

(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.

[T.D. 8644, 60 FR 66903, Dec. 27, 1995; 61 FR 29654, June 12, 1996]

#### § 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 determined as of the date of the initial completed transfer to the trust, and

the denominator of which is the value of the entire trust. For example, T, a NRA transferor, transfers property that has a value of \$1,000 to a generation-skipping trust. Of the property transferred to the trust, property having a value of \$200 is subject to chapter 13 and property having a value of \$800 is not subject to chapter 13. The nontax portion is .8 (\$800 (the value of the property not subject to chapter 13) over \$1,000 (the total value of the property transferred to the trust)).

(3) *Special rule with respect to the estate tax inclusion period.* For purposes of this section, the provisions of § 26.2632-1(c), providing rules applicable in the case of an estate tax inclusion period (ETIP), apply only if the property transferred by the NRA transferor is subsequently included in the transferor's gross estate. If the property is not subsequently included in the gross estate, then the nontax portion of the trust and the applicable fraction are determined as of the date of the initial transfer. If the property is subsequently included in the gross estate, then the nontax portion and the applicable fraction are determined as of the date of death.

(d) *Examples.* The following examples illustrate the provisions of this section. In each example T, a NRA, is the transferor; C is T's child; and GC is C's child and a grandchild of T:

*Example 1. Direct transfer to skip person.* T transfers property to GC in a transfer that is subject to Federal gift tax under chapter 12 within the meaning of § 26.2652-1(a)(2). At the time of the transfer, C and GC are NRAs. T's transfer is subject to chapter 13 because the transfer is subject to gift tax under chapter 12.

*Example 2. Transfers of both U.S. and foreign situs property.* (i) T's will established a testamentary trust for the benefit of C and GC. The trust was funded with stock in a publicly traded U.S. corporation having a value on the date of T's death of \$100,000, and property not situated in the United States (and therefore not subject to estate tax) having a value on the date of T's death of \$400,000.

(ii) On a timely filed estate tax return (Form 706NA), the executor of T's estate allocates \$50,000 of GST exemption under section 2632(a) to the trust. The numerator of the applicable fraction is \$450,000, the sum of \$50,000 (the amount of exemption allocated to the trust) plus \$400,000 (the value of the nontax portion of the trust ( $4/5 \times \$500,000$ )).

The denominator is \$500,000. Hence, the applicable fraction with respect to the trust is  $.9$  ( $\$450,000/\$500,000$ ), and the inclusion ratio is  $.1$  ( $1 - 9/10$ ).

*Example 3. Inter vivos transfer of U.S. and foreign situs property to a trust and a timely allocation of GST exemption.* T establishes a trust providing that trust income is payable to T's child for life and the remainder is to be paid to T's grandchild. T transfers property to the trust that has a value of \$100,000 and is subject to chapter 13. T also transfers property to the trust that has a value of \$300,000 but is not subject to chapter 13. T allocates \$100,000 of exemption to the trust on a timely filed United States Gift (and Generation-Skipping Transfer) Tax Return (Form 709). The applicable fraction with respect to the trust is 1, determined as follows: \$300,000 (the value of the nontax portion of the trust) plus \$100,000 (the exemption allocated to the trust) / \$400,000 (the total value of the property transferred to the trust).

*Example 4. Inter vivos transfer of U.S. and foreign situs property to a trust and a late allocation of GST exemption.* (i) In 1996, T transfers \$500,000 of property to an inter vivos trust the terms of which provide that income is payable to C, for life, with the remainder to GC. The property transferred to the trust consists of property subject to chapter 13 that has a value of \$400,000 on the date of the transfer and property not subject to chapter 13 that has a value of \$100,000. T does not allocate GST exemption to the trust. On the transfer date, the nontax portion of the trust is  $.2$  ( $\$100,000/\$500,000$ ) and the applicable fraction is also  $.2$  determined as follows:  $\$100,000$  (the value of the nontax portion of the trust) /  $\$500,000$  (the value of the property transferred to the trust).

(ii) In 1999, when the value of the trust is \$800,000, T allocates \$100,000 of GST exemption to the trust. The applicable fraction of the trust must be recomputed. The numerator of the applicable fraction is \$260,000 ( $\$100,000$  (the amount of GST exemption allocated to the trust) plus  $\$160,000$  (the value of the nontax portion of the trust as of the date of allocation ( $.2 \times \$800,000$ ))). The denominator of the applicable fraction is \$800,000. Accordingly, the applicable fraction with respect to the trust after the allocation is  $.325$  ( $\$260,000/\$800,000$ ) and the inclusion ratio is  $.675$  ( $1 - .325$ ).

*Example 5. Taxable termination.* The facts are the same as in Example 4 except that, in 2006, when the value of the property is \$1,200,000, C dies and the trust corpus is distributed to GC. The termination is a taxable termination. If no further GST exemption has been allocated to the trust, the applicable fraction remains  $.325$  and the inclusion ratio remains  $.675$ .

*Example 6. Estate Tax Inclusion Period.* (i) T transferred property to an inter vivos trust the terms of which provided T with an annu-

ity payable for 10 years or until T's prior death. The annuity satisfies the definition of a qualified interest under section 2702(b). The trust also provided that, at the end of the trust term, the remainder will pass to GC or GC's estate. The property transferred to the trust consisted of property subject to chapter 13 that has a value of \$100,000 and property not subject to chapter 13 that has a value of \$400,000. T allocated \$100,000 of GST exemption to the trust. If T dies within the 10 year period, the value of the trust principal will be subject to inclusion in T's gross estate to the extent provided in sections 2103 and 2104(b). Accordingly, the ETIP rule under paragraph (c)(3) of this section applies.

(ii) In year 6 of the trust term, T died. At T's death, the trust corpus had a value of \$800,000, and \$500,000 was includible in T's gross estate as provided in sections 2103 and 2104(b). Thus, \$500,000 of the trust corpus is subject to chapter 13 and \$300,000 is not subject to chapter 13. The \$100,000 GST exemption allocation is effective as of T's date of death. Also, the nontax portion of the trust and the applicable fraction are determined as of T's date of death. In this case, the nontax portion of the trust is  $.375$ , determined as follows:  $\$300,000$  (the value of the trust not subject to chapter 13) /  $\$800,000$  (the value of the trust). The numerator of the applicable fraction is \$400,000, determined as follows:  $\$100,000$  (GST exemption previously allocated to the trust) plus  $\$300,000$  (the value of the nontax portion of the trust). The denominator of the applicable fraction is \$800,000. Thus, the applicable fraction with respect to the trust is  $.50$ , unless additional exemption is allocated to the trust by T's executor or the automatic allocation rules of § 26.2632-1(d)(2) apply.

*Example 7.* The facts are the same as in Example 6 except that T survives the termination date of T's retained annuity and the trust corpus is distributed to GC. Since the trust was not included in T's gross estate, the ETIP rules do not apply. Accordingly, the nontax portion of the trust and the applicable fraction are determined as of the date of the transfer to the trust. The nontax portion of the trust is  $.80$  ( $\$400,000/\$500,000$ ). The numerator of the applicable fraction is \$500,000 determined as follows:  $\$100,000$  (GST exemption allocated to the trust) plus  $\$400,000$  (the value of the nontax portion of the trust). Accordingly, the applicable fraction is 1, and the inclusion ratio is zero.

(e) *Transitional rule for allocations for transfers made before December 27, 1995.* If an NRA made a GST (inter vivos or testamentary) after December 23, 1992, and before December 27, 1995 that is subject to chapter 13 (within the meaning of § 26.2663-2), the NRA will be

treated as having made a timely allocation of GST exemption to the transfer in a calendar year in the order prescribed in section 2632(c). Thus, a NRA's unused GST exemption will initially be treated as allocated to any direct skips made during the calendar year and then to any trusts with respect to which the NRA made transfers during the same calendar year and from which a taxable distribution or a taxable termination may occur. Allocations within the above categories are made in the order in which the transfers occur. Allocations among simultaneous transfers within the same category are made pursuant to the principles of section 2632(c)(2). This transitional allocation rule will not apply if the NRA transferor, or the executor of the NRA's estate, as the case may be, elected to have an automatic allocation of GST exemption not apply by describing on a timely-filed Form 709 for the year of the transfer, or a timely filed Form 706NA, the details of the transfer and the extent to which the allocation was not to apply.

[T.D. 8644, 60 FR 66903, Dec. 27, 1995; 61 FR 29654, June 12, 1996]

**§ 26.6060-1 Reporting requirements for tax return preparers.**

(a) *In general.* A person that employs one or more tax return preparers to prepare a return or claim for refund of generation-skipping transfer tax under chapter 13 of subtitle B of the Internal Revenue Code, other than for the person, at any time during a return period, shall satisfy the record keeping and inspection requirements in the manner stated in § 1.6060-1 of this chapter.

(b) *Effective/applicability date.* This section is applicable to returns and claims for refund filed after December 31, 2008.

[T.D. 9436, 73 FR 78452, Dec. 22, 2008]

**§ 26.6081-1 Automatic extension of time for filing generation-skipping transfer tax returns.**

(a) *In general.* A skip person distributee required to file a return on Form 706-GS(D), "Generation-Skipping Transfer Tax Return for Distributions," or a trustee required to file a return on Form 706-GS(T), "Genera-

tion-Skipping Transfer Tax Return for Terminations," will be allowed an automatic 6-month extension of time to file the return after the date prescribed for filing if the skip person distributee or trustee files an application under this section in accordance with paragraph (b) of this section.

(b) *Requirements.* To satisfy this paragraph (b), a skip person distributee or trustee must—

(1) Submit a complete application on Form 7004, "Application for Automatic Extension of Time to File Certain Business Income Tax, Information, and Other Returns," or in any other manner prescribed by the Commissioner;

(2) File the application on or before the date prescribed for filing the return with the Internal Revenue Service office designated in the application's instructions; and

(3) Remit the amount of the properly estimated unpaid tax liability on or before the date prescribed for payment.

(c) *No extension of time for the payment of tax.* An automatic extension of time for filing a return granted under paragraph (a) of this section will not extend the time for payment of any tax due on such return.

(d) *Termination of automatic extension.* The Commissioner may terminate an automatic extension at any time by mailing to the skip person distributee or trustee a notice of termination at least 10 days prior to the termination date designated in such notice. The Commissioner must mail the notice of termination to the address shown on the Form 7004 or to the skip person distributee or trustee's last known address. For further guidance regarding the definition of last known address, see § 301.6212-2 of this chapter.

(e) *Penalties.* See section 6651 for failure to file a generation-skipping transfer tax return or failure to pay the amount shown as tax on the return.

(f) *Effective/applicability dates.* This section is applicable for applications for an automatic extension of time to file a generation-skipping transfer tax return filed after July 1, 2008.

[73 FR 37369, July 1, 2008]