

FORM 709: AVOIDING COMMON REPORTING ERRORS AND OTHER PRACTICAL TIPS

JEFFREY P. GEIDA



- Lyla Jackie Shultz
- Born October 7, 2022



CASE STUDY

1. Gift of marketable securities to 2 year zeroed-out Grantor Retained Annuity Trust in 2020; trust does not meet definition of "GST Trust;" Grantor is 30 years old
2. Gift of Netflix stock to Spousal Lifetime Access Trust for spouse in October 2021
3. Gift of cash to irrevocable life insurance trust; Crummey withdrawal rights for spouse and two children; spouse will make split gift election
4. Sale of stock of closely-held corporation to intentionally defective grantor trust

GST TRUSTS AND INDIRECT SKIPS

- Important to learn the definitions of GST Trusts
- IRS attempted to exempt certain trusts from the automatic allocation rules
- Exceptions to definition – 6 categories
 1. Age 46 Trusts
 2. Age Difference of 10 Years
 3. Partial Estate Tax Inclusion Trust
 4. Non-Skip Person Estate Tax Inclusion Trust
 5. CLATs, CRATs, CRUTs
 6. CLUTs with Non-Skip Beneficiary

AGE 46 TRUSTS

- The trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons—
 - before the date that the individual attains age 46,
 - on or before one or more dates specified in the trust instrument that will occur before the date that such individual attains age 46, or
 - upon the occurrence of an event that, in accordance with regulations prescribed by the Secretary, may reasonably be expected to occur before the date that such individual attains age 46

AGE DIFFERENCE OF 10 YEARS

- The trust instrument provides that more than 25 percent of the trust corpus must be distributed to or may be withdrawn by one or more individuals who are non-skip persons and who are living on the date of death of another person identified in the instrument (by name or by class) who is more than 10 years older than such individuals

PARTIAL ESTATE TAX INCLUSION TRUST

- The trust instrument provides that, if one or more individuals who are non-skip persons die on or before a date or event described in clause (i) or (ii) (Age 46 Trusts and Age Difference of 10 Years), more than 25 percent of the trust corpus either must be distributed to the estate or estates of one or more of such individuals or is subject to a general power of appointment exercisable by one or more of such individuals

NON-SKIP PERSON ESTATE TAX INCLUSION TRUST

- The trust is a trust any portion of which would be included in the gross estate of a non-skip person (other than the transferor) if such person died immediately after the transfer

CLUTs WITH NON-SKIP BENEFICIARY

- The trust is a trust with respect to which a deduction was allowed under section 2522 for the amount of an interest in the form of the right to receive annual payments of a fixed percentage of the net fair market value of the trust property (determined yearly) and which is required to pay principal to a non-skip person if such person is alive when the yearly payments for which the deduction was allowed terminate

GST TRUSTS AND INDIRECT SKIPS

- Many irrevocable trusts used in estate planning will meet the definition of a GST Trust
- Key is to be thoughtful about application of GST exemption
 - Review trust provisions and 6 exceptions
 - If a GST Trust and indirect skip, elect out of automatic allocation if necessary

CASE STUDY

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2. Gift of Netflix stock to Spousal Lifetime Access Trust for spouse in October 2021
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2020 FORM 709

Ima Judge
SSN: 123-45-6789

Form 709 (2020)

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SCHEDULE A Computation of Taxable Gifts (Including transfers in trust) (see instructions)

A Does the value of any item listed on Schedule A reflect any valuation discount? If "Yes," attach explanation Yes No

B Check here if you elect under section 529(c)(2)(B) to treat any transfers made this year to a qualified tuition program as made ratably over a 5-year period beginning this year. See instructions. Attach explanation.

Part 1—Gifts Subject Only to Gift Tax. Gifts less political organization, medical, and educational exclusions. See instructions.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
See schedule attached							

Gifts made by spouse — complete only if you are splitting gifts with your spouse and he/she also made gifts.

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Total of Part 1. Add amounts from Part 1, column H **0.**

SCHEDULE A -- Part 1 Gifts Subject Only to Gift Tax

A Item no.	B Donee's name, relationship to donor, address, and description	C	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
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OTHER GIFTS

1	Judge Family 2020 Grantor Retained Annuity Trust dated April 1, 2020 Frendo Judge, Trustee EIN: 99-9999999 1875 Century Park East, Suite 2000 Los Angeles, CA 90067			4/8/20	0.		0.
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Assignment of 30,000 shares of the capital stock of ABC, Inc., the fair market value of which was determined to be \$4,200,000.

Attached as **Exhibit A**, is the Judge Family 2020 Grantor Retained Annuity Trust dated April 1, 2020 (the "GRAT").

Attached as **Exhibit B** is the valuation report of the ABC stock as of the date of the gift.

As set forth in paragraph 4.2 of the GRAT the term is two (2) years and the payout rate is 46.722421% in year one, and 56.066904% in year two. Based on the foregoing, the value of the gift is zero. Attached as **Exhibit C** is the calculation of the taxable gift.

Ima Judge
SSN: 123-45-6789

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Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here if you are making a section 2652(a)(3) (special QTIP) election. See instructions.

Enter the item numbers from Schedule A of the gifts for which you are making this election

1	Maximum allowable exemption (see instructions)	1	11,580,000.
2	Total exemption used for periods before filing this return	2	0.
3	Exemption available for this return. Subtract line 2 from line 1	3	11,580,000.
4	Exemption claimed on this return from Part 3, column C, total below	4	0.
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. See instructions	5	0.
6	Exemption allocated to transfers not shown on line 4 or 5 above. You must attach a "Notice of Allocation." See instructions	6	0.
7	Add lines 4, 5, and 6	7	0.
8	Exemption available for future transfers. Subtract line 7 from line 3	8	11,580,000.

REPORTING GIFTS SUBJECT TO AN ETIP

- Definition of Estate Tax Inclusion Period
 - IRC Section 2642(f)(3) - the period of time after an inter vivos gift during which the property transferred would be includible in the gross estate of the transferor if the transferor died

REPORTING GIFTS SUBJECT TO AN ETIP

- Exception - 5% Probability of Inclusion
 - Transferred property is not considered being subject to inclusion in the gross estate of the transferor “if the possibility that the property will be included is so remote as to be negligible” (i.e. if it can be ascertained actuarially that there is less than a 5% probability that the assets will be included)
 - If there is no ETIP, then the normal rules apply - automatic allocation to direct skips and indirect skips

REPORTING GIFTS SUBJECT TO AN ETIP

- When is GST allocated?
 - A direct skip or indirect subject to an ETIP is deemed to have been made only at the close of the ETIP
 - GST exemption is automatically allocated to direct skips and indirect skips
 - An affirmative allocation of GST exemption cannot be revoked, but becomes effective as of (and no earlier than) the date of the close of the ETIP

REPORTING GIFTS SUBJECT TO AN ETIP

- Example from Form 709 Instructions:
 - A transfers house to QPRT for 10 year term, remainder to A's granddaughter. Value of house would be includible in A's estate if she dies during 10-year term.
 - Transfer of remainder portion to the QPRT is a completed gift that must be reported on Part 1 Schedule A.
 - GST portion of transfer would not be reported until A died during term or her interest in the QPRT otherwise ended. This is reported on Schedule D, Part 1, but only at the close of the ETIP.

REPORTING GIFTS SUBJECT TO AN ETIP

- Electing Out of Automatic GST Allocations
 - A transferor can elect out of the automatic allocation of GST exemption at any time prior to the due date of the gift tax return for the calendar year in which the close of the ETIP occurs
 - If electing out of automatic allocation, best to do elect out on the gift tax return filed to report the gift

CASE STUDY

1. Gift of marketable securities to 2 year zeroed-out Grantor Retained Annuity Trust in 2020; trust does not meet definition of "GST Trust;" Grantor is 30 years old
2. Gift of Netflix stock to Spousal Lifetime Access Trust for spouse in October 2021
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Part 3—Indirect Skips and Other Transfers in Trust. Gifts to trusts that are indirect skips as defined under section 2632(c) or to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
See schedule attached							
<i>Gifts made by spouse — complete only if you are splitting gifts with your spouse and he/she also made gifts.</i>							
Total of Part 3. Add amounts from Part 3, column H							0.

(If more space is needed, attach additional statements.)

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Ima Judge
SSN: 123-45-6789

SCHEDULE A -- Part 3 Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
1	Judge Family 2020 Grantor Retained Annuity Trust dated April 1, 2020 Ima Judge, Trustee EIN: 99-9999999 1875 Century Park East, Suite 2000 Los Angeles, CA 90067			1/1/21	0.		0.
See attachment regarding the taxpayer's election out of the automatic GST allocations for this GRAT prior to the end of the term of the GRAT.							— 0.

2021 FORM 709

Ima Judge
 SSN: 123-45-6789

Form 709 (2021)

Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here if you are making a section 2652(a)(3) (special QTIP) election. See instructions.

Enter the item numbers from Schedule A of the gifts for which you are making this election ► _____

1	Maximum allowable exemption (see instructions)	1	11,700,000.
2	Total exemption used for periods before filing this return	2	0.
3	Exemption available for this return. Subtract line 2 from line 1	3	11,700,000.
4	Exemption claimed on this return from Part 3, column C, total below	4	0.
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. See instructions	5	0.
6	Exemption allocated to transfers not shown on line 4 or 5 above. You must attach a "Notice of Allocation." See instructions	6	0.
7	Add lines 4, 5, and 6	7	0.
8	Exemption available for future transfers. Subtract line 7 from line 3	8	11,700,000.

Part 3 Tax Computation

Attached to and made part of
United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709)
Calendar Year 2021
Ima Judge
Social Security No.: 123-45-6789

Schedule A, Part 3, Item 1

Judge Family 2020 Grantor Retained Annuity Trust dated April 1, 2020
Ima Judge, as Trustor and Trustee
5050 Ledgerdemain Ave.
Justice, CA 90000

EIN: 99-9999999

Pursuant to Internal Revenue Code Section 2632(c)(5)(A)(i)(II) and Treasury Regulation Section 26.2632-1(b)(2)(iii)(B), the taxpayer hereby elects that the automatic allocation rules of Section 2632(c) shall **NOT** apply to the transfer by the taxpayer described on Schedule A, Part 3, Item 1, or to any future transfers to the Judge 2020 Grantor Retained Annuity Trust dated April 1, 2020. As a result of this election, the inclusion ratio of the Judge Family 2020 Grantor Retained Annuity Trust dated April 4, 2020 is one. This election shall also apply to any transfer made by the taxpayer to any subtrust created under the Judge Family 2020 Grantor Retained Annuity Trust dated April 1, 2020.

REPORTING GIFTS SUBJECT TO AN ETIP

- Voluntary Allocations of GST Exemption
 - A transferor can allocate GST exemption voluntarily on a 709
 - Voluntary allocations are irrevocable after the due date of the return
 - Voluntary allocations to a trust are made on a Notice of Allocation attached to the return

GST PLANNING: ELECTING OUT OF AUTOMATIC ALLOCATION, FOLLOWED BY LATE ALLOCATION IN 2023

Step 1: Electing Out of Year 1 Transfer

- Assume a GST Trust
- Need to elect out of automatic allocation – IRC Section 2632(c) – election is only for transfer reported on that gift tax return
- Check box in Schedule A Part 3
- Attach statement electing out
- Review Form 709 instructions:
- "Election 1" – timely made if made on a timely filed gift tax return for the year the transfer was made (or deemed to have been made)
- Clearly identify the trusts and/or transfers to which the election applies

2020 FORM 709

Part 3—Indirect Skips and Other Transfers in Trust. Gifts to trusts that are indirect skips as defined under section 2632(c) or to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
See schedule attached							

Gifts made by spouse — complete only if you are splitting gifts with your spouse and he/she also made gifts.

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Total of Part 3. Add amounts from Part 3, column H ▶ **6,903,100.**

(If more space is needed, attach additional statements.)

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SCHEDULE A -- Part 3 Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
1	<p>AJ Irrevocable Gift Trust dated October 1, 2021 Ample Justice, Trustee EIN: 55-5555555 1875 Century Park East Suite 2000 Los Angeles, CA 90067</p>			10/1/21	6,903,100.		6,903,100.

Gift of 10,000 shares of Netflix, Inc. @ 690.31/share as of date of gift

Attached as **Exhibit A** is a copy of the AJ Irrevocable Gift Trust (the "AJ Gift Trust"), established by the taxpayer on October 1, 2021.

Attached as **Exhibit B** is a copy of the valuation report of the shares of Netflix, Inc. as of the date of the gift.

The Taxpayer elects out of the automatic deemed allocation rules applicable to indirect skip transfers pursuant to IRS Section 2632(c)(5)(A) and therefore specifically elects not to allocate any generation-skipping transfer tax exemption to the 2021 gift listed above.

Equal Justice
SSN: 456-78-9123

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Part 4—Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	6,903,100.
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	0.
3	Total included amount of gifts. Subtract line 2 from line 1	3	6,903,100.
Deductions (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	0.
5	Exclusions attributable to gifts on line 4	5	0.
6	Marital deduction. Subtract line 5 from line 4	6	0.
7	Charitable deduction, based on item nos. _____ less exclusions	7	0.
8	Total deductions. Add lines 6 and 7	8	0.
9	Subtract line 8 from line 3	9	6,903,100.
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. G, total)	10	0.
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	6,903,100.

Equal Justice
SSN: 456-78-9123

Form 709 (2021)

Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here if you are making a section 2652(a)(3) (special QTIP) election. See instructions.

Enter the item numbers from Schedule A of the gifts for which you are making this election

1	Maximum allowable exemption (see instructions)	1	11,700,000.
2	Total exemption used for periods before filing this return	2	0.
3	Exemption available for this return. Subtract line 2 from line 1	3	11,700,000.
4	Exemption claimed on this return from Part 3, column C, total below	4	0.
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. See instructions	5	0.
6	Exemption allocated to transfers not shown on line 4 or 5 above. You must attach a "Notice of Allocation." See instructions	6	0.
7	Add lines 4, 5, and 6	7	0.
8	Exemption available for future transfers. Subtract line 7 from line 3	8	11,700,000.

GST PLANNING: ELECTING OUT OF AUTOMATIC ALLOCATION, FOLLOWED BY LATE ALLOCATION IN 2023 (CONT.)

Step 2: Allocating GST Exemption to Year 1 Transfer in Year 2

- Obtain value of trust assets as of the date of the transfer of GST exemption
 - Review Form 709 instructions
 - Attach a statement titled "Notice of Allocation"
- Must include the following information in the statement:
 - Obtain value of trust assets as of the date of the transfer of GST exemption
 - Review Form 709 instructions
 - Attach a statement titled "Notice of Allocation"
 - Must include the following information in the statement:

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Part 3—Indirect Skips and Other Transfers in Trust. Gifts to trusts that are indirect skips as defined under section 2632(c) or to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
See sch. attached							
<i>Gifts made by spouse — complete only if you are splitting gifts with your spouse and he/she also made gifts.</i>							
Total of Part 3. Add amounts from Part 3, column H							0.

(If more space is needed, attach additional statements.)

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Equal Justice
SSN: 456-78-9123

SCHEDULE A -- Part 3 Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
1	AJ Irrevocable Gift Trust dated October 1, 2021 Ample Justice, Trustee EIN: 55-5555555 1875 Century Park East Suite 2000 Los Angeles, CA 90067 See attached statement regarding the taxpayer's affirmative election to allocate GST exemption to the AJ 2021 Irrevocable Gift Trust as of October 5, 2022			10/5/22	0.		0.
							0.

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Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here if you are making a section 2652(a)(3) (special QTIP) election. See instructions.

Enter the item numbers from Schedule A of the gifts for which you are making this election

1	Maximum allowable exemption (see instructions)	12,060,000.
2	Total exemption used for periods before filing this return	0.
3	Exemption available for this return. Subtract line 2 from line 1	12,060,000.
4	Exemption claimed on this return from Part 3, column C, total below	0.
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. See instructions	0.
6	Exemption allocated to transfers not shown on line 4 or 5 above. You must attach a "Notice of Allocation." See instructions	2,302,500.
7	Add lines 4, 5, and 6	2,302,500.
8	Exemption available for future transfers. Subtract line 7 from line 3	9,757,500.

Part 3—Tax Computation

Equal Justice
SSN: 456-78-9123

NOTICE OF GST EXEMPTION ALLOCATION For Calendar Year 2022

The following transfer(s) are not listed on this return

Trust name	AJ 2021 Irrevocable Gift Trust dated October 1, 2021
Trust EIN	55-5555555
GST exemption allocated to transfer	\$2,302,500
Inclusion ratio after allocation	0.000
Year originally reported on Form 709	2021
Value of trust assets at effective date of allocation	\$2,302,500

GST PLANNING: USE INCREASED GST EXEMPTION TO CREATE GST EXEMPT TRUST FROM NON-EXEMPT TRUST

- Could work with lifetime trusts established at end of GRAT or QPRT
- Divide trust into two separate trusts, not necessarily equal in value
- Late allocation of GST exemption to one trust
- If grantor trust with substitution power, can swap assets prior to allocation of GST exemption
- Assets could be subject to valuation discounts and/or have high appreciation potential

GIFT SPLITTING AND RELATED GST ALLOCATION ISSUES

- Review of general rules:
 - If one spouse elects, then the other must consent
 - Gifts can be split only while married – can't split a gift made before marriage in the same calendar year
 - Also cannot gift split for a gift made after death of spouse
 - Non-donor spouse is not required to file a gift tax return if the only gifts in the calendar year are less than twice the annual exclusion amount and they are not gifts of a future interest
- For gifts to a trust in which the donor's spouse is a beneficiary along with others (e.g. life insurance trust), gift splitting is allowed to the portion of the interest transferred to the other parties only if the interest is ascertainable and therefore severable from the spouse's interest
- Election applies to all gifts made by both spouses

GIFT SPLITTING AND RELATED GST ALLOCATION ISSUES (CONT.)

- Gift splitting applies "for purposes of this chapter" (i.e. Chapter 12); therefore does not apply for purposes of Chapter 11 (i.e. estate tax)
 - However, under GST tax regulations, if a gift is split, it is split for GST purposes as well
- What about gifts to trusts in which the donor's spouse is a beneficiary?
- Electing spouse is deemed to be transferor for GST purposes of one-half of the entire amount gifted (See PLR 200218001)

CASE STUDY

1. Gift of marketable securities to 2 year zeroed-out Grantor Retained Annuity Trust in 2020; trust does not meet definition of "GST Trust;" Grantor is 30 years old
2. Gift of Netflix stock to Spousal Lifetime Access Trust for spouse in October 2021
3. Gift of cash to irrevocable life insurance trust; Crummey withdrawal rights for spouse and two children; spouse will make split gift election
4. Sale of stock of closely-held corporation to intentionally defective grantor trust

SCHEDULE A -- Part 3 Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
1	<p>Aaron Judge 2021 Irrevocable Life Insurance Trust dated July 1, 2021 Aaron Judge, Trustee EIN: 33-3333333 1875 Century Park East Suite 2000 Los Angeles, CA 90067</p> <p>Gift of cash</p> <p>Attached as Exhibit A is a copy of the Aaron Judge 2021 Irrevocable Life Insurance Trust (the "ILIT") established by the taxpayer on July 1, 2021.</p> <p>Portion of gift to spouse (\$5,000) is not split pursuant to IRC 25.2513-1(b)(4).</p> <p>Children Junior and Julie have withdrawal rights over the the portion of the gift to the ILIT that qualifies for the annual exclusion.</p>	X					
	<p>Junior Judge (Son) 1875 Century Park East Suite 2000 Los Angeles, CA 90067</p>	X	30,000.	7/5/21	30,000.	15,000.	15,000.

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Junior Judge (Son) 1875 Century Park East Suite 2000 Los Angeles, CA 90067	X	30,000.	7/5/21	30,000.	15,000.	15,000.
Julie Judge (Daughter) 1875 Century Park East Suite 2000 Los Angeles, CA 90067	X	30,000.	7/5/21	30,000.	15,000.	15,000.
Busee Judge (Spouse) 1875 Century Park East, Suite 2000 Los Angeles, CA 90067	X	5,000.	7/5/21	5,000.		5,000.
Portion not allocable to specific beneficiary	X	10,000.	7/5/21	10,000.	5,000.	5,000.
						<hr/> 40,000.

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Aaron Judge
SSN: 123-45-6798

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Part 4—Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	40,000.
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	35,000.
3	Total included amount of gifts. Subtract line 2 from line 1	3	5,000.
Deductions (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	0.
5	Exclusions attributable to gifts on line 4	5	0.
6	Marital deduction. Subtract line 5 from line 4	6	0.
7	Charitable deduction, based on item nos. _____ less exclusions	7	0.
8	Total deductions. Add lines 6 and 7	8	0.
9	Subtract line 8 from line 3	9	5,000.
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. G, total)	10	0.
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	5,000.

Aaron Judge
SSN: 123-45-6798

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Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here if you are making a section 2652(a)(3) (special QTIP) election. See instructions.

Enter the item numbers from Schedule A of the gifts for which you are making this election ► _____

1	Maximum allowable exemption (see instructions)	1	11,700,000.
2	Total exemption used for periods before filing this return	2	0.
3	Exemption available for this return. Subtract line 2 from line 1	3	11,700,000.
4	Exemption claimed on this return from Part 3, column C, total below	4	0.
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. See instructions	5	37,500.
6	Exemption allocated to transfers not shown on line 4 or 5 above. You must attach a "Notice of Allocation." See instructions	6	0.
7	Add lines 4, 5, and 6	7	37,500.
8	Exemption available for future transfers. Subtract line 7 from line 3	8	11,662,500.

Aaron Judge
SSN: 123-45-6798

Page 1

NOTICE OF ELECTION UNDER IRC §2632(c)
Election to Automatically Allocate GST Exemption Under IRC §2632(c)

Trust name: Aaron Judge 2021 Irrevocable Life Insurance
Trust dated July 1, 2021
Aaron Judge, Trustee

Trust EIN: 33-3333333

Item 1, Part 3, Schedule A

The taxpayer hereby elects to treat the above trust as a GST trust and elects to have the automatic allocation provisions of IRC §2632(c) apply to all transfers made by the taxpayer to the trust in 2021 and in all future years.

SCHEDULE A -- Part 3 Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
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GIFTS MADE BY SPOUSE

1	Aaron Judge 2021 Irrevocable Life Insurance Trust dated July 1, 2021 Aaron Judge, Trustee EIN: 33-3333333 1875 Century Park East Suite 2000 Los Angeles, CA 90067	X					
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Gift of cash

Attached as **Exhibit A** is a copy of the Aaron Judge 2021 Irrevocable Life Insurance Trust (the "ILIT") established by the taxpayer on July 1, 2021.

Portion of gift to spouse (\$5,000) is not split pursuant to IRC 25.2513-1(b)(4).

2021 FORM 709

Portion of gift to spouse (\$5,000) is not split pursuant to IRC 25.2513-1(b)(4).

Children Junior and Julie have withdrawal rights over the the portion of the gift to the ILIT that qualifies for the annual exclusion.

Junior Judge (Son) 1875 Century Park East Suite 2000 Los Angeles, CA 90067	X	7/5/21	30,000.	15,000.	15,000.
Julie Judge (Daughter) 1875 Century Park East Suite 2000 Los Angeles, CA 90067	X	7/5/21	30,000.	15,000.	15,000.
Portion not allocable to specific beneficiary	X	7/5/21	10,000.	5,000.	5,000.
					35,000.

Busee Judge
 SSN: 321-45-6798

Form 709 (2021)

Part 4—Taxable Gift Reconciliation

1	Total value of gifts of donor. Add totals from column H of Parts 1, 2, and 3	1	35,000.
2	Total annual exclusions for gifts listed on line 1 (see instructions)	2	30,000.
3	Total included amount of gifts. Subtract line 2 from line 1	3	5,000.
Deductions (see instructions)			
4	Gifts of interests to spouse for which a marital deduction will be claimed, based on item numbers _____ of Schedule A	4	0.
5	Exclusions attributable to gifts on line 4	5	0.
6	Marital deduction. Subtract line 5 from line 4	6	0.
7	Charitable deduction, based on item nos. _____ less exclusions	7	0.
8	Total deductions. Add lines 6 and 7	8	0.
9	Subtract line 8 from line 3	9	5,000.
10	Generation-skipping transfer taxes payable with this Form 709 (from Schedule D, Part 3, col. G, total)	10	0.
11	Taxable gifts. Add lines 9 and 10. Enter here and on page 1, Part 2—Tax Computation, line 1	11	5,000.

Busee Judge
SSN: 321-45-6798

Form 709 (2021)

Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here if you are making a section 2652(a)(3) (special QTIP) election. See instructions.

Enter the item numbers from Schedule A of the gifts for which you are making this election

1	Maximum allowable exemption (see instructions)	1	11,700,000.
2	Total exemption used for periods before filing this return	2	0.
3	Exemption available for this return. Subtract line 2 from line 1	3	11,700,000.
4	Exemption claimed on this return from Part 3, column C, total below	4	0.
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. See instructions	5	37,500.
6	Exemption allocated to transfers not shown on line 4 or 5 above. You must attach a "Notice of Allocation." See instructions	6	0.
7	Add lines 4, 5, and 6	7	37,500.
8	Exemption available for future transfers. Subtract line 7 from line 3	8	11,662,500.

REPORTING CHARITABLE GIFTS

- Review of general rules:
 - No gift tax return required if only gifts in calendar year are to charity (i.e. IRC Section 2522) and the transfer was of the donor's entire interest in the property
 - If you are filing a gift tax return to report gifts to non-charitable beneficiaries, then you are required to report all charitable gifts as well
 - If a partial interest in property is transferred to charity, or property was transferred part to charity and part to a non-charitable beneficiary, gift tax return must be filed
 - Extension of statute of limitations if charitable gifts are not disclosed because of lack of adequate disclosure of all gifts

REPORTING CHARITABLE GIFTS (CONT.)

- Gifts to charitable remainder trusts:
 - If donor is sole non-charitable beneficiary and retains the right to change charitable remainder beneficiary, gift of remainder interest is incomplete – not gift tax return required
 - However, if donor does not retain power to change remainder beneficiary, gift tax return must be filed (donor's entire interest not transferred to charity)
 - If donor's spouse is sole non-charitable beneficiary or is a non-charitable beneficiary with donor, gift tax marital deduction is available
 - Gift tax annual exclusion is available for gift or annuity or unitrust interest to third party (i.e. not the donor or donor's spouse)
 - Donor can reserve power in charitable remainder trust to revoke a non-charitable interest by will only; this will cause gift to non-charitable beneficiary to be incomplete (also results in inclusion of the trust in the donor's estate on death)

REPORTING CHARITABLE GIFTS (CONT.)

- Gifts to charitable lead trusts:
 - Like charitable remainder trusts, charitable lead trusts are split interest gifts that must be reported
 - Does the gift tax charitable deduction apply to a gift of the charitable income interest? Depends on whether the lead trust is “qualified” or “nonqualified”
 - A “qualified” charitable lead trust is a trust with a guaranteed annuity or unitrust payment to the charitable income beneficiary
 - Inter vivos qualified lead trusts qualify for gift and income tax deduction
 - A “nonqualified” charitable lead trust does not have a guaranteed annuity or unitrust payment to the charitable income beneficiary
 - Gift tax deduction for a qualified lead trust is the actuarial value of the qualified income interest

REPORTING CHARITABLE GIFTS (CONT.)

- Gifts to charitable lead trusts (cont.):
 - Gift must be complete to obtain gift tax charitable deduction (e.g. no completed gift if grantor, as Trustee, has power to change charitable beneficiaries)
 - What if charitable lead trust is a family foundation and grantor is a Trustee or director of the foundation?
 - Gift will be complete only if funds transferred from the charitable lead trust to the foundation are segregated from the foundation's other assets and foundation's organizational document prohibit grantor from having control over funds or selecting done charitable organizations
 - What about grantor's donor-advised fund as the charitable lead beneficiary?
 - IRS has privately ruled that this gift will be complete, since grantor has no legal control over fund

REPORTING CHARITABLE GIFTS (CONT.)

- GST allocation to charitable lead trust:
 - Charitable lead annuity trust is not a “GST Trust”
 - Charitable lead unitrust is not a GST Trust if a non-skip person is among the remainder beneficiaries
 - Allocating GST exemption in an amount equal to the actuarial value of the remainder interest in a charitable lead unitrust will cause entire trust to be GST exempt
 - Allocating GST exemption in an amount equal to the actuarial value of the remainder interest in a charitable lead annuity trust may not result in a fully GST exempt trust at the end of the lead interest period, since inclusion ratio is not determined until end of charitable lead interest

ADEQUATE DISCLOSURE OF GIFTS

- Adequate Disclosure Issues:
 - Importance of “adequate disclosure” - statute of limitations does not begin to run until gift has been adequately disclosed
 - Treasury Regulations for IRC Section 6501 define adequate disclosure: based on either (i) description or (ii) appraisal

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

- Adequate Disclosure Issues (cont.):
 - To be adequate disclosed based on a description of the gift, the gift tax return needs to show the following:
 - A description of the transferred property and any consideration received by the transferor
 - The identity of, and relationship between, the transferor and each transferee
 - If the property is transferred in trust, the trust's tax identification number and a brief description of the terms of the trust, or, in lieu of a brief description of the trust terms, a copy of the trust instrument
 - A detailed description of the method used to determine the fair market value of the property transferred
 - A statement describing any position taken that is contrary to any proposed, temporary, or final Treasury regulations or revenue rulings published at the time of the transfer

ADEQUATE DISCLOSURE OF GIFTS

- Adequate Disclosure Issues (cont.):
 - For what is a “detailed description of the method used to determine the fair market value of the property transferred,” See Treasury Regulation section 301.6501(c)-1(f)(2)(iv)

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

- Adequate Disclosure Issues (cont.):
 - Requirements of 301.6501(c)-1(f)(2)(iv) will be met with a qualified appraisal, which must include the following:
 - The date of the transfer, the date on which the transferred property was appraised, and the purpose of the appraisal
 - A description of the property
 - A description of the appraisal process employed
 - A description of the assumptions, hypothetical conditions, and any limiting conditions and restrictions on the transferred property that affect the appraiser's analyses, opinions, and conclusions
 - The information considered in determining the appraised value, including in the case of an ownership interest in a business, all financial data that was used in determining the value of the interest that is sufficiently detailed so that another person can replicate the process and arrive at the appraised value

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

- Adequate Disclosure Issues (cont.):
 - Requirements of 301.6501(c)-1(f)(2)(iv) will be met with a qualified appraisal, which must include the following (cont.):
 - The appraisal procedures followed, and the reasoning that supports the analyses, opinions, and conclusions
 - The valuation method utilized, the rationale for the valuation method, and the procedure used in determining the fair market value of the asset transferred
 - The specific basis for the valuation, such as specific comparable sales or transactions, sales of similar interests, asset-based approaches, or merger-acquisition transactions
 - Appraiser qualifications

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

- For reporting non-gifts (e.g. sales to or substitution of assets with intentionally defective grantor trusts), all of the same adequate disclosure requirements must be followed (except, interestingly, the detailed statement of value required in Treasury Regulation Section 301.6501(c)-1(f)(2)(iv)), and the gift tax return also must contain an explanation as to why the transfer is not a transfer by gift for gift tax purposes

CASE STUDY

1. Gift of marketable securities to 2 year zeroed-out Grantor Retained Annuity Trust in 2020; trust does not meet definition of "GST Trust;" Grantor is 30 years old
2. Gift of Netflix stock to Spousal Lifetime Access Trust for spouse in October 2021
3. Gift of cash to irrevocable life insurance trust; Crummey withdrawal rights for spouse and two children; spouse will make split gift election
4. Sale of stock of closely-held corporation to intentionally defective grantor trust

Bea Judge
SSN: 222-33-4444

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NOTICE OF ELECTION UNDER IRC §2632(c)
Election to Automatically Allocate GST Exemption Under IRC §2632(c)

Trust name: Judge Descendants 2012 Irrevocable Gift
Trust dated December 1, 2012
Bea Judge, Trustee

Trust EIN: 11-1111111

Item 1, Part 3, Schedule A

The taxpayer hereby elects to treat the above trust as a GST trust and elects to have the automatic allocation provisions of IRC §2632(c) apply to all transfers made by the taxpayer to the trust in 2021 and in all future years.

Bea Judge
 SSN: 222-33-4444

SCHEDULE A -- Part 3 Indirect Skips

A Item no.	B Donee's name, relationship to donor, address, and description	C 2632(c) election	D Donor's adj. basis	E Date of gift	F Value at date of gift	G 1/2 of column F	H Net transfer
1	Judge Descendants 2012 Irrevocable Gift Trust dated December 1, 2012 Bea Judge, Trustee EIN: 11-1111111 1875 Century Park East Suite 2000 Los Angeles, CA 90067	X	3,000,000.	12/5/21	0.		0.

On December 1, 2012, the taxpayer established the Judge Descendants 2012 Irrevocable Trust (the "Judge 2012 Trust"), a copy of which is attached as **Exhibit A**.

On December 5, 2012, the taxpayer sold 25,000 shares of Class A voting shares of Judge Enterprises, Inc., a California corporation ("Judge Enterprises"), a privately held company, @ \$200/share the established fair market value as determined by an independent appraiser, to the Trustee of the Judge 2012 Trust in exchange for a promissory note and a pledge agreement. The Judge 2012 Trust is a wholly owned grantor trust under IRC Section 671, created and funded by the taxpayer. It is the taxpayer's position that this transaction constitutes a sale at full and adequate consideration and thus does not constitute a gift under Treas. Reg. 25.2512-8. This disclosure is being submitted in accordance with Treas. Reg. 301.6501(c)-1(f).

The 409A valuation and appraisal report of the Class A voting shares of Judge Enterprises is attached as **Exhibit B**.

The Stock Purchase Agreement is attached as **Exhibit C**.

Bea Judge
 SSN: 222-33-4444

Form 709 (2021)

Part 2—GST Exemption Reconciliation (Section 2631) and Section 2652(a)(3) Election

Check here if you are making a section 2652(a)(3) (special QTIP) election. See instructions.

Enter the item numbers from Schedule A of the gifts for which you are making this election **▶** _____

1	Maximum allowable exemption (see instructions)	11,700,000.
2	Total exemption used for periods before filing this return	0.
3	Exemption available for this return. Subtract line 2 from line 1	11,700,000.
4	Exemption claimed on this return from Part 3, column C, total below	0.
5	Automatic allocation of exemption to transfers reported on Schedule A, Part 3. To opt out of the automatic allocation rules, you must attach an "Election Out" statement. See instructions	0.
6	Exemption allocated to transfers not shown on line 4 or 5 above. You must attach a "Notice of Allocation." See instructions	0.
7	Add lines 4, 5, and 6	0.
8	Exemption available for future transfers. Subtract line 7 from line 3	11,700,000.

Part 3—Indirect Skips and Other Transfers in Trust. Gifts to trusts that are indirect skips as defined under section 2632(c) or to trusts that are currently subject to gift tax and may later be subject to generation-skipping transfer tax. You must list these gifts in chronological order.

A Item number	B • Donee's name and address • Relationship to donor (if any) • Description of gift • If the gift was of securities, give CUSIP no. • If closely held entity, give EIN	C 2632(c) election	D Donor's adjusted basis of gift	E Date of gift	F Value at date of gift	G For split gifts, enter 1/2 of column F	H Net transfer (subtract col. G from col. F)
See schedule attached							
<i>Gifts made by spouse — complete only if you are splitting gifts with your spouse and he/she also made gifts.</i>							
Total of Part 3. Add amounts from Part 3, column H							0.

(If more space is needed, attach additional statements.)

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

- Valuations of closely-held stock done for 409A purposes may or may not satisfy adequate disclosure requirements for gift tax purposes
 - Exercise price of stock option may never be less than the fair market value of the stock on the date the option is granted
 - Under 409A, any reasonable valuation method is acceptable
 - Use caution if client insists on using 409A appraisal

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

Cautionary Tale: Chief Counsel Advice 202152018

- Donor, the founder of a successful company, began the process of looking for buyers. At the end of Year 1, Donor contacted two investment advisors to explore the possibility of finding an outside buyer.
- Approximately six months later (June) and within a two-week period concluding on Date 1, the investment advisors presented Donor with offers from five different potential buyers.
- Three days later, on Date 2, Donor created a two-year GRAT and funded the GRAT with shares of the company. The value of the shares of Company was determined based on an appraisal of the company on December 31, Year 1 for 409A purposes, a date approximately seven months prior to the transfer to GRAT.
- Additional time was granted to the Corporations to submit final offers. The last offer was received on Date 3, almost three months after the initial offers.

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

Cautionary Tale: Chief Counsel Advice 202152018 (cont.)

- On Date 4, Donor funded a CRT and transferred shares of the company to the CRT. These shares were valued pursuant to a qualified appraisal, and the per share value was equal to the tender offer value described below. Several weeks after the transfer to the CRT, Donor accepted an offer from a buyer which was 10% higher than the buyer's initial offer, in an amount that was nearly three times greater than the value on the 409A appraisal.
- That was nearly three times greater than the value on the 409A appraisal.
- On December 31, Year 2, a new 409A appraisal was issued and valued the shares of the company at almost double the value on December 31, Year 1. On December 31, Year 3, another 409A appraisal was issued and valued the shares at almost double the value on December 31, Year 2. The December 31, Year 2 and Year 3 appraisals both included the following language: “[a]ccording to management, there have been no other recent offers or closed transactions in Company shares as of the Valuation Date.” There was no such declaration in the December 31, Year 1 appraisal.

ADEQUATE DISCLOSURE OF GIFTS (CONT.)

Cautionary Tale: Chief Counsel Advice 202152018 (cont.)

- In Year 4, approximately six months after the end of the two-year GRAT term, the company was sold at a value almost double the value of as on December 31, Year 2.
- Ruling: The GRAT did not provide for a qualified interest because the determination of the annuity was based on an outdated appraisal that did not take into account the pending sale that was known as of Date 2.
- Possible that a 409A appraisal could meet adequate disclosure requirements, but why risk it?

REVIEWING PRIOR GIFTS AND GIFT TAX RETURNS

- Never take "no" for an answer
- Review all prior gift tax returns, especially those from 2001-2012
- Review trust agreements, particularly those you did not draft
- Prepare for QPRT terminations in coming years
- Form 709 instructions \neq IRC and Treasury Regulations