

FOREIGN GIFT REPORTING



GIFTS FROM FOREIGN PERSON(S)

December is a time when we think of gifts -- both giving and receiving them. If you are a U.S. person who received foreign gifts of money or other property, you may need to report these gifts on Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts. Form 3520 is an information return, not a tax return, because foreign gifts are not subject to income tax. However, there are significant penalties for failure to file Form 3520 when it is required.

GENERAL RULE: FOREIGN GIFTS

In general, a foreign gift is money or other property received by a U.S. person from a foreign person that the recipient treats as a gift or bequest and excludes from gross income. A "foreign person" is a nonresident alien individual or foreign corporation, partnership or estate.

The IRS may re-characterize purported gifts from foreign partnerships or foreign corporations as items of income that must be included in gross income.

Additionally, gifts from foreign trusts are subject to different rules than gifts from other foreign persons.

A gift to a U.S. person does not include amounts paid for qualified tuition or medical payments made on behalf of the U.S. person.

REPORTING REQUIREMENTS

You must file Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts, if, during the current tax year, you

treat the receipt of money or other property above certain amounts as a foreign gift or bequest. Include on Form 3520:

Gifts or bequests valued at more than \$100,000 from a nonresident alien individual or foreign estate (including foreign persons related to that nonresident alien individual or foreign estate);

or

Gifts valued at more than \$13,258 (adjusted annually for inflation) from foreign corporations or foreign partnerships (including foreign persons related to the foreign corporations or foreign partnerships).

You must aggregate gifts received from related parties. For example, if you receive \$60,000 from nonresident alien A and \$50,000 from nonresident alien B, and you know or have reason to know they are related, you must report the gifts because the total is more than \$100,000. Report them in Part IV of

Form 3520. Treat gifts from foreign trusts as trust distributions you report in Part III of Form 3520.

File Form 3520 separately from your income tax return. The due date for filing Form 3520 is the same as the due date for filing your annual income tax return, including extensions. You file an annual Form 3520 for all reportable foreign gifts and bequests you receive during the taxable year. See the Instructions for Form 3520 for additional information.

Under a new law effective June 17, 2008, gifts from individuals who ceased to be a U.S. citizens or green card holders (lawful permanent residents) on or after June 17, 2008 may be subject to special rules. Refer to the 2008 Instructions for Form 3520 for additional information.

PENALTIES FOR FAILURE TO FILE FORM 3520

You may be penalized if you do not file your Form 3520 on time or if it is incomplete or inaccurate. Generally, the penalty is 5% of the amount of the foreign gift for each month for which the failure to report continues (not to exceed a total of 25%). ■

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