



# NEW IRS REGULATIONS ON GIFTS AND BEQUESTS FROM COVERED EXPATRIATES

## WHAT YOU NEED TO KNOW



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On January 10, 2025, Treasury and the IRS released final regulations on taxes imposed on gifts and bequests from covered expatriates. These rules are effective for covered gifts or bequests made on or after January 1, 2025.

### WHO PAYS THIS TAX?


Section 2801 of the Internal Revenue Code imposes a tax on U.S. citizens and residents who receive covered gifts and covered bequests from covered expatriates.

This includes distributions from non-electing foreign trusts attributable to such gifts and bequests. Domestic trusts and electing foreign trusts are taxed in the same manner as U.S. citizens.

The tax only applies when the total value of covered gifts and bequests exceeds the annual exclusion amount, which is \$19,000 for 2026.

### WHO IS A COVERED EXPATRIATE?

A covered expatriate is any U.S. citizen or resident (for federal gift and estate tax purposes) who meets either of the following thresholds: an average annual net income exceeding \$124,000 over the past five taxable years, or a net worth of at least \$2,000,000 on the date the gift is made.



Importantly, residency here is determined under gift and estate tax rules, not income tax rules. This means a person can be a U.S. person for transfer tax purposes but not for federal income tax purposes.

## WHAT ABOUT NON-RESIDENT ALIENS AND FOREIGN TRUSTS?

These regulations generally do not apply to covered gifts and bequests from non-resident aliens or foreign and domestic trusts. However, the rules may still apply depending on the facts and circumstances, including who the donors and beneficiaries are, the domicile of the settlors, trustees, and beneficiaries, and the situs of the assets. U.S. persons and trusts receiving foreign income, gifts, or bequests may also have reporting obligations.

## THE TAKEAWAY

Gift and estate tax planning is relevant for any U.S. citizen or resident who owns assets that will be transferred to beneficiaries, regardless of where those assets are located. It is equally relevant for non-resident aliens who own U.S.-situated assets, hold interests in foreign or domestic trusts, have U.S. beneficiaries, or are planning to become U.S. residents in the near future.

*This alert is provided for informational purposes only and does not constitute legal advice. For questions about how these regulations may affect you or your clients, please contact **Augusto Egoavil** at [aegoavil@burghergray.com](mailto:aegoavil@burghergray.com). BurgherGray is a dynamic corporate boutique law firm comprised of highly experienced and diverse attorneys, most of whom have honed their skills practicing at large corporate law firms and in-house legal departments of large corporations and governmental agencies. The firm counsels clients ranging from emerging companies to Fortune 100 enterprises on a range of complex business litigation, government and internal investigations and transactional matters, including finance, M&A, securities regulation and corporate and commercial transactions. The firm is a member of NAMWOLF, a member of NMSDC, and is certified as an MBE by the City and State of New York and the City of Chicago and State of Illinois.*



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