

# Annual Gifts, Gifts to Minors, and 529 Plans

By Yahne Miorini, LL.M.

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## 1. Payment of Tuition Fees

The payment of tuition fee made directly to a qualifying education institution is not considered a gift by the IRS.

The exemption does only apply to the payment of tuition fees; it does not include books, supplies, or dormitory expenses. A qualifying education institution is defined as one that maintains a regular faculty and curriculum and has a regularly enrolled student body at the place where its educational activities are carried on.

The donor can also enter into a contract with the institution to pay future tuition. The IRS rules that a grandmother would qualify for the exclusion under § 2503(e) for the payment in advance of the tuition of her grandchildren. The IRS requires that the payments are nonrefundable and are to be forfeited if the grandchildren ceased to attend the school.

## 2. Payment of Medical Expenses

Medical care is defined to include expenses incurred for the diagnosis, cure, mitigation, treatment or prevention of disease, or for transportation for such medical care, and applies only to payments that have not been reimbursed by the donee's insurance. In addition, the person who pay medical expenses for a third person, may report on his/her own income tax returns, the payment as a deduction. If the yearly medical expenses exceed 7.5% of the AGI, then this deduction can be reported. This is very important when a family member pays a nursing home. Health care premium and long-term care insurance are deductible medical expenses.

The person who pays tuition fee for a spouse or a dependent may also be eligible for an income tax deduction by filing Form 8917 with the federal income tax return.

## 3. Annual Exclusion

For gifts of present interest only, a donor may exclude the first \$10,000 of gifts, adjusted to inflation, made to each donee during any calendar year. Currently the annual exclusion amount is \$13,000. If the donor is married, the annual exclusion may be aggregated per couple and increased to \$26,000.

## 4. 529 Plans

A donor can contribute a lump sum of \$60,000 (\$120,000 for married donors) to a 529 College Savings Plan. The IRS accepts that the donor books his/her coming 5 years of annual exclusion for the beneficiary of the 529 College Savings Plan. The beneficiary will be able to take immediate advantage of the potential growth of the 529 Plan investments. If the donor were to die within this 5-year period, a portion of the gift may be includable in the gross estate of the donor.

## 5. Outright Gifts to Minors

Parents can accept gifts on behalf of their children. Actually, when the minor receives an important amount of money, a parent needs to be appointed legal conservator of the child. The funds will be held into a restricted account, and the conservator will have to file an inventory and yearly accounting with the court. For amounts above \$10,000 a court authorization is needed.

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## 6. UTMA

The Uniform Transfers to Minors Act (UTMA) or its predecessor, the Uniform Gifts to Minors Act (UGMA) have been enacted by all of the fifty (50) states. These acts provide a mechanism whereby an individual can transfer funds for the benefit of a minor. The funds remain with a custodian until the minor attains age 18 or in some states, age 21. The UTMA has the advantage of being simple to set up, the money does not to be spent on school like the 529 College Savings Plan, and there are no contribution ceilings.

## 7. Trust for Minors

If the donor wants to make a gift to a minor via a trust, the annual exclusion may not be available because it will be a gift of a future interest. However, Section 2503(c) of the IRC set up a form of trust for minors, which has the following requirements:

- ✓ The trust may only benefit one beneficiary during the beneficiary's life time
- ✓ The trustee has discretion to distribute the net income and principal for the benefit of the beneficiary until he reaches 21
- ✓ The beneficiary must have the right to withdraw all of the undistributed property upon reaching age 21
- ✓ If the beneficiary dies before the trust terminates, the trust assets must be included in the beneficiary's estate for federal estate tax purposes