
MEMORANDUM

RE: U.S. GIFT TAX (NON-RESIDENT ALIENS)

A non-resident alien is subject to gift tax when he makes a gift of real or tangible personal property situated in the U.S. (IRC §2501(a)(1), §2511(a); Treas Reg §25.2511-1(b)).

A gift of U.S. real estate is subject to gift tax (Treas Reg §25.2511-3(b)(1)).

A gift of U.S. intangible personal property is not subject to gift tax (IRC §2501(a)(2)).

Non-resident aliens are not entitled to the unified credit (\$1M in gifts exempt from tax).

Non-resident aliens are entitled to:

1. \$13,000 annual exclusion for gifts to any person.
2. Unlimited exclusion for gifts to defray educational or medical expenses.
3. The unlimited exclusion for gifts to citizen spouses.
4. The \$133,000 (2009) annual exclusion for gifts to non-citizen spouses (see: Rev Proc 2008-66, IRC §2503(b); 2503 (e), Treas Reg §25.2523(i)-(1)(a), (c)(2)).
5. Unlimited amount of property to U.S. charity free of gift tax (IRC §2522(b)).
6. Unlimited amount of property to a trust, or foundation, only if the gift is to be used within the U.S.
7. Basis of property, acquired by gift from a non-resident alien is determined in the same manner as property basis acquired by gift from a resident alien (IRC §1015, 1015(d)).

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