally one does not get a marital deduction from estate tax for transfers to a non citizen spouse (need a QDOT).
- Same sex marriage recognized for Federal tax purposes. Federal government does not recognize civil unions as marriages.
- The transfer ordinarily cannot be terminable in the future. The exception is a QTIP, which is a special kind of trust that qualifies terminable property for the marital deduction.

QTIP Trust (IRC 2056(b)(7))

- Requirements for QTIP:
 - The trust income must be paid to the spouse at least annually for the remainder of the spouse's life
 - No one can have the power to distribute any principal from the trust during the spouse's lifetime to anyone other than the spouse
 - The spouse must have the power to require that the trust produce a reasonable income

QTIP Trust (IRC 2056(b)(7))

- Requirements for QTIP (continued):
 - Only the spouse can appoint the trust property upon the spouse's death
 - Also, the surviving spouse must be a citizen of the United States. See QDOT
 - QTIP election must be made
- The QTIP election can be made separately for federal and MA purposes.

Schedule O – Charitable Deduction (IRC 2055)

- IRC 2055 allows a deduction for the value of all property transferred by the decedent for specified public, religious, education or other charitable purposes.
- Not all transfers qualify. The transfer must be to an organization operated exclusively for a recognized religious, scientific, literary, education or other charitable purpose.

Schedule O – Charitable Deduction (IRC 2055), continued

- Charitable remainder or charitable lead transfers are deductible only if the split interest transfers are in certain designated forms such as an “annuity trust” or “unitrust”, so the charitable component can be valued.
- The estate will not get a charitable deduction if a beneficiary wants to gift the property on his or her own.

John Adams Example

John Adams passes away on July 4, 2019.

He has \$20M of assets.

He is predeceased by his wife, Abigail Adams.

He gives all of his property to his son, John Quincy Adams.

He has deductions of \$1M (i.e.,: debts and administration expenses).

He made \$2M of taxable gifts during his lifetime.

How would we enter this into Part 2 – Tax Computation of the Form 706?

Computation

- Gross estate: 20M (line 1).
- Deductions of \$1M, so Taxable Estate is \$19M (line 3c).
- \$2M of taxable gifts, so taxable estate increases to \$21M (line 5).
- Gross estate tax on \$21M prior to exclusion amount is \$8,345,800 (line 8).
- Exclusion amount of \$11.4M results in a credit of \$4,505,800 (line 11).
- Difference between gross estate tax and credit results in net estate tax of \$3,840,000 (line 16).
- $\$21M - \$11.4M = \$9.6M$
- $\$9.6M \times 40\% = \$3.84M$

Part 2 — Tax Computation			
1	Total gross estate less exclusion (from Part 5 — Recapitulation, item 13)	1	20,000,000.00
2	Tentative total allowable deductions (from Part 5 — Recapitulation, item 24)	2	1,000,000.00
3a	Tentative taxable estate (subtract line 2 from line 1)	3a	19,000,000.00
b	State death tax deduction	3b	.00
3c	Taxable estate (subtract line 3b from line 3a)	3c	19,000,000.00
4	Adjusted taxable gifts (see instructions)	4	2,000,000.00
5	Add lines 3c and 4	5	21,000,000.00
6	Tentative tax on the amount on line 5 from Table A in the instructions	6	8,345,800.00
7	Total gift tax paid or payable (see instructions)	7	.00
8	Gross estate tax (subtract line 7 from line 6)	8	8,345,800.00
9a	Basic exclusion amount	9a	11,400,000.00
b	Deceased spousal unused exclusion (DSUE) amount from prededceased spouse(s), if any (from Section D, Part 6—Portability of Deceased Spousal Unused Exclusion)	9b	.00
c	Restored exclusion amount (see instructions)	9c	.00
d	Applicable exclusion amount (add lines 9a, 9b, and 9c)	9d	11,400,000.00
e	Applicable credit amount (tentative tax on the amount in 9d from Table A in the instructions)	9e	4,505,800.00
10	Adjustment to applicable credit amount. (May not exceed \$6,000. See instructions.)	10	.00
11	Allowable applicable credit amount (subtract line 10 from line 9d)	11	4,505,800.00
12	Subtract line 11 from line 8 (but do not enter less than zero)	12	3,840,000.00
13	Credit for foreign death taxes (from Schedule P). (Attach Form(s) 706-CE.)	13	.00
14	Credit for tax on prior transfers (from Schedule Q)	14	.00
15	Total credits (add lines 13 and 14)	15	.00
16	Net estate tax (subtract line 15 from line 12)	16	3,840,000.00
17	Generation-skipping transfer (GST) taxes payable (from Schedule R, Part 2, line 10)	17	.00
18	Total transfer taxes (add lines 16 and 17)	18	3,840,000.00
19	Prior payments. Explain in an attached statement	19	.00
20	Balance due (or overpayment) (subtract line 19 from line 18)	20	3,840,000.00

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



Portability

- Beginning January 1, 2011, estates of decedents survived by a spouse may elect to pass any of the decedent's unused exemption (DSUE) to the surviving spouse.
- This election is made on a timely filed estate tax return for the decedent with a surviving spouse.
- Only available federally, not for the Massachusetts estate tax.

Massachusetts Estate Tax

Massachusetts

- MA does not have a gift tax.
- MA estate tax exemption is 1M.
- The computation is based on the federal credit for state death taxes in effect on December 31, 2000.
- File M-706 along with the Federal 706 forms with revision date of July 1999 when the federal estate limit was 1M.

Estimate of Amount of Tax Due

Massachusetts Estate Tax

1 M	\$ -
1.5 M	\$ 64,400
2 M	\$ 99,600
2.5 M	\$ 138,800
3 M	\$ 182,000
3.5 M	\$ 229,200
4 M	\$ 280,400
4.5M	\$ 335,600
5 M	\$ 391,600
5.5 M	\$ 450,800

The image features several stacks of US 100 dollar bills. A prominent red ribbon is tied around the top of the central stack, forming a bow. The bills are scattered around the stacks, creating a sense of abundance. The text 'Federal Gift Tax' is overlaid in white on a semi-transparent dark red background.

Federal Gift Tax

Gift Tax

- Taxable gifts over the \$11.4 M lifetime gift exclusion are taxed at 40% rate.
- Lifetime gift exclusion amount is unified with the Federal estate tax exclusion amount.
- What is a gift? Any transfer to an individual, either directly or indirectly, where full consideration is not received in return.
- Who pays the gift tax? The donor is generally responsible for paying the gift tax.

Annual Exclusion

- \$15K per year may be gifted to each separate donee per year free of gift tax.
- \$15K exclusion for 2019, 2020 and 2021.
- Must be a present interest. The annual exclusion will ordinarily not apply if you gift someone money to be provided in the future.
- May be gift split.

Tuition or medical expenses you pay for someone (educational and medical exclusions)

- Any amount transferred on behalf of an individual (1) as tuition to a qualifying educational organization, or (2) for medical expenses to a medical care provider is excluded from the gift tax base.
- These exclusions are in addition to the annual gift tax exclusion and are allowed regardless of the relationship between the donor and the donee.

Example

- John Adams is still living in 2019.
- He gifted his son, John Quincy Adams \$500K in 2018.
- He wants to gift another \$1.5M to John Quincy Adams in 2019.
- He also wants to give an additional \$15K to each of his five children under the annual exclusion, for a total of \$75K.
- How would we enter this into the Form 709 – Federal Gift Tax Return?

Part 4 of the Form 709

- Total Value of Gifts: \$1.5M + \$15K X 5 = \$1,575,000 (line 1).
- Total Annual Exclusions: \$75K (line 2).
- Total Included Amount of Gifts: \$1.5M (line 3).
- No Deductions.
- Taxable Gifts (\$1.5M).

Form 709 (2018)

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Part 4—Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	1,575,000	00
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	75,000	00
3	Total included amount of gifts. Subtract line 2 from line 1	3	1,500,000	00
Deductions (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	1,500,000	00
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. H, total)	10	0	00
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	1,500,000	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:



Part 2 of the Form 709

- Taxable Gifts from Part 4: \$1.5 M (line 1).
- Prior Gifts: \$500K (line 2).
- Total Taxable Gifts: \$1.5 M + 500K = \$2 M (line 3).
- Difference between Gift Tax on \$2M and \$200K (tax due on 2018 gifts) = \$590K (line 6).
- Applicable Credit Amount on \$11.4 M Exemption Amount = \$4,505,800 (line 7).
- Credit Amount Used Up on prior gifts of \$500K = \$155,800 (line 8).
- Remaining Credit Amount = \$4,350,000 (line 11).
- Applicable credit being used in 2018 = \$590K (line 14).
- Balance due: \$0 (line 17).

709? If "Yes," complete Schedule C				
Part 2—Tax Computation	1	Enter the amount from Schedule A, Part 4, line 11	1	1,500,000 00
	2	Enter the amount from Schedule B, line 3	2	500,000 00
	3	Total taxable gifts. Add lines 1 and 2	3	2,000,000 00
	4	Tax computed on amount on line 3 (see <i>Table for Computing Gift Tax</i> in instructions)	4	745,800 00
	5	Tax computed on amount on line 2 (see <i>Table for Computing Gift Tax</i> in instructions)	5	155,800 00
	6	Balance. Subtract line 5 from line 4	6	590,000 00
	7	Applicable credit amount. If donor has DSUE amount from predeceased spouse(s) or Restored Exclusion Amount, enter amount from Schedule C, line 5; otherwise, see instructions	7	4,505,800 00
	8	Enter the applicable credit against tax allowable for all prior periods (from Sch. B, line 1, col. C)	8	155,800 00
	9	Balance. Subtract line 8 from line 7. Do not enter less than zero	9	4,350,000 00
	10	Enter 20% (0.20) of the amount allowed as a specific exemption for gifts made after September 8, 1976, and before January 1, 1977. See instructions	10	0 00
	11	Balance. Subtract line 10 from line 9. Do not enter less than zero	11	4,350,000 00
	12	Applicable credit. Enter the smaller of line 6 or line 11	12	590,000 00
	13	Credit for foreign gift taxes (see instructions)	13	0 00
	14	Total credits. Add lines 12 and 13	14	590,000 00
	15	Balance. Subtract line 14 from line 6. Do not enter less than zero	15	0 00
	16	Generation-skipping transfer taxes (from Schedule D, Part 3, col. H, total)	16	0 00
	17	Total tax. Add lines 15 and 16	17	0 00
	18	Gift and generation-skipping transfer taxes prepaid with extension of time to file	18	0 00
	19	If line 18 is less than line 17, enter balance due . See instructions	19	0 00
	20	If line 18 is greater than line 17, enter amount to be refunded	20	0 00





Federal GST Tax



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GST Tax

- Transfers to grandchildren or their equivalents (a skip person) over the GST Exemption taxed at 40% rate.
- Person who is 37.5 years younger than transferor is considered a skip person.
- GST Exemption is currently \$11.4 M.

GST Tax (continued)

- In addition to estate or gift tax.
- Without it, taxpayers could seek to bypass the estate tax by gifting property ahead multiple generations.
- Reported on same returns as federal estate tax (Schedule R of Form 706) and federal gift tax (Form 709).

3 types of generation-skipping transfers

1. Direct Skips

- A transfer to a skip person that is subject to either federal gift tax or estate tax
- Ex: John Adams gifts \$50K of cash to his grandson, Charles Francis Adams

2. Taxable Terminations

- Whenever there is a termination of an interest in a trust and after the terminating event all remaining interests in the trust are held by skip persons
- Ex: John Adams sets up a trust for the benefit of his son, John Quincy Adams, and his grandson, Charles Francis Adams. John Quincy Adams dies, leaving Charles as the only beneficiary of the trust.

3. Taxable Distributions

- Whenever there is a distribution to a skip person from a trust subject to the GST Tax
- Ex: John Adams sets up a trust that is subject to GST tax. The Trustee distributes \$50K to Charles. The distributions to Charles are subject to the GST tax.

Let's Connect!

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Questions?



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