

# 2008 Gifts

by Melissa J. Belvedere

**T**he system of Federal transfer taxes comprises three interrelated parts: the estate tax, the gift tax, and the generation-skipping transfer tax. The estate tax is a type of indirect tax imposed on the right to transfer gifts at death; the gift tax is levied on gifts transferred during a donor's life, also known as *inter vivos* gifts. The generation-skipping transfer tax ensures that wealth transfers, either during a donor's life or at death, are taxed at each successive generation.

A donor reports gift transfers on Form 709, *United States Gift (and Generation-Skipping Transfer) Tax Return*, which is filed annually, as appropriate. This article presents data from returns filed during Calendar Year 2009, collected by the Internal Revenue Service's Statistics of Income Division. Approximately 90 percent of returns filed during Calendar Year 2009 were for gifts made in 2008.<sup>1</sup> This "Gift Year 2008" study file is the most recent of SOI's annual Form 709 studies.

Donors filed 234,714 returns for Gift Year 2008. Most donors were female, and the majority of returns filed were nontaxable. Donors transferred a total of \$40.2 billion to 927,554 donees, or gift recipients, primarily children and grandchildren. Most gifts were given directly to recipients. Of the trust vehicles used to make indirect gifts, family trusts were used more commonly than other vehicles. The majority of gifts given were in the form of cash, while the next most commonly used form of gift was corporate stock.

## Background

Congress added the gift tax to the United States transfer tax system in 1924.<sup>2</sup> The gift tax rates were equal to estate tax rates, and there were provisions for both an annual exclusion and a lifetime exemption. The annual exclusion is the amount that a donor can give to any single recipient during a given year without incurring tax (the number of donees is

unlimited); the lifetime exemption is the total amount the donor can transfer tax free over the course of his or her lifetime. At its inception, the annual exclusion was \$500 per donee, and the lifetime exemption was set at \$50,000. Two years later, the Revenue Act of 1926 repealed the gift tax.

The government's need for revenue to address the changing economic circumstances of the Great Depression led to the reinstatement of the gift tax in 1932. The Revenue Act of 1932 established gift tax rates at 75 percent of estate tax rates and made gifts to charitable organizations entirely tax-exempt, regardless of the amount. Congress continued to make minor changes to gift tax law in subsequent years. In 1948, the marital deduction was introduced to equalize treatment of couples in community property states with those in non-community property states. The marital deduction allowed one spouse to gift an amount of up to half of their adjusted gross estate, excluding community property, to the other spouse without incurring tax. The split-gift rule, which allowed one spouse to elect to consider half of a gift as having been made by the non-donor spouse, was also introduced at that time. The split-gift rule effectively doubled the amount that a donor could give to any single recipient without incurring tax liability.

The transfer tax system underwent significant restructuring with the Tax Reform Act of 1976. The Act unified the system of estate and gift taxation, imposing a single, graduated rate schedule on all gifts, with the disposition of the decedent's estate considered to be the decedent's ultimate gift. The applied rate of tax, therefore, increased as the cumulative total of lifetime gifts exceeded threshold steps established in the rate schedule, with the highest rate applied to transfers at death. The 1976 Act also created the unified credit, which replaced both the estate tax exclusion and the lifetime gift exemption. Under the new system, the unified credit could be used to offset gift tax liability during the donor's life, and then any remaining credit could be used to offset estate tax liability. The gift tax annual exclusion was retained. The Act also introduced the generation-skipping tax, ensuring that wealth was taxed at each successive generation.

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<sup>1</sup> The remaining 10 percent of returns filed during Calendar Year 2009 report gifts made prior to 2008. These are likely returns filed by taxpayers who had received extensions to file, or who were fiscal year filers. They are considered an appropriate proxy for gifts made in 2008 that will be reported in subsequent filing periods.

<sup>2</sup> For more detailed information regarding the history of the transfer tax system in the United States, see Luckey, John R. "A History of Federal Estate, Gift, and Generation-Skipping Taxes," April 9, 2003, Congressional Research Service, Library of Congress.

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Between 1976 and 2001, there were only minor changes to gift tax law, although the annual exclusion amount was indexed as a result of the Taxpayer Protection Act of 1997. The Economic Growth and Tax Relief Reconciliation Act of 2001 gradually increased the lifetime exemption from estate and generation skipping taxes to \$3.5 million in 2009, of which \$1 million could be applied to gifts made during the donor's life. It also lowered the maximum gift tax rate to 35 percent. For gifts made in 2008, the annual exclusion amount was \$12,000, meaning that donors could give up to \$12,000 to any single recipient, tax-free.

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Donors filed a total of 234,714 Forms 709 for Gift Year 2008 (Figure A). Of the total returns filed, 223,996 were nontaxable (95.4 percent), while 10,718 were taxable (4.6 percent). This represents a decline of 8.8 percent from the total number of returns filed for Gift Year 2007, and a 3.7-percent decline from the total number of returns filed for Gift Year 2006. The entirety of this decline came from nontaxable returns; the number of taxable returns ac-

tually increased from 2007. Tax liability was calculated after making adjustments for annual exclusions, the marital deduction, and charitable deductions. Taxable gifts, which are calculated by subtracting the annual exclusion amount, charitable deduction, and marital deduction from total gifts, were \$24.9 billion (Figure B).

Female donors accounted for 55.3 percent of all returns filed; male donors accounted for 44.7 percent (Figure C). Nontaxable returns were composed of approximately equal percentages of male and female donors. However, the percentage of taxable returns filed by female donors was 62.7, while the percentage of taxable returns filed by male donors was only 37.3.

There were 927,554 donees, or gift recipients, in 2008 (Figure D). Approximately 44.9 percent of all donees were male, while approximately 46 percent of donees were female. The remaining 9.1 percent of recipients were trusts, organizations, or cases in which the donee's gender could not be determined.

Together, children and grandchildren received the vast majority of all gifts given, 48.9 percent and 24.7 percent, respectively (Figure E). Gifts to all other rela-

Figure A

Number of Gift Tax Returns Filed, by Tax Status, Gift Years 2006-2008



**Figure B**

**Total Gifts, Annual Exclusions, Marital and Charitable Deductions and Taxable Gifts, Gift Year 2008**

[All figures are estimates based on samples—money amounts are in thousands of dollars]

Item	Amount
Total gifts [1]	40,153,563
Total annual exclusions [2]	9,248,541
Marital deductions	1,955,546
Charitable deductions	4,103,220
Total taxable gifts [3]	24,878,317

[1] "Total gifts" is reported on Form 709, Part 4, Line 1. It reflects the amount of total gifts given by the donor, after having been split with the donor's spouse.  
 [2] "Annual exclusions" is reported on Form 709, Part 4, Line 2.  
 [3] "Total taxable gifts" is reported on Form 709, Part 4, Line 11.  
 NOTE: Detail may not add to totals due to taxpayer reporting discrepancies and processing tolerances.

**Figure C**

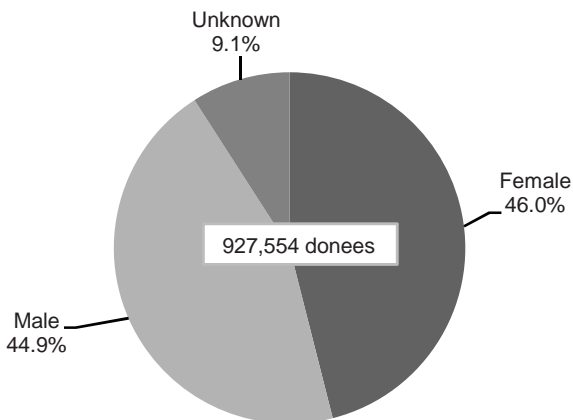
**Number of Gift Tax Returns Filed, by Tax Status and Donor Sex, Gift Year 2008**

[All figures are estimates based on a sample]

Tax status	All donors	Male	Female
	(1)	(2)	(3)
<b>Total</b>	<b>234,714</b>	<b>105,030</b>	<b>129,684</b>
Nontaxable	223,996	101,034	122,962
Taxable	10,718	3,996	6,722

**Figure D**

**Composition of Donees, by Sex, Gift Year 2008**



tives made up 10.4 percent. Charitable organizations received only 0.9 percent of all gifts given.

Most gifts (69.1 percent, or \$27.8 billion) were given directly, meaning that the recipients were able to have full use and enjoyment of the gifts immediately (Figure F). Gifts through trust, for which the

**Figure E**

**Relationship of Donees to Donors, Gift Year 2008**

[All figures are estimates based on samples]

Relationship	Number of donees	Percent of total
<b>Total</b>	<b>927,554</b>	<b>100.0</b>
Children [1]	453,673	48.9
Grandchildren [2]	228,789	24.7
Other donees [3]	139,951	15.1
Siblings [4]	33,985	3.7
Other relatives [5]	33,907	3.7
Parents [6]	16,421	1.8
Spouses [7]	12,218	1.3
Charitable organizations	8,610	0.9

[1] "Children" includes children by blood, adopted children, foster children, step-children, and sons- and daughters-in-law.  
 [2] "Grandchildren" includes grandchildren by blood, adopted grandchildren, foster grandchildren, step-grandchildren, grandchildren-in-law, and great-grandchildren.  
 [3] "Other donees" includes other individuals whose relationship was not specified and unidentified organizations.  
 [4] "Siblings" includes siblings by blood, adopted siblings, foster siblings, step-siblings, half-siblings, and siblings-in-law.  
 [5] "Other relatives" includes nieces and nephews, grand-nieces or grand-nephews, cousins (including second cousins, etc.), and aunts and uncles.  
 [6] "Parents" includes parents by blood, adopted parents, foster parents, step-parents, parents-in-law, and grandparents.  
 [7] "Spouses" includes current and divorced spouses and life partners.  
 NOTE: Percentages may not add to 100 percent due to rounding.

donee's use of the gift is dependent on a future event, made up the remaining 30.9 percent (\$12.4 billion) of the gifts. Family trusts were the most common trust type used, totaling \$2.4 billion, or 5.9 percent, of all gifts given. Family trusts, sometimes called dynasty trusts or credit shelter trusts, allow donors to take full advantage of the unified credit by removing assets from their estates with the intention of passing them on to other heirs, while still allowing surviving spouses access to the trust principal under limited circumstances.

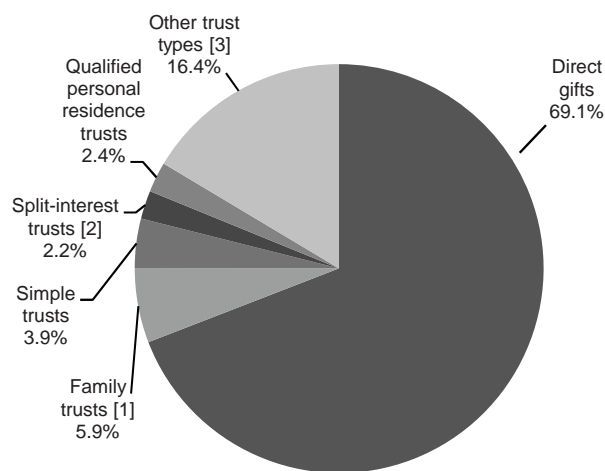
Gifts in the form of cash made up the largest share of total gifts (Figure G). Cash made up 46.3 percent (\$14.2 billion) of the total gifts reported on nontaxable returns, and 53.3 percent (\$5.1 billion)

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**Figure F**

### Transfer Method Used by All Donors, Taxable and Nontaxable, Gift Year 2008



[1] "Family trusts" includes children's trusts and bypass trusts.  
 [2] "Split-interest trusts" includes charitable remainder unitrusts, charitable remainder annuity trusts, charitable lead trusts, pooled income funds, unknown charitable remainder trusts, and unknown split-interest trusts.  
 [3] "Other trust types" includes insurance trusts, marital trusts, 529 trusts, grantor retained annuity trusts, generation skipping trusts, and unknown trusts.  
 NOTE: Detail may not add to totals due to taxpayer reporting discrepancies and processing tolerances.

of the total gift amount reported on taxable returns. Stock was the second most commonly gifted asset, for both taxable and nontaxable returns, followed by real estate. However, while real estate made up 19 percent (\$5.8 billion) of gifts reported on nontaxable returns, it made up only 8.2 percent (\$0.8 billion) of the gifts reported on taxable returns. The type of property given differed by gender of the donor: men gave less cash as gifts compared to women; 44.5 percent of total gifts given by men were cash versus 51.0 percent for women. Conversely, men gave more stock as gifts; 22.4 percent of the total value of gifts given by male donors was composed of stock, compared to 15.1 percent of the value of gifts given by women.

Gift taxes are calculated based on the fair market value of assets at the time of the transfer. However, for tax purposes, the fair market value can be reduced through the use of discounts. Discounts generally reflect the limited marketability of assets, often because the gifted asset represents a minority ownership interest in real or business assets. There were 102,608 gifts given in 2008 against which valuation discounts were taken, and the dollar value of these

**Figure G**

### Asset Composition of Gifts, by Tax Status of Return, Gift Year 2008

[All figures are estimates based on a sample—money amounts are in thousands of dollars]

Type of assets gifted	All returns		Nontaxable returns		Taxable returns	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
	(1)	(2)	(3)	(4)	(5)	(6)
<b>All gifts</b>	<b>40,153,562</b>	<b>100.0</b>	<b>30,735,612</b>	<b>100.0</b>	<b>9,417,950</b>	<b>100.0</b>
Cash	19,298,528	48.1	14,228,166	46.3	5,070,363	53.8
Stock [1]	7,384,012	18.4	5,552,096	18.1	1,831,916	19.5
Real estate [2]	6,613,706	16.5	5,839,781	19.0	773,924	8.2
Partnerships [3]	1,713,824	4.3	1,124,498	3.7	589,326	6.3
Farm assets	1,507,723	3.8	1,389,586	4.5	118,136	1.3
Other assets [4]	1,443,427	3.6	1,203,439	3.9	239,988	2.5
Other non-corporate business assets	1,058,990	2.6	791,900	2.6	267,090	2.8
Bonds [5]	493,403	1.2	200,887	0.7	292,516	3.1
Mortgages and notes	411,142	1.0	218,722	0.7	192,419	2.0
Other mutual funds	135,717	0.3	121,765	0.4	13,952	0.1
Hedge funds	93,091	0.2	64,771	0.2	28,320	0.3

[1] "Stock" includes publicly traded and closely held stock.  
 [2] "Real estate" includes personal residences, vacant land, improved real estate, farm land, real estate partnerships, and real estate mutual funds.  
 [3] "Partnerships" includes family limited partnerships and unidentified limited partnerships.  
 [4] "Other assets" includes annuities, retirement assets, futures, face value of insurance policies, art, depletable/intangible property, and other assets.  
 [5] "Bonds" includes state and local bonds, Federal savings bonds, other Federal bonds, corporate and foreign bonds, and bond funds.

**Figure H**

**Gifts Given with Discounts, by Size of Discount Percentage, Gift Year 2008**

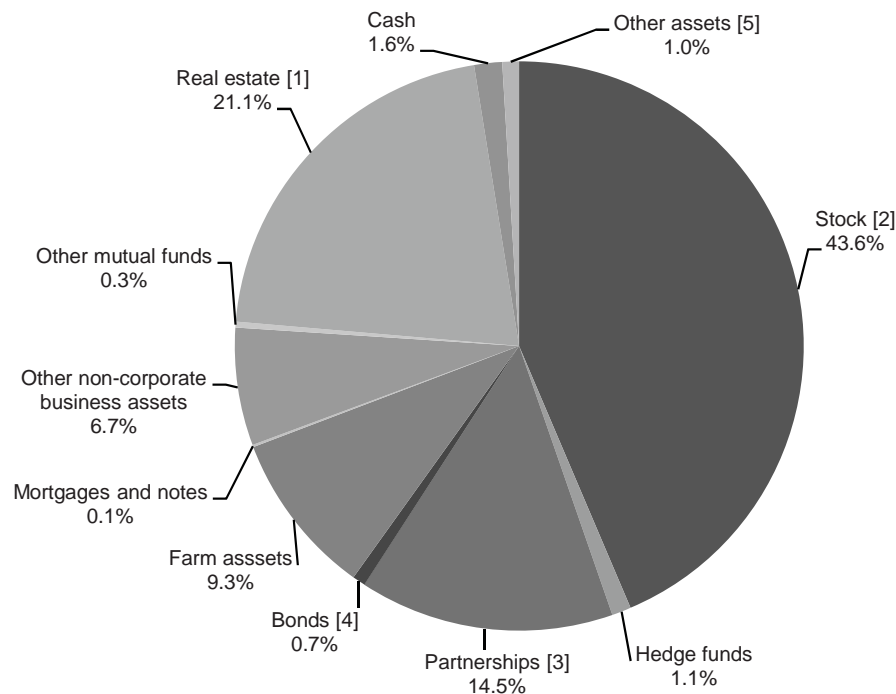
[All amounts are estimates based on samples—money amounts are in thousands of dollars]

Size of discount percentage	Number of discounted gifts	Amount of discount
<b>All discounts</b>	<b>102,608</b>	<b>3,674,903</b>
Less than 20 percent	7,291	106,825
Between 20 percent and 40 percent	24,655	472,404
Greater than 40 percent	70,663	3,095,674

discounts totaled \$3.7 billion (Figure H). The majority of discounts taken were in excess of 40 percent of the reported fair market value. Approximately 43.6 percent of discounted assets were stock, while real estate made up 21.1 percent of discounted assets (Figure I).

**Figure I**

**Asset Composition of Gifts Against Which Discounts Were Taken, Gift Year 2008**



[1] "Real estate" includes personal residences, vacant land, improved real estate, farm land, real estate partnerships, and real estate mutual funds.

[2] "Stock" includes publicly traded and closely held stock.

[3] "Partnerships" includes family limited partnerships and unidentified limited partnerships.

[4] "Bonds" includes state and local bonds, Federal savings bonds, other Federal bonds, corporate and foreign bonds, and bond funds.

[5] "Other assets" includes annuities, retirement assets, futures, face value of insurance policies, art, depletable/intangible property, and other assets.

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### Focus on Gifts Given Through Family Limited Partnerships

As part of its annual gift tax study, the Statistics of Income Division collects data on transfers of—i.e., gifts of—interests in family limited partnerships (FLPs), as well as the composition of those FLPs at the time of the transfer. FLPs are limited partnerships, organized with both a general partner (or partners) and limited partners who are related to one another, and they are often used to manage family wealth. For this reason, FLPs are an important tool in estate planning for many wealthy individuals.

Generally, parents create and fund an FLP, naming themselves as general partners who maintain full control and decision-making authority over the partnership and its assets, regardless of how few general partnership shares they own. Over time, the general partners transfer the limited partnership shares in the FLP to children, grandchildren, or other family members. These limited partnership shares convey no control over the FLP or its assets. This arrangement allows parents to retain full control over the FLP assets, while taking full advantage of the annual gift tax exclusion by slowly transferring shares in the partnership and ultimately reducing the wealth that is eventually included in the parents' estates at death.

For 2008, donors gifted FLP shares worth approximately \$1.7 billion, which represents about 4.2

percent of all gifts given in 2008. Figure J presents the overall composition of those FLPs, as reported by donors. Stock was the most prevalent asset in the donors' FLPs; it represented about 48.7 percent of FLP assets reported on nontaxable returns and about 53.4 percent of the FLP assets reported on taxable returns. Real estate was the next most common type of FLP asset, regardless of tax status. However, while bonds made up only 1.7 percent of FLP assets reported on nontaxable returns, they accounted for 11.7 percent of FLP assets reported on taxable returns.

The asset composition of FLPs varies significantly by the gender of the donor (Figure K). The FLPs reported by male donors were overwhelmingly composed of stock (57.7 percent), while all other asset categories contributed less than 10 percent of the total value of FLPs. Farm assets were the second most common type of asset within the FLPs of male donors. However, farm assets still contributed only 8.9 percent of the value of FLP assets. By comparison, real estate assets (which accounted for only 6 percent of the FLP assets of male donors) made up 35.5 percent of the FLPs of female donors, making it the most popular type of asset in the FLPs of female donors. Stock, meanwhile, accounted for only 27.4 percent of FLP assets of female donors.

**Figure J**

#### Asset Composition of Family Limited Partnerships, Shares of Which Were Gifted, by Tax Status of Return, Gift Year 2008

[All figures are estimates based on a sample—money amounts are in thousands of dollars]

Type of assets gifted	All returns		Nontaxable returns		Taxable returns	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
	(1)	(2)	(3)	(4)	(5)	(6)
<b>All gifts</b>	<b>1,696,520</b>	<b>100.0</b>	<b>1,442,001</b>	<b>100.0</b>	<b>254,519</b>	<b>100.0</b>
Stock [1]	837,532	49.4	701,564	48.7	135,968	53.4
Real estate [2]	238,659	14.1	195,107	13.5	43,552	17.1
Farm assets	153,307	9.0	140,535	9.7	12,772	5.0
Cash	128,007	7.5	112,540	7.8	15,467	6.1
Other non-corporate business assets	97,784	5.8	95,273	6.6	2,511	1.0
Other assets [3]	59,248	3.5	57,793	4.0	1,456	0.6
Bonds [4]	54,231	3.2	24,520	1.7	29,711	11.7
Hedge funds	46,344	2.7	42,667	3.0	3,677	1.4
Partnerships [5]	39,419	2.3	35,689	2.5	3,730	1.5
Other mutual funds	30,731	1.8	28,441	2.0	2,290	0.9
Mortgages and notes	11,258	0.7	7,874	0.5	3,384	1.3

[1] "Stock" includes publicly traded and closely held stock.

[2] "Real estate" includes personal residences, vacant land, improved real estate, farm land, real estate partnerships, and real estate mutual funds.

[3] "Other assets" includes annuities, retirement assets, futures, face value of insurance policies, art, depletable/intangible property, and other assets.

[4] "Bonds" includes state and local bonds, Federal savings bonds, other Federal bonds, corporate and foreign bonds, and bond funds.

[5] "Partnerships" includes family limited partnerships and unidentified limited partnerships.

Figure K

### Asset Composition of Family Limited Partnerships, Shares of Which Were Gifted, by Sex of Donor, Gift Year 2008

[All figures are estimates based on a sample—money amounts are in thousands of dollars]

Type of assets gifted	All donors		Male		Female	
	Amount	Percent of total	Amount	Percent of total	Amount	Percent of total
	(1)	(2)	(3)	(4)	(5)	(6)
<b>All gifts</b>	<b>1,696,520</b>	<b>100.0</b>	<b>1,230,513</b>	<b>100.0</b>	<b>466,006</b>	<b>100.0</b>
Stock [1]	837,532	49.4	709,677	57.7	127,855	27.4
Real estate [2]	238,659	14.1	73,336	6.0	165,323	35.5
Farm assets	153,307	9.0	109,923	8.9	43,384	9.3
Cash	128,007	7.5	95,078	7.7	32,929	7.1
Other non-corporate business assets	97,784	5.8	94,749	7.7	3,035	0.7
Other assets [3]	59,248	3.5	38,427	3.1	20,822	4.5
Bonds [4]	54,231	3.2	28,754	2.3	25,476	5.5
Hedge funds	46,344	2.7	28,476	2.3	17,868	3.8
Partnerships [5]	39,419	2.3	32,927	2.7	6,492	1.4
Other mutual funds	30,731	1.8	15,282	1.2	15,449	3.3
Mortgages and notes	11,258	0.7	3,884	0.3	7,374	1.6

[1] "Stock" includes publicly traded and closely held stock.

[2] "Real estate" includes personal residences, vacant land, improved real estate, farm land, real estate partnerships, and real estate mutual funds.

[3] "Other assets" includes annuities, retirement assets, futures, face value of insurance policies, art, depletable/intangible property, and other assets.

[4] "Bonds" includes state and local bonds, Federal savings bonds, other Federal bonds, corporate and foreign bonds, and bond funds.

[5] "Partnerships" includes family limited partnerships and unidentified limited partnerships.

### Data Sources and Limitations

Statistics presented in this article were derived from a sample of 7,399 Federal gift tax returns filed in Calendar Year 2009. Approximately 90 percent of gifts reported on returns filed in 2009 were given during Calendar Year 2008. The remaining approximately 10 percent of returns filed during 2009 reported gifts made prior to Calendar Year 2008. These include fiscal-year filers, taxpayers who were granted extensions to file their gift tax returns, and late-filed returns. They are considered an appropriate proxy for gifts made in 2008 that will be reported in subsequent filing periods.

The Form 709, *United States Gift (and Generation-Skipping Transfer) Tax*, study is an annual study based on a stratified random sample. Returns are stratified based on tax status (taxable or nontaxable) and size of total gifts. Tax status is determined based on the amount of tax liability reported on the return in Part 2, Line 15. The amount of total taxable gifts is the sum of gifts given during a given calendar year, prior to reductions for the annual exclusion amounts, and the marital and charitable deductions.

There are four strata of nontaxable returns and five strata of taxable returns, based on the amount of

total deductions. Nontaxable returns with total gifts of less than \$100,000 were sampled at a rate of 0.30 percent; rates increased as the amount of total taxable gifts increased, up to a rate of 100 percent for returns with total gifts of \$1.0 million or more. Taxable returns with total gifts of less than \$100,000 were sampled at a rate of 6.53; rates increased to 100 percent for taxable returns of \$1 million or more. The final sample included 3,971 nontaxable returns and 3,428 taxable returns.

Weights were applied, by strata, to each return in the sample to create population estimates. All weights were calculated by dividing the final population count by the final sample count for each stratum. All weights were adjusted to account for missing returns and returns rejected from the sample. Selected coefficients of variation, which measure sampling error, are shown in Figure L.

### Selected Terms and Concepts

*Annual exclusion*—The amount that a donor can give to any single beneficiary, within a given tax year, without incurring Federal gift taxes. For gifts given in 2008, the annual exclusion amount was \$12,000.

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**Figure L**

### Coefficients of Variation for Selected Data Items, by Tax Status, Gift Year 2008

Item	All returns	Nontaxable returns	Taxable returns
	(1)	(2)	(3)
Total returns filed	0.00	0.16	3.27
Male donors	3.58	3.72	2.99
Female donors	2.90	3.06	5.46
Total gift amount	0.74	0.96	0.36
Total gift tax	0.51	0.00	0.51

*Charitable deduction*—Completed, outright transfers to a qualifying charitable organization entitle the donor to take a deduction for the full amount of the transfer. Gifts given through trust must meet various legal requirements in order for the donation to qualify for a charitable deduction.

*Crummey trust*—A trust arrangement that allows trust beneficiaries, or contingent beneficiaries, the right to withdraw their gifts from the trust. The trust structure enables the donor to take advantage of the annual gift exclusion, while still exerting a measure of control over the gift in the trust. Crummey trusts were first legitimized in 1968, by *Crummey v. Commissioner*; the principle was extended further in 1991 in *Cristofani's Estate v. Commissioner*.

*Family limited partnership (FLP)*—FLPs are limited partnerships in which the majority of partners are related. They are most commonly used to manage family business or financial assets. Generally, the creators are general partners with control over the FLP management, while limited partnership shares are gifted and distributed to other family members over time.

*Marital deduction*—Gifts between spouses, either during life or at death, qualify the donor for an unlimited marital deduction for the full amount of the transfer.

*Tax status*—Returns can be considered taxable or nontaxable, based on the amount of tax liability reported on Part 2, line 15 of the return. Gift tax returns with a positive amount of liability reported are taxable returns; those with no liability reported are nontaxable.

*Trust*—An independent legal entity governed by a trust agreement, created when one party (known as the grantor or settler) transfers ownership of assets to the trust under the control of a trustee, for the benefit of a third-party beneficiary. Trusts can be either simple or complex. Simple trusts are those that are required to distribute all income in the tax year in which it is earned; that neither distribute nor reserve any money for charitable purposes; and that do not distribute amounts from the corpus of the trust. Complex trusts are those that are not, by definition, simple trusts.