

Gifting Real Estate To Family? The IRS May Come Knocking

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Have you gifted real estate worth more than \$13,000 to a family member? If so, don't forget to file a gift tax return.

A recent [Wall Street Journal article](#) discusses the IRS's "low profile, but sweeping" effort to discover unreported gifts of real estate to family members through an examination of state land-transfer records. What does that mean? It means that the IRS is looking at real estate deeds that show transfers of property between family members. When they find one, they look to IRS records to see if the person who gifted the property filed a gift tax return. If the IRS doesn't find one in their records, they'll probably send you a letter, which isn't on most people's list of favorite things to find in the mailbox.

So how do you avoid this letter? Simple. You file a gift tax return ([IRS Form 709](#)) in any year that you gift more than \$13,000 to any one person. That \$13,000 amount that passes tax-free is known as your annual exclusion. If you are married, spouses may combine their annual exclusions and gift up to \$26,000 to any one person in any one year before they must file a gift tax return. That means that Harry and Wendy, as husband and wife, could gift up to \$26,000 of real estate to their son, Ralph, without having to report the gift to the IRS. However, if Harry and Wendy gift real estate worth more than \$26,000 to Ralph, they must report the amount of the gift over and above \$26,000 to the IRS on a gift tax return.

Now, most people's next concern is whether they have to pay a tax. Going back to Harry and Wendy, whether they will pay a gift tax on the amount above \$26,000 depends on another type of tax exemption known as the lifetime gift tax exemption. The lifetime exemption looks at the total amount of gifts that you have made over the course of your lifetime. While every year you can gift up to \$13,000 to any one person tax free because of your annual exclusion, the amounts OVER \$13,000 are

accumulated over your lifetime and applied to your lifetime exemption. Your lifetime exemption is \$5 million, meaning that once your total lifetime gifts exceed \$5 million, then you will start to pay a gift tax on your gifts. The amount of \$5 million comes from recently passed legislation that made significant changes to the gift and estate tax laws.

As an example, we'll go back to Harry and Wendy. Let's say they gift real estate worth \$1,000,000 to their son, Ralph. They must report the gift to the IRS on a federal gift tax return that year because it exceeds \$26,000 but they do not have to pay tax at that time.

On each of their returns, Harry and Wendy would "split" the gift, meaning that the IRS will view Harry as giving \$500,000 and Wendy as giving \$500,000. So on Harry's return, he will report a gift of \$487,000 (the \$500,000 gift minus the \$13,000 annual exclusion). That \$487,000 gift will reduce his \$5 million lifetime exemption to \$4.513 million, meaning that after this gift Harry can make \$4.513 million of gifts before he has to pay a gift tax. He will not pay a gift tax until he uses that entire amount.

If you should have filed a gift tax return in a previous year, but failed to do so, you can file a late return. However, the lifetime exemption applicable to your gift will be the exemption that was in place during the year the gift was made. If you gifted over that amount, you will likely owe a gift tax.

If you are planning to gift real estate worth more than \$13,000 to a family member in the future, you should speak with an attorney before making the gift. Not only will your attorney assist you with properly reporting the gift, but he or she will discuss certain gifting techniques with you that may help you reduce any gift tax that may be due. Upcoming entries on this blog will also discuss some of these techniques. Be sure to check back!