

ANNUAL EXCLUSION FOR GIFTS, 2032A AND 2523 ADJUSTMENTS MADE

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On Wednesday, October 16, 2008, the Internal Revenue Service issued Rev.Proc. 2008-66, 2008-45 IRB 1, in which the Service published inflation adjusted tax items for 2009. This type of revenue procedure is published annually, and covers the new tax tables and rates for the coming year, adjustments to credits, and a number of other items that are changeable because of inflation.

Of importance to estate planners are three things: (a) the change in the annual gift tax exclusion; (b) the maximum reduction amount under Internal Revenue Code Section¹ 2032A; and (c) the non-citizen spouse gift limit.

Annual Gift Tax Exclusion Under Section 2503: For calendar year 2009, the first \$13,000 of gifts to any person (other than gifts of future interests in property) are not included in the total amount of taxable gifts under Section 2503 made during that year. The last change to the annual gift tax exclusion amount was made in 2005 for 2006 (changing the amount to \$12,000),² and the one prior to that was in 2001 effective in 2002 (changing the amount to \$11,000).³ Before that, the annual gift exclusion was statutorily set at \$10,000, and indexed to inflation.⁴ The relative rarity of adjustments to the annual gift tax exclusion amount occurs because changes are allowed only in \$1,000 increments, and the statute specifically requires inflation adjusted computations to be rounded downward to the next lowest \$1,000 multiple. Given the small size of the exclusion to start with, as can be seen, often several years pass between revisions.

Annual Gift Tax Exclusion for Gifts to Non-Citizen Spouses: This is a figure, unlike the annual gift tax exclusion, that adjusts every year. Generally speaking, there is no marital deduction for gifts to non-citizen spouses. Instead, the annual gift tax exclusion in Section 2503 is modified via Section 2523(i)(2) to allow a special, increased annual gift tax exclusion for gifts to non-citizen spouses, and the number therein (originally \$100,000) is indexed to inflation. For calendar year 2009, the first \$133,000 of gifts to a spouse who is not a citizen of the United States (other than gifts of future interests in property) are not included in the total amount of taxable gifts under Sections 2503 and 2523(i)(2) made during that year. For 2008, the limit was \$128,000⁵ and for 2007 the limit was \$125,000.⁶

Valuation of Qualified Real Property in Decedent's Gross Estate: Like the Section 2523 amount, this number changes annually. For an estate of a decedent dying in calendar year 2009, if the executor elects to use the special use valuation method under Section 2032A for qualified real property, the aggregate decrease in the value of qualified

real property resulting from electing to use Section 2032A for purposes of the estate tax cannot exceed \$1,000,000. In 2007, the dollar limit was changed for 2008 to \$960,000.⁷ In 2006, the dollar limit was changed for 2007 to \$940,000.⁸

¹ For convenience, any reference to “Section” means a Section in the Internal Revenue Code

² Rev. Proc. 2005-70; 2005-47 IRB 1

³ Rev. Proc. 2001-59; 2001-52 IRB 1

⁴ Code Section 2503(b)(2), an amendment added by Section 501(c)(3) of the Taxpayer Relief Act of 1997

⁵ Rev. Proc. 2007-66; 2007-45 IRB 1

⁶ Rev. Proc. 2006-53; 2006-48 IRB 1

⁷ Rev. Proc. 2007-66; 2007-45 IRB 1

⁸ Rev. Proc. 2006-53; 2006-48 IRB 1