



TaxNewsFlash

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Notice 2017-15: Estate and gift exclusions, GST exemptions for same-sex spouses

The IRS today released an advance version of Notice 2017-15 concerning the treatment of the applicable exclusion amount for estate and gift tax purposes and the generation-skipping transfer (GST) exemption for gifts, bequests, and transfers by or to same-sex spouses.

[Notice 2017-15](#) [PDF 38 KB] provides special administrative procedures to allow eligible taxpayers (and the executors of eligible estates) to recalculate the remaining applicable exclusion amount and the remaining GST exemption, to the extent that an allocation of that exclusion (or exemption) was made with respect to certain transfers when the taxpayer was married to a person of the same sex.

Today's notice provides that with respect to the applicable exclusion amount applied to a transfer between spouses that did not qualify for the marital deduction for federal estate or gift tax purposes at the time of the transfer (based solely on the application of the Defense of Marriage Act (DOMA)):

- Eligible taxpayers will be permitted to establish that transfer's qualification for the marital deduction and to recover the applicable exclusion amount previously applied on a return by reason of such a transfer, even if the limitations period applicable to that return for the assessment of tax or for claiming a credit or refund of tax has expired.
- If, however, qualification for the marital deduction or a reverse qualified terminable interest property (QTIP) election would require a QTIP, qualified domestic trust (QDOT), or reverse QTIP election, taxpayers must file a request for "9100 relief" (under Reg. section 301.9100-3) to make such an election.

With respect to a taxpayer's GST exemption that was allocated to transfers made, prior to the recognition of same-sex marriages for federal tax purposes, to or for the

benefit of one or more persons in a same-sex marriage and/or any other person(s) whose generation assignment is determined under section 2651 with reference to a same-sex spouse, certain exemption allocations to transfers to persons now recognized to be non-skip persons as defined in section 2613(b) will be deemed void. Today's notice clarifies that taxpayers who made such a transfer will be permitted to recalculate the amount of their remaining GST exemption.

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