

Gift Tax Returns: Top Tips for the Trade

Washington, D.C. Estate Planning Council and
Montgomery County Estate Planning Council

January 21, 2016





Tip 1 – When NOT to File a Return

- Gifts within the annual exclusion amount
- Tuition payments and medical expenses
- Certain gifts to charities
- Certain gifts to spouse

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
CHARITABLE GIFTS							
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.						
OTHER GIFTS							
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)		14,000.00	1/1/15	14,000.00		14,000.00



Tip 2 – Who, When, Where & How

- Who – Donor, her guardian, agent or PR
- When – Monday, April 18, 2016. Exceptions:
 - Extension to 10/15 via Form 4868 or Form 8892
 - Possibly earlier if death in first half of year of gift
- Where – Mail to Cincinnati; Overnight to KY
- How – Neatly, with both spouses' returns in same envelope



Tip 3 – Avoid (Gift) Splitting Headaches

- Meet the Section 2513 requirements
- Both spouses must file a 709 – there are only 2 exceptions
- Manner of consenting to gift splitting
- Time for consent
- Report . Every . Single . Gift

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Adam Client
SSN: 000-00-0000

**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 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:	X					
	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



Tip 3 (continued) – Avoid Gift Splitting Headaches

- Applies to all gifts, but some gifts cannot be split
 - Gifts to trusts where spouse has non-ascertainable interest
- Read *Crummey* withdrawal right provisions
- Community property
- Joint accounts
- Death within 3 years after gift-splitting

Bob Client
SSN: 555-55-5555

Form 709 (2015)

Page **2**

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.*

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)

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

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)

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.	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)



Tip 4 – Get an Appraisal and Disclose, Disclose, Disclose (Adequately)!

- Discounts – Check the box on Question A
- Statute of Limitations – 3 years, 6 years, unlimited, or shortened for estates
- Adequate disclosure for QPRTs, GRATs and partnership freezes (§§ 2701 and 2702)
- Rules for all other gifts
- Rules for non-gifts
- The benefits of a qualified appraisal



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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.

Charles Client
SSN: 444-44-4444

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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.]



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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).



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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.



Tip 5 – The 5-Year Election for Gifts to Qualified Tuition Programs

- No 2503(e) treatment, so report if over \$14K
- Consider the 5-year election
 - The election is ratable over 5 years, not FIFO like a 5-year carry forward
- Don't forget prior 5-year elections and other gifts
- Report the gift in Part 1 or 2 of Schedule A
- Gift Splitting can lead to interesting results

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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 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:		8,000.00	1/1/15	8,000.00	4,000.00	4,000.00
	Allison Client (Great-niece) 15 Riverland Circle Giftland, NY		28,000.00	1/1/15	28,000.00	14,000.00	14,000.00
2	Sally Jones (Granddaughter) 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.		140,000.00	2015	28,000.00	14,000.00	14,000.00
							32,000.00



Tip 6 – Don't Misplace Your Trusts: Trusts That Belong on Part 1

A trust that is a non-skip person and not a GST Trust is the only type of trust to report on Part 1.

Examples:

- 2503(c) trust for a non-skip person
- GPOA trust for a non-skip person
- Charitable remainder trust for non-skip person
- Original transfer to a trust with an ETIP



Tip 6 – Don't Misplace Your Trusts: Trusts That Belong on Part 2

- A trust that is a skip person. Examples:
 - 2503(c) trust for a grandchild
 - 2642(c) trust for a grandchild
 - Close of ETIP period for direct skip trust
 - i.e., a QPRT for a grandchild
- Warning – Election out of GST allocation will result in GST tax liability



Tip 6 – Don't Misplace Your Trusts: Trusts That Belong on Part 3

- Indirect Skip – Any transfer other than a direct skip that is made to a GST Trust. Examples:
 - Any trust for children that passes to grandchildren if a child dies before his or her distribution age without a GPOA
 - Dynasty Trust that starts with children
 - Close of ETIP period for a GST Trust



Tip 7 – Make the Right 2632(c) Election at the Right Time

- Opting out of automatic allocation for a single transfer
- Opting out for any current and future transfers
 - ILITs
 - Trusts for children
 - Trusts subject to ETIPs
- Opting in – treating a trust as a GST Trust
 - Do this when automatic allocation is important



Tip 7 – Make the Right 2632(c) Election at the Right Time, continued

- Manner of making the election
 - X the box at column C
 - Election-out statement
 - Election to treat trust as GST trust
- Deadline is the due date for filing the return for the year the transfer occurred
 - Exception for ETIPs
- Don't repeat a permanent election in subsequent years

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Adam Client
SSN: 000-00-0000

**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 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:	X					
	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)	X	14,000.00	1/1/15	14,000.00	7,000.00	7,000.00



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Adam Client
SSN: 000-00-0000

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**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.

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**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)		28,000.00	6/1/15	28,000.00	14,000.00	14,000.00



Tip 8 – Put *Crummeys* in Their Place

- Disconnect between gift and GST tax exemptions when grandchildren are *Crummey* beneficiaries, unless 2632(c) election out
- Reporting *Crummey* withdrawal rights on Schedule A
 - Separate item gift for each beneficiary
 - \$5,000 or 5% *Crummey* right for spouse does not qualify for marital deduction, use annual exclusion on Part 4
- Read the trust agreement – make sure not limited to \$10,000 or even \$5,000

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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 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:		8,000.00	1/1/15	8,000.00	4,000.00	4,000.00
	Allison Client (Great-niece) 15 Riverland Circle Giftland, NY		28,000.00	1/1/15	28,000.00	14,000.00	14,000.00
2	Sally Jones (Granddaughter) 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.		140,000.00	2015	28,000.00	14,000.00	14,000.00
							32,000.00

Adam Client
SSN: 000-00-0000

Form 709 (2015)

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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	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
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	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	Taxable gifts. 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	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
2014	SEE ATTACHED	0.00		0.00



Tip 9 – Be Wary of Annual Exclusion Treatment for FLPs and LLCs

- Section 6694 return preparer penalties
- Annual exclusion treatment for gifts of FLP or LLC interests may be questionable
- Read partnership or operating agreement to determine if factors favor present interest treatment:
 - Right of transfer (even if limited by ROFR)
 - Right to distributions for taxes and actual distributions of cash flow



Tip 9 – Be Wary of Formula Clauses

- *Proctor* – void against public policy
- *Petter* – gift-over to charity is permitted
- *Wandry* – define as gift of dollar amount, not as gift of percentage interest
- Reporting on Form 709



Tip 10 – Be Prepared for an Audit

- Audits focus on valuation discounts and annual exclusion gifts
- Keep a closing binder
- Returns reporting gifts of cash or listed stocks are generally not audited (no classification committee)
- Wait for one S/L period to close before making another “red flag” gift