

monthly payments of \$750 to GC, T's grandchild, for life with the remainder payable to T's great grandchild, GGC. The face value of the policy is \$300,000. Since the proceeds continue to be held by the insurance company (the trustee), the proceeds are treated as if they were transferred to a trust for purposes of chapter 13. The trust is a skip person (as defined in section 2613(a)(2)) and the transfer is a direct skip. Since the total value of the policy (\$300,000) exceeds \$250,000, the insurance company is liable for the tax imposed by chapter 13 and is required to file Schedule R-1 of Form 706.

**Example 4. Insurance proceeds less than \$250,000 held by insurance company.** Assume the same facts as in Example 3, except the policy provides that the insurance company shall make monthly payments of \$500 to GC and that the face value of the policy is \$200,000. The transfer is a transfer to a trust for purposes of chapter 13. However, since the total value of the policy (\$200,000) is less than \$250,000, the executor is liable for the tax imposed by chapter 13 and is required to file Form 706.

**Example 5.** On August 1, 1997, A, the insured under a life insurance policy, dies. The insurance proceeds on A's life that are payable under policies issued by Company X are in the aggregate amount of \$200,000 and are includible in A's gross estate. Because the proceeds are includible in A's gross estate, the generation-skipping transfer that occurs upon A's death, if any, will be a direct skip rather than a taxable distribution or a taxable termination. Accordingly, because the aggregate amount of insurance proceeds with respect to Company X is less than \$250,000, Company X may pay the proceeds without regard to whether the beneficiary is a skip person in relation to the decedent-transferor.

**(3) Limitation on personal liability of trustee.** Except as provided in paragraph (c)(3)(iii) of this section, a trustee is not personally liable for any increases in the tax imposed by section 2601 which is attributable to the fact that—

(i) A transfer is made to the trust during the life of the transferor for which a gift tax return is not filed; or

(ii) The inclusion ratio with respect to the trust, determined by reference to the transferor's gift tax return, is erroneous, the actual inclusion ratio being greater than the reported inclusion ratio.

(iii) This paragraph (c)(3) does not apply if the trustee has or is deemed to have knowledge of facts sufficient to reasonably conclude that a gift tax return was required to be filed or that the inclusion ratio is erroneous. A trustee is deemed to have knowledge of such facts if the trustee's agent, employee, partner, or co-trustee has knowledge of such facts.

**(4) Exceptions—(i) Legal or mental incapacity.** If a distributee is legally or mentally incapable of making a return, the return may be made for the distributee by the distributee's guardian or, if no guardian has been appointed,

by a person charged with the care of the distributee's person or property.

(ii) **Returns made by fiduciaries.** See section 6012(b) for a fiduciary's responsibilities regarding the returns of decedents, returns of persons under a disability, returns of estates and trusts, and returns made by joint fiduciaries.

**(d) Time and manner of filing return—(1) In general.** Forms 706, 706NA, 706GS(D), 706GS(D-1), 706GS(T), 709, and Schedule R-1 of Form 706 must be filed with the Internal Revenue Service office with which an estate or gift tax return of the transferor must be filed. The return shall be filed—

(i) **Direct skip.** In the case of a direct skip, on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer (see section 6075(b)(3)); and

(ii) **Other transfers.** In all other cases, on or before the 15th day of the 4th month after the close of the calendar year in which such transfer occurs. See paragraph (d)(2) of this section for an exception to this rule when an election is made under section 2624(c) to value property included in certain taxable terminations in accordance with section 2032.

**(2) Exception for alternative valuation of taxable termination.** In the case of a taxable termination with respect to which an election is made under section 2624(c) to value property in accordance with section 2032, a Form 706GS(T) must be filed on or before the 15th day of the 4th month after the close of the calendar year in which the taxable termination occurred, or on or before the 10th month following the month in which the death that resulted in the taxable termination occurred, whichever is later.

**(e) Place for filing returns.** See section 6091 for the place for filing any return, declaration, statement, or other document, or copies thereof, required by chapter 13.

**(f) Lien on property.** The liens imposed under sections 6324, 6324A, and 6324B are applicable with respect to the tax imposed under chapter 13. Thus, a lien under section 6324 is imposed in the amount of the tax imposed by section 2601 on all property transferred in a generation-skipping transfer until the tax is fully paid or becomes uncollectible by reason of lapse of time. The lien attaches at the time of the generation-skipping transfer and is in addition to the lien for taxes under section 6321.

#### **§ 26.2663-1 Recapture tax under section 2032A.**

See § 26.2642-4(a)(4) for rules relating to the recomputation of the applicable

fraction and the imposition of additional GST tax, if additional estate tax is imposed under section 2032A.

#### **§ 26.2663-2 Application of chapter 13 to transfers by nonresidents not citizens of the United States.**

**(a) In general.** This section provides rules for applying chapter 13 of the Internal Revenue Code to transfers by a transferor who is a nonresident not a citizen of the United States (NRA transferor). For purposes of this section, an individual is a resident or citizen of the United States if that individual is a resident or citizen of the United States under the rules of chapter 11 or 12 of the Internal Revenue Code, as the case may be. Every NRA transferor is allowed a GST exemption of \$1,000,000. See § 26.2632-1 regarding the allocation of the exemption.

**(b) Transfers subject to chapter 13—**

**(1) Direct skips.** A transfer by a NRA transferor is a direct skip subject to chapter 13 only to the extent that the transfer is subject to the Federal estate or gift tax within the meaning of § 26.2652-1(a)(2). See § 26.2612-1(a) for the definition of direct skip.

**(2) Taxable distributions and taxable terminations.** Chapter 13 applies to a taxable distribution or a taxable termination to the extent that the initial transfer of property to the trust by a NRA transferor, whether during life or at death, was subject to the Federal estate or gift tax within the meaning of § 26.2652-1(a)(2). See § 26.2612-1(b) for the definition of a taxable termination and § 26.2612-1(c) for the definition of a taxable distribution.

**(c) Trusts funded in part with property subject to chapter 13 and in part with property not subject to chapter 13—(1) In general.** If a single trust created by a NRA transferor is in part subject to chapter 13 under the rules of paragraph (b) of this section and in part not subject to chapter 13, the applicable fraction with respect to the trust is determined as of the date of the transfer, except as provided in paragraph (c)(3) of this section.

**(i) Numerator of applicable fraction.** The numerator of the applicable fraction is the sum of the amount of GST exemption allocated to the trust (if any) plus the value of the nontax portion of the trust.

**(ii) Denominator of applicable fraction.** The denominator of the applicable fraction is the value of the property transferred to the trust reduced as provided in § 26.2642-1(c).

**(2) Nontax portion of the trust.** The nontax portion of a trust is a fraction, the numerator of which is the value of property not subject to chapter 13