



September 13, 2022

Ms. Melissa C. Liquerman  
Chief, Branch 4 (Estate & Gift)  
Office of Chief Counsel  
Passthroughs and Special Industries  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20044

**RE: Suggestions for Improvements to Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and Instructions**

Dear Ms. Liquerman:

On behalf of the American Institute of CPAs (AICPA), we are writing to provide to the Department of the Treasury (“Treasury”) and the Internal Revenue Service (IRS) our suggestions for improvements to the Form 709, United States Gift (and Generation-Skipping Transfer) Tax Return, and instructions, as well as guidance and regulations updates if Treasury and IRS find that the issues are beyond changes to the form and instructions. Several of our suggestions below, including items 1, 2, 3, and 7 were previously submitted to IRS in [AICPA comments](#) on the IRS priority guidance plan.<sup>1</sup>

Our suggestions for improvements to Form 709 and instructions are listed below.

1. Provide clarification in the instructions to Form 709 with regard to Column C in Part 3 of Schedule A, *Computation of Taxable Gifts*, as to the elections made under section 2632(c) (electing “in and out” of a deemed generation-skipping transfer (GST) tax exemption allocation).<sup>2</sup> The instructions state that checking the box in Column C applies only for transfers reported on the return. Confusion can result as the instructions provide that, if a prior election has been made with respect to future transfers, the taxpayer should not check the box in Column C and should not file an explanatory statement with the applicable Form 709. There is also confusion because taxpayers currently need to check a box for both making an election in and out. One suggestion is to have two columns – one for electing in and one for electing out of the automatic allocation rules under section 2632(c).

---

<sup>1</sup> See pages previously submitted IRS comments. See [AICPA comments](#), “Recommendations for the 2022-2023 Guidance Priority List ([Notice 2022-21](#)),” May 24, 2022. Specifically, see page 23, items 21 and 22 for items 1 and 2 above, respectively, page 24, item 24, for item 3 above, and page 25, item 34 for item 7 above, in the Trust, Estate, and Gift Tax Technical Resource Panel comments part of the May 24, 2022, AICPA comments.

<sup>2</sup> Unless otherwise indicated, references to a “section” are to a section of the Internal Revenue Code of 1986, as amended (the “Code”), and references to a “Treas. Reg. §” are to the Treasury regulations promulgated under the Code.

2. Provide clarification in the instructions to Form 709 with respect to gifts subject to an estate tax inclusion period (ETIP), such as a gift to a Grantor Retained Annuity Trust (GRAT). Currently, the instructions indicate such gifts should be reported in Schedule A, Part 1. As many GRATs have potential GST tax implications, consider having the instructions state that such gifts should be reported in Schedule A, Part 3. This way, a GST election can be made (either to elect in or out of the automatic allocation rules under section 2632(c)). Even though the election would not be effective until the end of the ETIP, many returns include the election on the return for the year in which the gift is made so that this election is not inadvertently overlooked when the ETIP ends. It would also be helpful for IRS to provide more detailed instruction on how to make the election, such as whether the election should apply to the GRAT, the remainder trust, or both, and whether something needs to be included on Schedule A itself when an election is being made at the end of the ETIP (as no gift is being reported from the GRAT when the ETIP ends).
3. Remove the Form 709 reporting requirement of all outright gifts of 100% of an asset to charities. The Form 709 instructions currently provide: “If you are required to file a return to report noncharitable gifts and you made gifts to charities, you must include all of your gifts to charities on the return.” Practically speaking, this reporting is often not done (except for split interests) because charitable contributions are reported on the Form 1040, U.S. Individual Income Tax Return. For outright gifts (gifts of 100% interest in an asset) that qualify for a charitable deduction, there are no gift tax implications. We suggest removing this reporting requirement. Split interests would still be reported. As an alternative if IRS is not able to easily remove this reporting requirement, the IRS could provide a box to check, indicating that all charitable gifts are reported on the Form 1040, similar to the checkbox for Form 8938, Statement of Specified Foreign Financial Assets, with various forms such as Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts.
4. Provide additional lines or clarification about a supporting schedule as the Deceased Spousal Unused Exclusion (DSUE) section in Form 709 Schedule C, Part 1 column F only allows for one date to be used. Gifts using the DSUE are often made on multiple dates/years.
5. Remove the requirement in the Form 709 and instructions requiring reporting the number of donees. If that is not possible, clarify in the Form 709 instructions how the number of donees is calculated on the Form 709, page 1, line 10, which requests that the taxpayer list the total number of donees. For example, does the taxpayer look through a gift to a trust to the number of beneficiaries with withdrawal rights? And if the gift to a trust exceeds the annual exclusions, would the taxpayer separately count the trust? Also, what about a gift to a trust with no withdrawal rights? Also confirm treatment of charitable gifts if such reporting is not removed as suggested in item 3 above.
6. Revise the Form 709 Schedule A for taxpayers to indicate on Form 709 Schedule A that the gift is to the trust but indicate in the description the individuals that have a withdrawal right allowing for the annual exclusion. The Form 709 instructions currently provide that “for a gift in trust, each beneficiary of the trust is treated as a separate donee for purposes of the annual

exclusion.” Making the suggested revision would more accurately show the trust as the donee (with the withdrawal rights described) rather than show each beneficiary as a donee.

7. The Form 709 instructions should be clarified to allow, as provided in the adequate disclosure regulations, either providing a trust summary or attaching the trust document, and the IRS should provide a description of what is needed in a trust summary to satisfy the adequate disclosure regulations. Consider developing a form on which specific information could be entered, rather than free-form descriptions.
8. Remove from the Form 709 instructions the requirement to provide a trust summary or attach the trust agreement to the Form 709, if the trust summary or trust agreement was previously included or attached, in order to start the running of the statute of limitations for adequate disclosure. Consider a repository of trust electronic documents instead of paper attaching it every year. We suggest mirroring the Form 3520, Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts, and Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner, where the taxpayer checks a box that says “attached previously,” and then provides the year the documents were attached.
9. Request for a specific form to include with Form 709 filings for GST allocations. A standardized/developed form for GST allocations would help standardize the information being provided to the IRS, instead of practitioners developing their own GST allocation statements. We realize there are many variables to consider when making a standardized form for both electing in or out of GST allocations, with even more variables when late allocations and ETIPs are considered. Therefore, consider providing sample allocation statements for practitioners to follow in place of developing additional forms.
10. In the Form 709 instructions, clarify for split-gifts, as provided in the adequate disclosure regulations (Treas. Reg. § 301.6501(c)-1(f)(6)), the trust summary of terms (or trust agreement) and all the documents required for adequate disclosure, (i.e., valuation, agreements, entity documents) is required to be attached to only the actual donor’s return, and not to both the return filed by the donor and the return filed by the spouse.
11. Delete from the Form 709 instructions discussion that for a gift to be adequately disclosed, it requires a “full and complete Form 709.” In the current Form 709 instructions under the discussion of the Adequate Disclosure rules, the discussion mentions that “a gift will be considered adequately disclosed if the return or statement includes the following” and then lists a number of bullet points. Among the points listed is “A full and complete Form 709” and also “Either a qualified appraisal or a detailed description of the method used to determine the fair market value of the gift.” The discussion then goes on to reference the applicable regulation under Treas. Reg. § 301.6501(c)-(1) and (f) for details. The regulations cited provide a general rule for adequate disclosure that the gift tax return should provide a description in a manner adequate to apprise the IRS of the nature of the gift and the basis for the value reported. It then goes on to provide that a detailed description of the method used to determine that value should include any financial data that were utilized, etc. The adequate disclosure regulations do not address what a “full and complete Form 709” entails. Since the

regulations do not provide this “full and complete Form 709” requirement for adequate disclosure, the current Form 709 instructions requiring that a “full and complete Form 709” in order for a gift to be adequately disclosed should be deleted.

12. Delete from the Form 709 instructions under the Supplemental Documents discussion that “to support the value of your gifts, you must provide information showing how it was determined” and the requirement for stock in a closely held corporation (with no reference to partnerships or limited liability companies (LLCs)), that balance sheets, income statements, and dividends paid for each of the five (5) preceding years must be attached. This requirement in the Form 709 instructions is confusing and not consistent with the adequate disclosure regulations and should be deleted.
13. Regarding basis, remove the requirement for reporting basis for the remainder interest or allow taxpayers to write “unknown” or leave it blank for GRATs, sales, etc. as the remainder interest is unknown at the time of the filing of the return. Alternatively, if that is not possible, provide clarification on how to calculate basis for GRATs, sales, etc. and clarify if the basis is the gift amount or the amount transferred to trust?
14. Allow e-filing of the Form 709 (as we previously requested in our [December 4, 2020 letter](#)).

\* \* \* \* \*

The AICPA is the world’s largest member association representing the CPA profession, with more than 421,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

If you have any questions, please contact Irene Estrada, Chair, AICPA Trust, Estate, and Gift Tax Technical Resource Panel, at (703) 628-5243 or [Irene.C.Estrada@pwc.com](mailto:Irene.C.Estrada@pwc.com); Eileen Sherr, AICPA Senior Manager – Tax Policy & Advocacy, at (202) 434-9256 or [Eileen.Sherr@aicpa-cima.com](mailto:Eileen.Sherr@aicpa-cima.com); or me at (601) 326-7119 or [JanLewis@HaddoxReid.com](mailto:JanLewis@HaddoxReid.com).

Sincerely,



Jan Lewis, CPA  
Chair, AICPA Tax Executive Committee

Ms. Melissa C. Liquerman

September 13, 2022

Page 5 of 5

cc: Ms. Catherine Hughes, Estate and Gift Tax Attorney-Advisor, Office of Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury  
Ms. Holly Porter, Associate Chief Counsel, Passthrough & Special Industries, Internal Revenue Service  
Ms. Karlene Lesho, Senior Technician Reviewer, Office of Associate Chief Counsel, Passthroughs & Special Industries (Estate & Gift), Internal Revenue Service  
Ms. Leslie H. Finlow, Senior Technician Reviewer, Office of Associate Chief Counsel, Passthroughs & Special Industries (Estate & Gift), Internal Revenue Service  
Mr. Daniel Gespass, Attorney, Office of Associate Chief Counsel, Passthroughs & Special Industries, Branch 4 (Estate & Gift), Internal Revenue Service