

included in the transferor's gross estate (in the case of a testamentary direct skip). In the case of taxable terminations and taxable distributions, chapter 13 will apply to the extent a gift tax was imposed on the initial transfer to the trust, or the property was included in the transferor's gross estate.

Accordingly, under the final regulations (in the absence of a situation involving an ETIP), the application of Chapter 13 is generally dependent on the situs of the property at the time of the initial transfer. The regulations contain special rules for determining the applicable fraction and inclusion ratio where a trust is funded with both U.S. and foreign situs property.

In general, the rules of § 26.2632-1 apply with respect to the allocation of the exemption. However, the ETIP rule provided in § 26.2632-1(c) applies only if the property transferred by the NRA is subsequently included in the transferor's gross estate. The final regulations provide transitional relief with respect to NRA's who made GST transfers and relied on the automatic allocation rules in the proposed regulations.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

Drafting Information. The principal author of these regulations is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 26

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 26, 301, and 602 are amended as follows:

Paragraph 1. Part 26 is revised to read as follows:

PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986

Sec.

- 26.2600-1 Table of contents.
- 26.2601-1 Effective dates.
- 26.2611-1 Generation-skipping transfer defined.
- 26.2612-1 Definitions.
- 26.2613-1 Skip person.
- 26.2632-1 Allocation of GST exemption.
- 26.2641-1 Applicable rate of tax.
- 26.2642-1 Inclusion ratio.
- 26.2642-2 Valuation.
- 26.2642-3 Special rule for charitable lead annuity trusts.
- 26.2642-4 Redetermination of applicable fraction.
- 26.2642-5 Finality of inclusion ratio.
- 26.2652-1 Transferor defined; other definitions.
- 26.2652-2 Special election for qualified terminable interest property.
- 26.2653-1 Taxation of multiple skips.
- 26.2654-1 Certain trusts treated as separate trusts.
- 26.2662-1 Generation-skipping transfer tax return requirements.
- 26.2663-1 Recapture tax under section 2032A.
- 26.2663-2 Application of chapter 13 to transfers by nonresidents not citizens of the United States.

Authority: 26 U.S.C. 7805 and 26 U.S.C. 2663.

Section 26.2632-1 also issued under 26 U.S.C. 2632 and 2663.

Section 26.2642-4 also issued under 26 U.S.C. 2632 and 2663.

Section 26.2662-1 also issued under 26 U.S.C. 2662.

Section 26.2663-2 also issued under 26 U.S.C. 2632 and 2663.

§ 26.2600-1 Table of contents.

This section lists the captions that appear in the regulations under sections 2601 through 2663.

§ 26.2601-1 Effective dates.

- (a) Transfers subject to the generation-skipping transfer tax.
 - (1) In general.
 - (2) Certain transfers treated as if made after October 22, 1986.
 - (3) Certain trust events treated as if occurring after October 22, 1986.
 - (4) Example.
 - (b) Exceptions.
 - (1) Irrevocable trusts.

(2) Transition rule for wills or revocable trusts executed before October 22, 1986.

(3) Transition rule in the case of mental incompetency.

(4) Exceptions to additions rule.

(c) Additional effective dates.

§ 26.2611-1 Generation-skipping transfer defined.

§ 26.2612-1 Definitions.

- (a) Direct skip.
 - (1) In general.
 - (2) Special rule for certain lineal descendants.
- (b) Taxable termination.
 - (1) In general.
 - (2) Partial termination.
- (c) Taxable distribution.
 - (1) In general.
 - (2) Look-through rule not to apply.
- (d) Skip person.
- (e) Interest in trust.
 - (1) In general.
 - (2) Exceptions.
 - (3) Disclaimers.
 - (f) Examples.

§ 26.2613-1 Skip person.

§ 26.2632-1 Allocation of GST exemption.

- (a) General rule.
- (b) Lifetime allocations.
 - (1) Automatic allocation to direct skips.
 - (2) Allocation to other transfers.
- (c) Special rules during an estate tax inclusion period.
 - (1) In general.
 - (2) Estate tax inclusion period defined.
 - (3) Termination of an ETIP.
 - (4) Treatment of direct skips.
 - (5) Examples.
 - (d) Allocations after the transferor's death.
 - (1) Allocation by executor.
 - (2) Automatic allocation after death.

§ 26.2641-1 Applicable rate of tax.

§ 26.2642-1 Inclusion ratio.

- (a) In general.
- (b) Numerator of applicable fraction.
 - (1) In general.
 - (2) GSTs occurring during an ETIP.
- (c) Denominator of applicable fraction.
 - (1) In general.
 - (2) Zero denominator.
 - (3) Nontaxable gifts.
 - (d) Examples.

§ 26.2642-2 Valuation.

- (a) Lifetime transfers.
 - (1) In general.
 - (2) Special rule for late allocations during life.
- (b) Transfers at death.
 - (1) In general.
 - (2) Special rule for pecuniary payments.
 - (3) Special rule for residual transfers after payment of a pecuniary payment.
 - (4) Appropriate interest.
 - (c) Examples.

§ 26.2642-3 Special rule for charitable lead annuity trusts.

- (a) In general.
- (b) Adjusted GST exemption defined.
- (c) Example.