

gifts therein specified are included in the amount of gifts against which such deductions are applied.

(Aug. 16, 1954, ch. 736, 68A Stat. 414.)

CHAPTER 13—TAX ON GENERATION-SKIPPING TRANSFERS

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AMENDMENTS

1986—Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, struck out “CERTAIN” after “TAX ON” in chapter heading, substituted “Generation-skipping transfers” for “Definitions and special rules” in item for subchapter B and “Taxable amount” for “Administration” in item for subchapter C, and added items for subchapters D, E, and F.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 529, 667, 691, 2032, 2044, 2515, 2701, 7517 of this title.

Subchapter A—Tax Imposed

| | |
|-------|---------------------------------|
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AMENDMENTS

1986—Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2717, in amending analysis of subchapter A generally, added item 2604.

§ 2601. Tax imposed

A tax is hereby imposed on every generation-skipping transfer (within the meaning of subchapter B).

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting “(within the meaning of subchapter B)” for “in the amount determined under section 2602”.

EFFECTIVE DATE OF 1986 AMENDMENT

Section 1433 of Pub. L. 99-514, as amended by Pub. L. 100-647, title I, §1014(h)(1)-(3)(A), (4), Nov. 10, 1988, 102 Stat. 3567, 3568, provided that:

“(a) GENERAL RULE.—Except as provided in subsection (b), the amendments made by this subtitle [subtitle D (§§1431-1433) of title XIV of Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611 of the Internal Revenue Code of 1986) made after the date of the enactment of this Act [Oct. 22, 1986].

“(b) SPECIAL RULES.—

“(1) TREATMENT OF CERTAIN INTER VIVOS TRANSFERS MADE AFTER SEPTEMBER 25, 1985.—For purposes of subsection (a) (and chapter 13 of the Internal Revenue Code of 1986 as amended by this part), any inter vivos

transfer after September 25, 1985, and on or before the date of the enactment of this Act [Oct. 22, 1986] shall be treated as if it were made on the 1st day after the date of enactment of this Act.

“(2) EXCEPTIONS.—The amendments made by this subtitle shall not apply to—

“(A) any generation-skipping transfer under a trust which was irrevocable on September 25, 1985, but only to the extent that such transfer is not made out of corpus added to the trust after September 25, 1985 (or out of income attributable to corpus so added),

“(B) any generation-skipping transfer under a will or revocable trust executed before the date of the enactment of this Act [Oct. 22, 1986] if the decedent dies before January 1, 1987, and

“(C) any generation-skipping transfer—

“(i) under a trust to the extent such trust consists of property included in the gross estate of a decedent (other than property transferred by the decedent during his life after the date of the enactment of this Act [Oct. 22, 1986]), or reinvestments thereof, or

“(ii) which is a direct skip which occurs by reason of the death of any decedent;

but only if such decedent was, on the date of the enactment of this Act [Oct. 22, 1986], under a mental disability to change the disposition of his property and did not regain his competence to dispose of such property before the date of his death.

“(3) TREATMENT OF CERTAIN TRANSFERS TO GRANDCHILDREN.—

“(A) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the term ‘direct skip’ shall not include any transfer before January 1, 1990, from a transferor to a grandchild of the transferor to the extent the aggregate transfers from such transferor to such grandchild do not exceed \$2,000,000.

“(B) TREATMENT OF TRANSFERS IN TRUST.—For purposes of subparagraph (A), a transfer in trust for the benefit of a grandchild shall be treated as a transfer to such grandchild if (and only if)—

“(i) during the life of the grandchild, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such grandchild,

“(ii) the assets of the trust will be includible in the gross estate of the grandchild if the grandchild dies before the trust is terminated, and

“(iii) all of the income of the trust for periods after the grandchild has attained age 21 will be distributed to (or for the benefit of) such grandchild not less frequently than annually.

“(C) COORDINATION WITH SECTION 2653(A) OF THE 1986 CODE.—In the case of any transfer which would be a generation-skipping transfer but for subparagraph (A), the rules of section 2653(a) of the Internal Revenue Code of 1986 shall apply as if such transfer were a generation-skipping transfer.

“(D) COORDINATION WITH TAXABLE TERMINATIONS AND TAXABLE DISTRIBUTIONS.—For purposes of chapter 13 of the Internal Revenue Code of 1986, the terms ‘taxable termination’ and ‘taxable distribution’ shall not include any transfer which would be a direct skip but for subparagraph (A).

“(4) DEFINITIONS.—Terms used in this section shall have the same respective meanings as when used in chapter 13 of the Internal Revenue Code of 1986; except that section 2612(c)(2) of such Code shall not apply in determining whether an individual is a grandchild of the transferor.

“(c) REPEAL OF EXISTING TAX ON GENERATION-SKIPPING TRANSFERS.—

“(1) IN GENERAL.—In the case of any tax imposed by chapter 13 of the Internal Revenue Code of 1954 [now 1986] (as in effect on the day before the date of the enactment of this Act [Oct. 22, 1986]), such tax (including interest, additions to tax, and additional amounts) shall not be assessed and if assessed, the as-

¹ Section numbers editorially supplied.

assessment shall be abated, and if collected, shall be credited or refunded (with interest) as an overpayment.

“(2) WAIVER OF STATUTE OF LIMITATIONS.—If on the date of the enactment of this Act [Oct. 22, 1986] (or at any time within 1 year after such date of enactment) refund or credit of any overpayment of tax resulting from the application of paragraph (1) is barred by any law or rule of law, refund or credit of such overpayment shall, nevertheless, be made or allowed if claim therefore [sic] is filed before the date 1 year after the date of the enactment of this Act.

“(d) ELECTION FOR CERTAIN TRANSFERS BENEFITING GRANDCHILD.—

“(1) IN GENERAL.—For purposes of chapter 13 of the Internal Revenue Code of 1986 (as amended by this Act) and subsection (b) of this section, any transfer in trust for the benefit of a grandchild of a transferor shall be treated as a direct skip to such grandchild if—

“(A) the transfer occurs before the date of enactment of this Act [Oct. 22, 1986],

“(B) the transfer would be a direct skip to a grandchild except for the fact that the trust instrument provides that, if the grandchild dies before vesting of the interest transferred, the interest is transferred to the grandchild's heir (rather than the grandchild's estate), and

“(C) an election under this subsection applies to such transfer.

Any transfer treated as a direct skip by reason of the preceding sentence shall be subject to Federal estate tax on the grandchild's death in the same manner as if the contingent gift over had been to the grandchild's estate.

“(2) ELECTION.—An election under paragraph (1) shall be made at such time and in such manner as the Secretary of the Treasury or his delegate may prescribe.

Unless the grandchild otherwise directs by will, the estate of such grandchild shall be entitled to recover from the person receiving the property on the death of the grandchild any increase in Federal estate tax on the estate of the grandchild by reason of the preceding sentence.”

[Pub. L. 101-508, title XI, §11703(c)(3), Nov. 5, 1990, 104 Stat. 1388-517, provided that: “Subparagraph (C) of section 1433(b)(2) of the Tax Reform Act of 1986 [Pub. L. 99-514, set out above] shall not exempt any generation-skipping transfer from the amendments made by subtitle D of title XVI of such Act [probably means subtitle D (§§1431-1433) of title XIV of Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] to the extent such transfer is attributable to property transferred by gift or by reason of the death of another person to the decedent (or trust) referred to in such subparagraph after August 3, 1990.”]

[Section 1014(h)(3)(B) of Pub. L. 100-647 provided that: “Clause (iii) of section 1443(b)(3)(B) [1433(b)(3)(B)] of the Reform Act [Pub. L. 99-514, set out above] (as amended by subparagraph (A)) shall apply only to transfers after June 10, 1987.”]

[Section 1014(h)(5) of Pub. L. 100-647 provided that: “Subparagraph (C) of section 1433(b)(2) of the Reform Act [Pub. L. 99-514, set out above] shall not exempt any direct skip from the amendments made by subtitle D of title XIV of the Reform Act [Pub. L. 99-514, amending chapter 13 of this title, enacting section 2515 of this title, and amending sections 164, 303, 691, 2013, 2032, and 6166 of this title] if—

[(A) such direct skip results from the application of section 2044 of the 1986 Code, and

[(B) such direct skip is attributable to property transferred to the trust after October 21, 1988.”]

EFFECTIVE DATE

Section 2006(c) of Pub. L. 94-455, as amended by Pub. L. 95-600, title VII, §702(n)(1), Nov. 6, 1978, 92 Stat. 2935;

Pub. L. 97-34, title IV, §428, Aug. 13, 1981, 95 Stat. 319; Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [enacting this chapter and amending sections 303, 691, and 2013 of this title] shall apply to any generation-skipping transfer (within the meaning of section 2611(a) of the Internal Revenue Code of 1986 [formerly I.R.C. 1954]) made after June 11, 1976.

“(2) EXCEPTIONS.—The amendments made by this section shall not apply to any generation-skipping transfer—

“(A) under a trust which was irrevocable on June 11, 1976, but only to the extent that the transfer is not made out of corpus added to the trust after June 11, 1976, or

“(B) in the case of a decedent dying before January 1, 1983, pursuant to a will (or revocable trust) which was in existence on June 11, 1976, and was not amended at any time after that date in any respect which will result in the creation of, or increasing the amount of, any generation-skipping transfer.

For purposes of subparagraph (B), if the decedent on June 11, 1976, was under a mental disability to change the disposition of his property, the period set forth in such subparagraph shall not expire before the date which is 2 years after the date on which he first regains his competence to dispose of such property.

“(3) TRUST EQUIVALENTS.—For purposes of paragraph (2), in the case of a trust equivalent within the meaning of subsection (d) of section 2611 of the Internal Revenue Code of 1986, the provisions of such subsection (d) shall apply.”

[Amendment of section 2006(c) of Pub. L. 94-455, set out above, by section 702(n)(1) of Pub. L. 95-600, effective Oct. 4, 1976, see section 702(n)(5) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 2613 of this title.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 164, 303, 2602, 2603, 2604, 2654, 2661, 6166 of this title.

§ 2602. Amount of tax

The amount of the tax imposed by section 2601 is—

- (1) the taxable amount (determined under subchapter C), multiplied by
- (2) the applicable rate (determined under subchapter E).

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1879; amended Pub. L. 95-600, title VII, §702(h)(2), (n)(4), Nov. 6, 1978, 92 Stat. 2931, 2936; Pub. L. 97-34, title IV, §403(a)(2)(B), Aug. 13, 1981, 95 Stat. 301; Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718.)

AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting provisions that amount of tax imposed by section 2601 is the taxable amount (determined under subchapter C), multiplied by the applicable rate (determined under subchapter E) for former provisions which set out in detail the calculations and formulae for determining amount of tax imposed by section 2601.

1981—Subsec. (c)(5). Pub. L. 97-34 redesignated subpars. (B) and (C) as (A) and (B), respectively, and struck out former subpar. (A) relating to adjustments to marital deduction and providing that if the generation-skipping transfer occurs at the same time as, or within 9 months after, the death of the deemed transferor, for purposes of section 2056, relating to bequests, etc., to surviving spouse, the value of the gross estate of the deemed transferor shall be deemed to be increased by the amount of such transfer.

1978—Subsec. (a)(1)(C). Pub. L. 95-600, §702(h)(2), inserted “, as modified by section 2001(e)” after “within the meaning of section 2001(b)”.

Subsec. (d)(1)(A). Pub. L. 95-600, § 702(n)(4)(A), inserted “(or at the same time as the death of a beneficiary of the trust assigned to a higher generation than such deemed transferor)” after “such deemed transferor”.

Subsec. (d)(2)(A). Pub. L. 95-600, § 702(n)(4)(B), inserted “(or beneficiary)” after “the deemed transferor”.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, but inapplicable under certain conditions under will executed before date which is 30 days after Aug. 13, 1981, or under trust created by such date, see section 403(e) of Pub. L. 97-34, set out as a note under section 2056 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 702(h)(2) of Pub. L. 95-600 applicable to estates of decedents dying after Dec. 31, 1976, except that such amendment shall not apply to transfers made before Jan. 1, 1977, see section 702(h)(3) of Pub. L. 95-600, set out as a note under section 2001 of this title.

Amendment by section 702(n)(4) of Pub. L. 95-600 effective as if included in this chapter as added by section 2006 of Pub. L. 94-455, see section 702(n)(5) of Pub. L. 95-600, set out as a note under section 2613 of this title.

§ 2603. Liability for tax

(a) Personal liability

(1) Taxable distributions

In the case of a taxable distribution, the tax imposed by section 2601 shall be paid by the transferee.

(2) Taxable termination

In the case of a taxable termination or a direct skip from a trust, the tax shall be paid by the trustee.

(3) Direct skip

In the case of a direct skip (other than a direct skip from a trust), the tax shall be paid by the transferor.

(b) Source of tax

Unless otherwise directed pursuant to the governing instrument by specific reference to the tax imposed by this chapter, the tax imposed by this chapter on a generation-skipping transfer shall be charged to the property constituting such transfer.

(c) Cross reference

For provisions making estate and gift tax provisions with respect to transferee liability, liens, and related matters applicable to the tax imposed by section 2601, see section 2661.

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1881; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718.)

AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting tax liability provisions consisting of language placing liability, under different circumstances, on the transferee, the trustee, or the transferor, the source of the tax, and a cross reference to section 2661 for former

provisions which covered the question of liability for tax with language covering the trustee and the distributee, the limitation on personal liability of the trustee who relied on certain information furnished by the Secretary, the limitation on personal liability of distributee, and the lien on property transferred until the tax was paid in full or became unenforceable by reason of lapse of time.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2662 of this title.

§ 2604. Credit for certain State taxes

(a) General rule

If a generation-skipping transfer (other than a direct skip) occurs at the same time as and as a result of the death of an individual, a credit against the tax imposed by section 2601 shall be allowed in an amount equal to the generation-skipping transfer tax actually paid to any State in respect to any property included in the generation-skipping transfer.

(b) Limitation

The aggregate amount allowed as a credit under this section with respect to any transfer shall not exceed 5 percent of the amount of the tax imposed by section 2601 on such transfer.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2718; amended Pub. L. 107-16, title V, § 532(c)(10), June 7, 2001, 115 Stat. 75.)

AMENDMENT OF SECTION

Pub. L. 107-16, title V, § 532(c)(10), (d), title IX, § 901, June 7, 2001, 115 Stat. 75, 150, provided that, applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, this section is temporarily amended by adding at the end the following new subsection:

(c) Termination

This section shall not apply to the generation-skipping transfers after December 31, 2004.

See Effective and Termination Dates of 2001 Amendment note below.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2004, see section 532(d) of Pub. L. 107-16, set out as a note under section 2011 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 164, 2654 of this title.

Subchapter B—Generation-Skipping Transfers

- Sec.
2611. Generation-skipping transfer defined.
2612. Taxable termination; taxable distribution; direct skip.
2613. Skip person and non-skip person defined.

AMENDMENTS

1986—Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718, substituted “Generation-Skipping Transfers” for “Definitions and Special Rules” in subchapter heading, substituted “Generation-skipping transfer defined” for “Generation-skipping transfer” in item 2611, “Taxable termination; taxable distribution; direct skip” for “Deemed transferor” in item 2612, and “Skip person and non-skip person defined” for “Other definitions” in item 2613, and struck out item 2614 “Special rules”.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2601 of this title.

§ 2611. Generation-skipping transfer defined**(a) In general**

For purposes of this chapter, the term “generation-skipping transfer” means—

- (1) a taxable distribution,
- (2) a taxable termination, and
- (3) a direct skip.

(b) Certain transfers excluded

The term “generation-skipping transfer” does not include—

- (1) any transfer which, if made inter vivos by an individual, would not be treated as a taxable gift by reason of section 2503(e) (relating to exclusion of certain transfers for educational or medical expenses), and
- (2) any transfer to the extent—
 - (A) the property transferred was subject to a prior tax imposed under this chapter,
 - (B) the transferee in the prior transfer was assigned to the same generation as (or a lower generation than) the generation assignment of the transferee in this transfer, and
 - (C) such transfers do not have the effect of avoiding tax under this chapter with respect to any transfer.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1882; amended Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2718; Pub. L. 100-647, title I, §§1014(g)(1), (2), 1018(u)(43), Nov. 10, 1988, 102 Stat. 3562, 3592.)

AMENDMENTS

1988—Subsec. (a). Pub. L. 100-647, §§1014(g)(1), 1018(u)(43), substituted “generation-skipping transfer” for “generation-skipping transfers” and “means” for “mean”.

Subsec. (b). Pub. L. 100-647, §1014(g)(2), redesignated pars. (2) and (3) as (1) and (2), respectively, and struck out former par. (1) which read as follows: “any transfer (other than a direct skip) from a trust, to the extent such transfer is subject to a tax imposed by chapter 11 or 12 with respect to a person in the 1st generation below that of the grantor, and”.

1986—Pub. L. 99-514 amended section generally, substituting provisions defining “generation-skipping transfers” and what that term does not include, for former provisions which defined “generation-skipping transfer”, “transfer”, and “generation-skipping trust”,

contained provisions to be used in determining the ascertainment of generation, and provided for a generation-skipping trust equivalent.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 303 of this title.

§ 2612. Taxable termination; taxable distribution; direct skip**(a) Taxable termination****(1) General rule**

For purposes of this chapter, the term “taxable termination” means the termination (by death, lapse of time, release of power, or otherwise) of an interest in property held in a trust unless—

- (A) immediately after such termination, a non-skip person has an interest in such property, or
- (B) at no time after such termination may a distribution (including distributions on termination) be made from such trust to a skip person.

(2) Certain partial terminations treated as taxable

If, upon the termination of an interest in property held in trust by reason of the death of a lineal descendant of the transferor, a specified portion of the trust’s assets are distributed to 1 or more skip persons (or 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.

(b) Taxable distribution

For purposes of this chapter, the term “taxable distribution” means any distribution from a trust to a skip person (other than a taxable termination or a direct skip).

(c) Direct skip

For purposes of this chapter—

(1) In general

The term “direct skip” means a transfer subject to a tax imposed by chapter 11 or 12 of an interest in property to a skip person.

(2) Look-thru rules not to apply

Solely for purposes of determining whether any transfer to a trust is a direct skip, the rules of section 2651(f)(2) shall not apply.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1883; amended Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2719; Pub. L. 100-647, title I, §1014(g)(5)(B), (7), (15), Nov. 10, 1988, 102 Stat. 3564-3566; Pub. L. 105-34, title V, §511(b), Aug. 5, 1997, 111 Stat. 861.)

AMENDMENTS

1997—Subsec. (c)(2). Pub. L. 105-34, §511(b)(2), substituted “section 2651(f)(2)” for “section 2651(e)(2)”.

Pub. L. 105-34, §511(b)(1), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: “For purposes of determining whether any transfer is a direct skip, if—

“(A) an individual is a grandchild of the transferor (or the transferor’s spouse or former spouse), and

“(B) as of the time of the transfer, the parent of such individual who is a lineal descendant of the transferor (or the transferor’s spouse or former spouse) is dead,

such individual shall be treated as if such individual were a child of the transferor and all of that grandchild’s children shall be treated as if they were grandchildren of the transferor. In the case of lineal descendants below a grandchild, the preceding sentence may be reapplied. If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property.”

Subsec. (c)(3). Pub. L. 105-34, §511(b)(1), redesignated par. (3) as (2).

1988—Subsec. (a)(2). Pub. L. 100-647, §1014(g)(15), amended par. (2) generally. Prior to amendment, par. (2) read as follows: “If, upon the termination of an interest in property held in a trust, a specified portion of the trust assets are distributed to skip persons who are lineal descendants of the holder of such interest (or to 1 or more trusts for the exclusive benefit of such persons), such termination shall constitute a taxable termination with respect to such portion of the trust property.”

Subsec. (c)(2). Pub. L. 100-647, §1014(g)(7), in closing provisions, inserted at end “If any transfer of property to a trust would be a direct skip but for this paragraph, any generation assignment under this paragraph shall apply also for purposes of applying this chapter to transfers from the portion of the trust attributable to such property.”

Subsec. (c)(3). Pub. L. 100-647, §1014(g)(5)(B), added par. (3).

1986—Pub. L. 99-514 amended section generally, substituting provisions covering definition and application of “taxable termination”, “taxable distribution”, and “direct skip” for former provisions which indicated who the “deemed transferor” would be for purposes of this chapter and that, for purposes of determining the person deemed the transferor, a parent related to the grantor of a trust by blood or adoption was to be deemed more closely related than a parent related to a grantor by marriage.

EFFECTIVE DATE OF 1997 AMENDMENT

Section 511(c) of Pub. L. 105-34 provided that: “The amendments made by this section [amending this section and section 2651 of this title] shall apply to terminations, distributions, and transfers occurring after December 31, 1997.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6166 of this title.

§ 2613. Skip person and non-skip person defined

(a) Skip person

For purposes of this chapter, the term “skip person” means—

(1) a natural person assigned to a generation which is 2 or more generations below the generation assignment of the transferor, or

(2) a trust—

(A) if all interests in such trust are held by skip persons, or

(B) if—

(i) there is no person holding an interest in such trust, and

(ii) at no time after such transfer may a distribution (including distributions on termination) be made from such trust to a nonskip person.

(b) Non-skip person

For purposes of this chapter, the term “non-skip person” means any person who is not a skip person.

(Added Pub. L. 94-455, title XX, §2006(a), Oct. 4, 1976, 90 Stat. 1884; amended Pub. L. 95-600, title VII, §702(n)(2), (3), Nov. 6, 1978, 92 Stat. 2935, 2936; Pub. L. 96-222, title I, §107(a)(2)(B), Apr. 1, 1980, 94 Stat. 222; Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2720; Pub. L. 100-647, title I, §1014(g)(5)(A), Nov. 10, 1988, 102 Stat. 3564.)

AMENDMENTS

1988—Subsec. (a)(1). Pub. L. 100-647 inserted “natural” before “person”.

1986—Pub. L. 99-514 amended section generally, substituting definitions of “skip person” and “non-skip person” for former provisions which defined and applied the terms “taxable distribution”, “taxable termination”, “younger generation beneficiary”, and “related or subordinate trustee”.

1980—Subsec. (e)(2)(A)(i). Pub. L. 96-222, §107(a)(2)(B)(i), inserted “(other than as a potential appointee under a power of appointment held by another)” after “trust”.

Subsec. (e)(2)(B). Pub. L. 96-222, §107(a)(2)(B)(ii), redesignated cls. (iii) to (v) as (iv) to (vi), added cl. (iii), and struck out cl. (vi) which related to an employee of a corporation in which the grantor or any beneficiary of the trust is an executive.

1978—Subsec. (b)(2)(B). Pub. L. 95-600, §702(n)(3), substituted “a present interest and a present power” for “an interest and a power” and “present interest or present power” for “interest or power” wherever appearing.

Subsec. (e). Pub. L. 95-600, §702(n)(2), inserted provisions relating to powers of independent trustees and definition of a related or subordinate trustee.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-222 effective, except as otherwise provided, as if it had been included in the

provisions of the Revenue Act of 1978, Pub. L. 95-600, to which such amendment relates, see section 201 of Pub. L. 96-222, set out as a note under section 32 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 702(n)(5) of Pub. L. 95-600, as amended by Pub. L. 99-514, § 2, Oct. 22, 1986, 100 Stat. 2095, provided that:

“(A) Except as provided in subparagraph (B), the amendments made by this subsection [amending this section, section 2602 of this title, and provisions set out as a note under section 2601 of this title] shall take effect as if included in chapter 13 of the Internal Revenue Code of 1986 [formerly I.R.C. 1954] as added by section 2006 of the Tax Reform Act of 1976 [Pub. L. 94-455, title XX, § 2006, Oct. 4, 1976, 90 Stat. 1879].

“(B) The amendment made by paragraph (1) [amending provisions set out as a note under section 2601 of this title] shall take effect on October 4, 1976.”

[§ 2614. Omitted]

CODIFICATION

Section, added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 95-600, title VII, § 702(c)(1)(B), Nov. 6, 1978, 92 Stat. 2926; Pub. L. 96-223, title IV, § 401(c)(3), Apr. 2, 1980, 94 Stat. 300, related to special rules for generation-skipping transfers, prior to the general revision of this chapter by Pub. L. 99-514, § 1431(a).

Subchapter C—Taxable Amount

| Sec. | |
|-------|---|
| 2621. | Taxable amount in case of taxable distribution. |
| 2622. | Taxable amount in case of taxable termination. |
| 2623. | Taxable amount in case of direct skip. |
| 2624. | Valuation. |

AMENDMENTS

1986—Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2720, substituted “Taxable Amount” for “Administration” in subchapter heading, substituted “Taxable amount in case of taxable distribution” for “Administration” in item 2621 and “Taxable amount in case of taxable termination” for “Regulations” in item 2622, and added items 2623 and 2624.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2602 of this title.

§ 2621. Taxable amount in case of taxable distribution

(a) In general

For purposes of this chapter, the taxable amount in the case of any taxable distribution shall be—

(1) the value of the property received by the transferee, reduced by

(2) any expense incurred by the transferee in connection with the determination, collection, or refund of the tax imposed by this chapter with respect to such distribution.

(b) Payment of GST tax treated as taxable distribution

For purposes of this chapter, if any of the tax imposed by this chapter with respect to any taxable distribution is paid out of the trust, an amount equal to the portion so paid shall be treated as a taxable distribution.

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1887; amended Pub. L. 97-34, title

IV, § 422(e)(4), Aug. 13, 1981, 95 Stat. 316; Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2720.)

AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting provisions relating to taxable amount in case of a taxable distribution for former provisions which related generally to administration of this chapter. See section 2661 of this title.

1981—Subsec. (b). Pub. L. 97-34 substituted “Section 6166” for “Sections 6166 and 6166A” in heading and “section 6166 (relating to extension of time” for “sections 6166 and 6166A (relating to extensions of time” in text.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

EFFECTIVE DATE OF 1981 AMENDMENT

Amendment by Pub. L. 97-34 applicable to estates of decedents dying after Dec. 31, 1981, see section 422(f)(1) of Pub. L. 97-34, set out as a note under section 6166 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 642 of this title.

§ 2622. Taxable amount in case of taxable termination

(a) In general

For purposes of this chapter, the taxable amount in the case of a taxable termination shall be—

(1) the value of all property with respect to which the taxable termination has occurred, reduced by

(2) any deduction allowed under subsection (b).

(b) Deduction for certain expenses

For purposes of subsection (a), there shall be allowed a deduction similar to the deduction allowed by section 2053 (relating to expenses, indebtedness, and taxes) for amounts attributable to the property with respect to which the taxable termination has occurred.

(Added Pub. L. 94-455, title XX, § 2006(a), Oct. 4, 1976, 90 Stat. 1888; amended Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2720.)

AMENDMENTS

1986—Pub. L. 99-514 amended section generally, substituting provisions relating to taxable amount in case of a taxable termination for former provisions which authorized the Secretary to promulgate regulations. See section 2663 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 642 of this title.

§ 2623. Taxable amount in case of direct skip

For purposes of this chapter, the taxable amount in the case of a direct skip shall be the value of the property received by the transferee.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

§ 2624. Valuation

(a) General rule

Except as otherwise provided in this chapter, property shall be valued as of the time of the generation-skipping transfer.

(b) Alternate valuation and special use valuation elections apply to certain direct skips

In the case of any direct skip of property which is included in the transferor's gross estate, the value of such property for purposes of this chapter shall be the same as its value for purposes of chapter 11 (determined with regard to sections 2032 and 2032A).

(c) Alternate valuation election permitted in the case of taxable terminations occurring at death

If 1 or more taxable terminations with respect to the same trust occur at the same time as and as a result of the death of an individual, an election may be made to value all of the property included in such terminations in accordance with section 2032.

(d) Reduction for consideration provided by transferee

For purposes of this chapter, the value of the property transferred shall be reduced by the amount of any consideration provided by the transferee.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

Subchapter D—GST Exemption

| | |
|------------------------|--|
| Sec. 2631. 2632. | GST exemption. Special rules for allocation of GST exemption. |
|------------------------|--|

§ 2631. GST exemption

(a) General rule

For purposes of determining the inclusion ratio, every individual shall be allowed a GST exemption of \$1,000,000 which may be allocated by such individual (or his executor) to any property with respect to which such individual is the transferor.

(b) Allocations irrevocable

Any allocation under subsection (a), once made, shall be irrevocable.

(c) Inflation adjustment

(1) In general

In the case of any calendar year after 1998, the \$1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

(A) \$1,000,000, multiplied by

(B) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting "calendar year 1997" for "calendar year 1992" in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000.

(2) Allocation of increase

Any increase under paragraph (1) for any calendar year shall apply only to generation-skipping transfers made during or after such calendar year; except that no such increase for calendar years after the calendar year in which the transferor dies shall apply to transfers by such transferor.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 105-34, title V, § 501(d), Aug. 5, 1997, 111 Stat. 846; Pub. L. 105-206, title VI, § 6007(a)(1), July 22, 1998, 112 Stat. 806; Pub. L. 107-16, title V, § 521(c), June 7, 2001, 115 Stat. 72.)

ADJUSTMENT OF GENERATION-SKIPPING TRANSFER TAX EXEMPTION FOR CALENDAR YEAR 2003

For adjustment of generation-skipping transfer tax exemption under this section for calendar year 2003, see section 3.25 of Revenue Procedure 2002-70, set out as a note under section 1 of this title.

AMENDMENT OF SECTION

Pub. L. 107-16, title V, § 521(c), (e)(3), title IX, § 901, June 7, 2001, 115 Stat. 72, 150, provided that, applicable to estates of decedents dying, and generation-skipping transfers, after Dec. 31, 2003, this section is temporarily amended as follows:

- (1) in subsection (a), by substituting "amount" for "of \$1,000,000"; and
- (2) by amending subsection (c) to read as follows:

(c) GST exemption amount

For purposes of subsection (a), the GST exemption amount for any calendar year shall be equal to the applicable exclusion amount under section 2010(c) for such calendar year.

See Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

1998—Subsec. (c). Pub. L. 105-206 reenacted heading without change and amended text generally. Prior to amendment, text read as follows: "In the case of an individual who dies in any calendar year after 1998, the \$1,000,000 amount contained in subsection (a) shall be increased by an amount equal to—

- "(1) \$1,000,000, multiplied by
- "(2) the cost-of-living adjustment determined under section 1(f)(3) for such calendar year by substituting 'calendar year 1997' for 'calendar year 1992' in subparagraph (B) thereof.

If any amount as adjusted under the preceding sentence is not a multiple of \$10,000, such amount shall be rounded to the next lowest multiple of \$10,000."

1997—Subsec. (c). Pub. L. 105-34 added subsec. (c).

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Amendment by Pub. L. 107-16 applicable to estates of decedents dying, and generation-skipping transfers,

after Dec. 31, 2003, see section 521(e)(3) of Pub. L. 107-16, set out as a note under section 2010 of this title.

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2632 of this title.

§ 2632. Special rules for allocation of GST exemption

(a) Time and manner of allocation

(1) Time

Any allocation by an individual of his GST exemption under section 2631(a) may be made at any time on or before the date prescribed for filing the estate tax return for such individual's estate (determined with regard to extensions), regardless of whether such a return is required to be filed.

(2) Manner

The Secretary shall prescribe by forms or regulations the manner in which any allocation referred to in paragraph (1) is to be made.

(b) Deemed allocation to certain lifetime direct skips

(1) In general

If any individual makes a direct skip during his lifetime, any unused portion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the direct skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

(2) Unused portion

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been allocated by such individual (or treated as allocated under paragraph (1) or subsection (c)(1)).

(3) Subsection not to apply in certain cases

An individual may elect to have this subsection not apply to a transfer.

(c) Deemed allocation to certain lifetime transfers to GST trusts

(1) In general

If any individual makes an indirect skip during such individual's lifetime, any unused por-

tion of such individual's GST exemption shall be allocated to the property transferred to the extent necessary to make the inclusion ratio for such property zero. If the amount of the indirect skip exceeds such unused portion, the entire unused portion shall be allocated to the property transferred.

(2) Unused portion

For purposes of paragraph (1), the unused portion of an individual's GST exemption is that portion of such exemption which has not previously been—

(A) allocated by such individual,

(B) treated as allocated under subsection (b) with respect to a direct skip occurring during or before the calendar year in which the indirect skip is made, or

(C) treated as allocated under paragraph (1) with respect to a prior indirect skip.

(3) Definitions

(A) Indirect skip

For purposes of this subsection, the term "indirect skip" means any transfer of property (other than a direct skip) subject to the tax imposed by chapter 12 made to a GST trust.

(B) GST trust

The term "GST trust" means a trust that could have a generation-skipping transfer with respect to the transferor unless—

(i) 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—

(I) before the date that the individual attains age 46,

(II) 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

(III) 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,

(ii) 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,

(iii) 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), 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,

(iv) 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,

(v) the trust is a charitable lead annuity trust (within the meaning of section 2642(e)(3)(A)) or a charitable remainder annuity trust or a charitable remainder unitrust (within the meaning of section 664(d)), or

(vi) 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.

For purposes of this subparagraph, the value of transferred property shall not be considered to be includible in the gross estate of a non-skip person or subject to a right of withdrawal by reason of such person holding a right to withdraw so much of such property as does not exceed the amount referred to in section 2503(b) with respect to any transferor, and it shall be assumed that powers of appointment held by non-skip persons will not be exercised.

(4) Automatic allocations to certain GST trusts

For purposes of this subsection, an indirect skip to which section 2642(f) applies shall be deemed to have been made only at the close of the estate tax inclusion period. The fair market value of such transfer shall be the fair market value of the trust property at the close of the estate tax inclusion period.

(5) Applicability and effect

(A) In general

An individual—

(i) may elect to have this subsection not apply to—

(I) an indirect skip, or

(II) any or all transfers made by such individual to a particular trust, and

(ii) may elect to treat any trust as a GST trust for purposes of this subsection with respect to any or all transfers made by such individual to such trust.

(B) Elections

(i) Elections with respect to indirect skips

An election under subparagraph (A)(i)(I) shall be deemed to be timely if filed on a timely filed gift tax return for the calendar year in which the transfer was made or deemed to have been made pursuant to paragraph (4) or on such later date or dates as may be prescribed by the Secretary.

(ii) Other elections

An election under clause (i)(II) or (ii) of subparagraph (A) may be made on a timely filed gift tax return for the calendar year for which the election is to become effective.

(d) Retroactive allocations

(1) In general

If—

(A) a non-skip person has an interest or a future interest in a trust to which any transferor has been made,

(B) such person—

(i) is a lineal descendant of a grandparent of the transferor or of a grandparent of the transferor's spouse or former spouse, and

(ii) is assigned to a generation below the generation assignment of the transferor, and

(C) such person predeceases the transferor,

then the transferor may make an allocation of any of such transferor's unused GST exemption to any previous transfer or transfers to the trust on a chronological basis.

(2) Special rules

If the allocation under paragraph (1) by the transferor is made on a gift tax return filed on or before the date prescribed by section 6075(b) for gifts made within the calendar year within which the non-skip person's death occurred—

(A) the value of such transfer or transfers for purposes of section 2642(a) shall be determined as if such allocation had been made on a timely filed gift tax return for each calendar year within which each transfer was made,

(B) such allocation shall be effective immediately before such death, and

(C) the amount of the transferor's unused GST exemption available to be allocated shall be determined immediately before such death.

(3) Future interest

For purposes of this subsection, a person has a future interest in a trust if the trust may permit income or corpus to be paid to such person on a date or dates in the future.

(e) Allocation of unused GST exemption

(1) In general

Any portion of an individual's GST exemption which has not been allocated within the time prescribed by subsection (a) shall be deemed to be allocated as follows—

(A) first, to property which is the subject of a direct skip occurring at such individual's death, and

(B) second, to trusts with respect to which such individual is the transferor and from which a taxable distribution or a taxable termination might occur at or after such individual's death.

(2) Allocation within categories

(A) In general

The allocation under paragraph (1) shall be made among the properties described in subparagraph (A) thereof and the trusts described in subparagraph (B) thereof, as the case may be, in proportion to the respective amounts (at the time of allocation) of the nonexempt portions of such properties or trusts.

(B) Nonexempt portion

For purposes of subparagraph (A), the term "nonexempt portion" means the value (at

the time of allocation) of the property or trust, multiplied by the inclusion ratio with respect to such property or trust.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2721; amended Pub. L. 100-647, title I, § 1014(g)(16), Nov. 10, 1988, 102 Stat. 3566; Pub. L. 107-16, title V, § 561(a), (b), June 7, 2001, 115 Stat. 86, 89.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2001—Subsec. (b)(2). Pub. L. 107-16, §§ 561(b), 901, temporarily substituted “or subsection (c)(1)” for “with respect to a prior direct skip”. See Effective and Termination Dates of 2001 Amendment note below.

Subsecs. (c) to (e). Pub. L. 107-16, §§ 561(a), 901, temporarily added subsecs. (c) and (d) and redesignated former subsec. (c) as (e). See Effective and Termination Dates of 2001 Amendment note below.

1988—Subsec. (b)(2). Pub. L. 100-647 substituted “paragraph (1) with respect to a prior direct skip” for “paragraph (1) with respect to a prior direct skip”.

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, § 561(c), June 7, 2001, 115 Stat. 89, provided that:

“(1) **DEEMED ALLOCATION.**—Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b) [amending this section], shall apply to transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000.

“(2) **RETROACTIVE ALLOCATIONS.**—Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 2000.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2642 of this title.

Subchapter E—Applicable Rate; Inclusion Ratio

| | |
|-------|------------------|
| Sec. | |
| 2641. | Applicable rate. |
| 2642. | Inclusion ratio. |

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2602 of this title.

§ 2641. Applicable rate

(a) General rule

For purposes of this chapter, the term “applicable rate” means, with respect to any generation-skipping transfer, the product of—

- (1) the maximum Federal estate tax rate, and
- (2) the inclusion ratio with respect to the transfer.

(b) Maximum Federal estate tax rate

For purposes of subsection (a), the term “maximum Federal estate tax rate” means the maximum rate imposed by section 2001 on the estates of decedents dying at the time of the taxable distribution, taxable termination, or direct skip, as the case may be.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2722.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

§ 2642. Inclusion ratio

(a) Inclusion ratio defined

For purposes of this chapter—

(1) In general

Except as otherwise provided in this section, the inclusion ratio with respect to any property transferred in a generation-skipping transfer shall be the excess (if any) of 1 over—

- (A) except as provided in subparagraph (B), the applicable fraction determined for the trust from which such transfer is made, or
- (B) in the case of a direct skip, the applicable fraction determined for such skip.

(2) Applicable fraction

For purposes of paragraph (1), the applicable fraction is a fraction—

- (A) the numerator of which is the amount of the GST exemption allocated to the trust (or in the case of a direct skip, allocated to the property transferred in such skip), and
- (B) the denominator of which is—
 - (i) the value of the property transferred to the trust (or involved in the direct skip), reduced by
 - (ii) the sum of—

(I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and

(II) any charitable deduction allowed under section 2055 or 2522 with respect to such property.

(3) Severing of trusts

(A) In general

If a trust is severed in a qualified severance, the trusts resulting from such severance shall be treated as separate trusts thereafter for purposes of this chapter.

(B) Qualified severance

For purposes of subparagraph (A)—

(i) In general

The term “qualified severance” means the division of a single trust and the cre-

ation (by any means available under the governing instrument or under local law) of two or more trusts if—

(I) the single trust was divided on a fractional basis, and

(II) the terms of the new trusts, in the aggregate, provide for the same succession of interests of beneficiaries as are provided in the original trust.

(ii) Trusts with inclusion ratio greater than zero

If a trust has an inclusion ratio of greater than zero and less than 1, a severance is a qualified severance only if the single trust is divided into two trusts, one of which receives a fractional share of the total value of all trust assets equal to the applicable fraction of the single trust immediately before the severance. In such case, the trust receiving such fractional share shall have an inclusion ratio of zero and the other trust shall have an inclusion ratio of 1.

(iii) Regulations

The term “qualified severance” includes any other severance permitted under regulations prescribed by the Secretary.

(C) Timing and manner of severances

A severance pursuant to this paragraph may be made at any time. The Secretary shall prescribe by forms or regulations the manner in which the qualified severance shall be reported to the Secretary.

(b) Valuation rules, etc.

Except as provided in subsection (f)—

(1) Gifts for which gift tax return filed or deemed allocation made

If the allocation of the GST exemption to any transfers of property is made on a gift tax return filed on or before the date prescribed by section 6075(b) for such transfer or is deemed to be made under section 2632(b)(1) or (c)(1)—

(A) the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 12 (within the meaning of section 2001(f)(2)), or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, its value at the time of the close of the estate tax inclusion period, and

(B) such allocation shall be effective on and after the date of such transfer, or, in the case of an allocation deemed to have been made at the close of an estate tax inclusion period, on and after the close of such estate tax inclusion period.

(2) Transfers and allocations at or after death

(A) Transfers at death

If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value as finally determined for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned.

(B) Allocations to property transferred at death of transferor

Any allocation to property transferred as a result of the death of the transferor shall be effective on and after the date of the death of the transferor.

(3) Allocations to inter vivos transfers not made on timely filed gift tax return

If any allocation of the GST exemption to any property not transferred as a result of the death of the transferor is not made on a gift tax return filed on or before the date prescribed by section 6075(b) and is not deemed to be made under section 2632(b)(1)—

(A) the value of such property for purposes of subsection (a) shall be determined as of the time such allocation is filed with the Secretary, and

(B) such allocation shall be effective on and after the date on which such allocation is filed with the Secretary.

(4) QTIP trusts

If the value of property is included in the estate of a spouse by virtue of section 2044, and if such spouse is treated as the transferor of such property under section 2652(a), the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11 in the estate of such spouse.

(c) Treatment of certain direct skips which are nontaxable gifts

(1) In general

In the case of a direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

(2) Exception for certain transfers in trust

Paragraph (1) shall not apply to any transfer to a trust for the benefit of an individual unless—

(A) during the life of such individual, no portion of the corpus or income of the trust may be distributed to (or for the benefit of) any person other than such individual, and

(B) if the trust does not terminate before the individual dies, the assets of such trust will be includible in the gross estate of such individual.

Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A).

(3) Nontaxable gift

For purposes of this subsection, the term “nontaxable gift” means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

(A) section 2503(b) (taking into account the application of section 2513), or

(B) section 2503(e).

(d) Special rules where more than 1 transfer made to trust

(1) In general

If a transfer of property is made to a trust in existence before such transfer, the applicable fraction for such trust shall be recomputed as of the time of such transfer in the manner provided in paragraph (2).

(2) Applicable fraction

In the case of any such transfer, the recomputed applicable fraction is a fraction—

- (A) the numerator of which is the sum of—
 (i) the amount of the GST exemption allocated to property involved in such transfer, plus
 (ii) the nontax portion of such trust immediately before such transfer, and

(B) the denominator of which is the sum of—

- (i) the value of the property involved in such transfer reduced by the sum of—
 (I) any Federal estate tax or State death tax actually recovered from the trust attributable to such property, and
 (II) any charitable deduction allowed under section 2055 or 2522 with respect to such property, and
 (ii) the value of all of the property in the trust (immediately before such transfer).

(3) Nontax portion

For purposes of paragraph (2), the term “nontax portion” means the product of—

- (A) the value of all of the property in the trust, and
 (B) the applicable fraction in effect for such trust.

(4) Similar recomputation in case of certain late allocations

If—

- (A) any allocation of the GST exemption to property transferred to a trust is not made on a timely filed gift tax return required by section 6019, and
 (B) there was a previous allocation with respect to property transferred to such trust,

the applicable fraction for such trust shall be recomputed as of the time of such allocation under rules similar to the rules of paragraph (2).

(e) Special rules for charitable lead annuity trusts

(1) In general

For purposes of determining the inclusion ratio for any charitable lead annuity trust, the applicable fraction shall be a fraction—

- (A) the numerator of which is the adjusted GST exemption, and
 (B) the denominator of which is the value of all of the property in such trust immediately after the termination of the charitable lead annuity.

(2) Adjusted GST exemption

For purposes of paragraph (1), the adjusted GST exemption is an amount equal to the GST exemption allocated to the trust increased by interest determined—

- (A) at the interest rate used in determining the amount of the deduction under section 2055 or 2522 (as the case may be) for the charitable lead annuity, and
 (B) for the actual period of the charitable lead annuity.

(3) Definitions

For purposes of this subsection—

(A) Charitable lead annuity trust

The term “charitable lead annuity trust” means any trust in which there is a charitable lead annuity.

(B) Charitable lead annuity

The term “charitable lead annuity” means any interest in the form of a guaranteed annuity with respect to which a deduction was allowed under section 2055 or 2522 (as the case may be).

(4) Coordination with subsection (d)

Under regulations, appropriate adjustments shall be made in the application of subsection (d) to take into account the provisions of this subsection.

(f) Special rules for certain inter vivos transfers

Except as provided in regulations—

(1) In general

For purposes of determining the inclusion ratio, if—

- (A) an individual makes an inter vivos transfer of property, and
 (B) the value of such property would be includible in the gross estate of such individual under chapter 11 if such individual died immediately after making such transfer (other than by reason of section 2035),

any allocation of GST exemption to such property shall not be made before the close of the estate tax inclusion period (and the value of such property shall be determined under paragraph (2)). If such transfer is a direct skip, such skip shall be treated as occurring as of the close of the estate tax inclusion period.

(2) Valuation

In the case of any property to which paragraph (1) applies, the value of such property shall be—

- (A) if such property is includible in the gross estate of the transferor (other than by reason of section 2035), its value for purposes of chapter 11, or

(B) if subparagraph (A) does not apply, its value as of the close of the estate tax inclusion period (or, if any allocation of GST exemption to such property is not made on a timely filed gift tax return for the calendar year in which such period ends, its value as of the time such allocation is filed with the Secretary).

(3) Estate tax inclusion period

For purposes of this subsection, the term “estate tax inclusion period” means any period after the transfer described in paragraph (1) during which the value of the property involved in such transfer would be includible in the gross estate of the transferor under chapter 11 if he died. Such period shall in no event extend beyond the earlier of—

- (A) the date on which there is a generation-skipping transfer with respect to such property, or
 (B) the date of the death of the transferor.

(4) Treatment of spouse

Except as provided in regulations, any reference in this subsection to an individual or transferor shall be treated as including a reference to the spouse of such individual or transferor.

(5) Coordination with subsection (d)

Under regulations, appropriate adjustments shall be made in the application of subsection

(d) to take into account the provisions of this subsection.

(g) Relief provisions

(1) Relief from late elections

(A) In general

The Secretary shall by regulation prescribe such circumstances and procedures under which extensions of time will be granted to make—

- (i) an allocation of GST exemption described in paragraph (1) or (2) of subsection (b), and
- (ii) an election under subsection (b)(3) or (c)(5) of section 2632.

Such regulations shall include procedures for requesting comparable relief with respect to transfers made before the date of the enactment of this paragraph.

(B) Basis for determinations

In determining whether to grant relief under this paragraph, the Secretary shall take into account all relevant circumstances, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant. For purposes of determining whether to grant relief under this paragraph, the time for making the allocation (or election) shall be treated as if not expressly prescribed by statute.

(2) Substantial compliance

An allocation of GST exemption under section 2632 that demonstrates an intent to have the lowest possible inclusion ratio with respect to a transfer or a trust shall be deemed to be an allocation of so much of the transferor's unused GST exemption as produces the lowest possible inclusion ratio. In determining whether there has been substantial compliance, all relevant circumstances shall be taken into account, including evidence of intent contained in the trust instrument or instrument of transfer and such other factors as the Secretary deems relevant.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2722; amended Pub. L. 100-647, title I, § 1014(g)(3)(A), (4), (17)(A), (B), (18), Nov. 10, 1988, 102 Stat. 3563, 3566, 3567; Pub. L. 101-239, title VII, § 7811(j)(4), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 101-508, title XI, §§ 11703(c)(1), (2), 11704(a)(17), (36), Nov. 5, 1990, 104 Stat. 1388-517, 1388-519; Pub. L. 107-16, title V, §§ 562(a), 563(a), (b), 564(a), June 7, 2001, 115 Stat. 89-91.)

AMENDMENT OF SECTION

For termination of amendment by section 901 of Pub. L. 107-16, see Effective and Termination Dates of 2001 Amendment note below.

AMENDMENTS

2001—Subsec. (a)(3). Pub. L. 107-16, §§ 562(a), 901, temporarily added par. (3). See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(1). Pub. L. 107-16, §§ 563(a), 901, temporarily reenacted heading without change and amended text of par. (1) generally. Prior to amendment, text read as follows: "If the allocation of the GST exemption to any property is made on a gift tax return filed

on or before the date prescribed by section 6075(b) or is deemed to be made under section 2632(b)(1)—

"(A) the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 12, and

"(B) such allocation shall be effective on and after the date of such transfer."

See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (b)(2)(A). Pub. L. 107-16, §§ 563(b), 901, temporarily reenacted heading without change and amended text of subpar. (A) generally. Prior to amendment, text read as follows: "If property is transferred as a result of the death of the transferor, the value of such property for purposes of subsection (a) shall be its value for purposes of chapter 11; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned." See Effective and Termination Dates of 2001 Amendment note below.

Subsec. (g). Pub. L. 107-16, §§ 564(a), 901, temporarily added subsec. (g). See Effective and Termination Dates of 2001 Amendment note below.

1990—Subsec. (b)(3). Pub. L. 101-508, § 11704(a)(36), amended Pub. L. 100-647, § 1014(g)(4)(F)(ii). See 1988 Amendment note below.

Subsec. (c)(2). Pub. L. 101-508, § 11703(c)(2), inserted at end: "Rules similar to the rules of section 2652(c)(3) shall apply for purposes of subparagraph (A)."

Subsec. (c)(2)(B). Pub. L. 101-508, § 11703(c)(1), substituted "the trust does not terminate before the individual dies" for "such individual dies before the trust is terminated".

Subsec. (d)(2)(B)(i)(I). Pub. L. 101-508, § 11704(a)(17), substituted "State" for "state".

1989—Subsec. (b)(1), (3). Pub. L. 101-239 substituted "a gift tax return filed on or before the date prescribed by section 6075(b)" for "a timely filed gift tax return required by section 6019" in introductory provisions.

1988—Subsec. (a)(2). Pub. L. 100-647, § 1014(g)(4)(B), struck out at end "Except as provided in paragraphs (3) and (4) of subsection (b), the value determined under subparagraph (B)(i) shall be of the property as of the time of the transfer to the trust (or the direct skip)."

Subsec. (b). Pub. L. 100-647, § 1014(g)(4)(D), inserted "Except as provided in subsection (f)—" as introductory provision.

Subsec. (b)(2)(A). Pub. L. 100-647, § 1014(g)(4)(C), inserted before period at end " ; except that, if the requirements prescribed by the Secretary respecting allocation of post-death changes in value are not met, the value of such property shall be determined as of the time of the distribution concerned."

Subsec. (b)(2)(B). Pub. L. 100-647, § 1014(g)(4)(E), substituted "to property transferred at death" for "at or after death" in heading and "to property transferred as a result of the death of the transferor" for "at or after the death of the transferor" in text.

Subsec. (b)(3). Pub. L. 100-647, § 1014(g)(4)(F)(ii), as amended by Pub. L. 101-508, § 11704(a)(36), substituted "Allocations to inter vivos transfers" for "Inter vivos allocations" in heading.

Pub. L. 100-647, § 1014(g)(4)(F)(i), substituted "to any property not transferred as a result of the death of the transferor is" for "to any property is made during the life of the transferor but is".

Subsec. (c). Pub. L. 100-647, § 1014(g)(17)(A), inserted "direct skips which are" in heading and amended text generally. Prior to amendment, text read as follows:

"(1) DIRECT SKIPS.—In the case of any direct skip which is a nontaxable gift, the inclusion ratio shall be zero.

"(2) TREATMENT OF NONTAXABLE GIFTS MADE TO TRUSTS.—

"(A) IN GENERAL.—Except as provided in subparagraph (B), any nontaxable gift which is not a direct skip and which is made to a trust shall not be taken into account under subsection (a)(2)(B).

"(B) DETERMINATION OF 1ST TRANSFER TO TRUST.—In the case of any nontaxable gift referred to in subpara-

graph (A) which is the 1st transfer to the trust, the inclusion ratio for such trust shall be zero.

“(3) NONTAXABLE GIFT.—For purposes of this section, the term ‘nontaxable gift’ means any transfer of property to the extent such transfer is not treated as a taxable gift by reason of—

“(A) section 2503(b) (taking into account the application of section 2513), or

“(B) section 2503(e).”

Subsec. (d)(1). Pub. L. 100-647, §1014(g)(17)(B), struck out “(other than a nontaxable gift)” after “transfer of property”.

Subsec. (d)(2)(B)(i). Pub. L. 100-647, §1014(g)(18), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “the value of the property involved in such transfer, reduced by any charitable deduction allowed under section 2055 or 2522 with respect to such property, and”.

Subsec. (e). Pub. L. 100-647, §1014(g)(3)(A), added subsec. (e).

Subsec. (f). Pub. L. 100-647, §1014(g)(4)(A), added subsec. (f).

EFFECTIVE AND TERMINATION DATES OF 2001 AMENDMENT

Pub. L. 107-16, title V, §562(b), June 7, 2001, 115 Stat. 90, provided that: “The amendment made by this section [amending this section] shall apply to severances after December 31, 2000.”

Pub. L. 107-16, title V, §563(c), June 7, 2001, 115 Stat. 91, provided that: “The amendments made by this section [amending this section] shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000.”

Pub. L. 107-16, title V, §564(b), June 7, 2001, 115 Stat. 91, provided that:

“(1) RELIEF FROM LATE ELECTIONS.—Section 2642(g)(1) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to requests pending on, or filed after, December 31, 2000.

“(2) SUBSTANTIAL COMPLIANCE.—Section 2642(g)(2) of such Code (as so added) shall apply to transfers subject to chapter 11 or 12 of the Internal Revenue Code of 1986 made after December 31, 2000. No implication is intended with respect to the availability of relief from late elections or the application of a rule of substantial compliance on or before such date.”

Amendment by Pub. L. 107-16 inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if such amendment had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Section 11703(c)(4) of Pub. L. 101-508 provided that: “The amendments made by paragraphs (1) and (2) [amending this section] shall apply to transfers after March 31, 1988.”

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Section 1014(g)(3)(B) of Pub. L. 100-647 provided that: “The amendment made by subparagraph (A) [amending this section] shall apply for purposes of determining the inclusion ratio with respect to property transferred after October 13, 1987.”

Section 1014(g)(17)(C) of Pub. L. 100-647 provided that: “The amendments made by this paragraph [amending this section] shall apply to transfers after March 31, 1988.”

Amendment by section 1014(g)(4), (18) of Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2632, 2654 of this title.

Subchapter F—Other Definitions and Special Rules

| | |
|-------|-----------------------------|
| Sec. | |
| 2651. | Generation assignment. |
| 2652. | Other definitions. |
| 2653. | Taxation of multiple skips. |
| 2654. | Special rules. |

§ 2651. Generation assignment

(a) In general

For purposes of this chapter, the generation to which any person (other than the transferor) belongs shall be determined in accordance with the rules set forth in this section.

(b) Lineal descendants

(1) In general

An individual who is a lineal descendant of a grandparent of the transferor shall be assigned to that generation which results from comparing the number of generations between the grandparent and such individual with the number of generations between the grandparent and the transferor.

(2) On spouse's side

An individual who is a lineal descendant of a grandparent of a spouse (or former spouse) of the transferor (other than such spouse) shall be assigned to that generation which results from comparing the number of generations between such grandparent and such individual with the number of generations between such grandparent and such spouse.

(3) Treatment of legal adoptions, etc.

For purposes of this subsection—

(A) Legal adoptions

A relationship by legal adoption shall be treated as a relationship by blood.

(B) Relationships by half-blood

A relationship by the half-blood shall be treated as a relationship of the whole-blood.

(c) Marital relationship

(1) Marriage to transferor

An individual who has been married at any time to the transferor shall be assigned to the transferor's generation.

(2) Marriage to other lineal descendants

An individual who has been married at any time to an individual described in subsection (b) shall be assigned to the generation of the individual so described.

(d) Persons who are not lineal descendants

An individual who is not assigned to a generation by reason of the foregoing provisions of this section shall be assigned to a generation on the basis of the date of such individual's birth with—

- (1) an individual born not more than 12½ years after the date of the birth of the transferor assigned to the transferor's generation,
- (2) an individual born more than 12½ years but not more than 37½ years after the date of the birth of the transferor assigned to the first generation younger than the transferor, and
- (3) similar rules for a new generation every 25 years.

(e) Special rule for persons with a deceased parent

(1) In general

For purposes of determining whether any transfer is a generation-skipping transfer, if—

- (A) an individual is a descendant of a parent of the transferor (or the transferor's spouse or former spouse), and
- (B) such individual's parent who is a lineal descendant of the parent of the transferor (or the transferor's spouse or former spouse) is dead at the time the transfer (from which an interest of such individual is established or derived) is subject to a tax imposed by chapter 11 or 12 upon the transferor (and if there shall be more than 1 such time, then at the earliest such time),

such individual shall be treated as if such individual were a member of the generation which is 1 generation below the lower of the transferor's generation or the generation assignment of the youngest living ancestor of such individual who is also a descendant of the parent of the transferor (or the transferor's spouse or former spouse), and the generation assignment of any descendant of such individual shall be adjusted accordingly.

(2) Limited application of subsection to collateral heirs

This subsection shall not apply with respect to a transfer to any individual who is not a lineal descendant of the transferor (or the transferor's spouse or former spouse) if, at the time of the transfer, such transferor has any living lineal descendant.

(f) Other special rules

(1) Individuals assigned to more than 1 generation

Except as provided in regulations, an individual who, but for this subsection, would be assigned to more than 1 generation shall be assigned to the youngest such generation.

(2) Interests through entities

Except as provided in paragraph (3), if an estate, trust, partnership, corporation, or other entity has an interest in property, each individual having a beneficial interest in such entity shall be treated as having an interest in such property and shall be assigned to a generation under the foregoing provisions of this subsection.

(3) Treatment of certain charitable organizations and governmental entities

Any—

- (A) organization described in section 511(a)(2),
- (B) charitable trust described in section 511(b)(2), and
- (C) governmental entity,

shall be assigned to the transferor's generation.

(Added Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2725; amended Pub. L. 100-647, title I, §1014(g)(11), (19), Nov. 10, 1988, 102 Stat. 3565, 3567; Pub. L. 105-34, title V, §511(a), Aug. 5, 1997, 111 Stat. 860.)

AMENDMENTS

1997—Subsecs. (e), (f). Pub. L. 105-34 added subsec. (e) and redesignated former subsec. (e) as (f).

1988—Subsec. (b)(2). Pub. L. 100-647, §1014(g)(19), inserted "(or former spouse)" after "a spouse".

Subsec. (e)(3). Pub. L. 100-647, §1014(g)(11), amended par. (3) generally, including governmental entities among the organizations to be assigned to transferor's generation.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable to terminations, distributions, and transfers occurring after Dec. 31, 1997, see section 511(c) of Pub. L. 105-34, set out as a note under section 2612 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 529, 2612, 2653 of this title.

§ 2652. Other definitions

(a) Transferor

For purposes of this chapter—

(1) In general

Except as provided in this subsection or section 2653(a), the term "transferor" means—

- (A) in the case of any property subject to the tax imposed by chapter 11, the decedent, and
- (B) in the case of any property subject to the tax imposed by chapter 12, the donor.

An individual shall be treated as transferring any property with respect to which such individual is the transferor.

(2) Gift-splitting by married couples

If, under section 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of this chapter.

(3) Special election for qualified terminable interest property

In the case of—

(A) any trust with respect to which a deduction is allowed to the decedent under section 2056 by reason of subsection (b)(7) thereof, and

(B) any trust with respect to which a deduction to the donor spouse is allowed under section 2523 by reason of subsection (f) thereof,

the estate of the decedent or the donor spouse, as the case may be, may elect to treat all of the property in such trust for purposes of this chapter as if the election to be treated as qualified terminable interest property had not been made.

(b) Trust and trustee

(1) Trust

The term “trust” includes any arrangement (other than an estate) which, although not a trust, has substantially the same effect as a trust.

(2) Trustee

In the case of an arrangement which is not a trust but which is treated as a trust under this subsection, the term “trustee” shall mean the person in actual or constructive possession of the property subject to such arrangement.

(3) Examples

Arrangements to which this subsection applies include arrangements involving life estates and remainders, estates for years, and insurance and annuity contracts.

(c) Interest

(1) In general

A person has an interest in property held in trust if (at the time the determination is made) such person—

(A) has a right (other than a future right) to receive income or corpus from the trust,

(B) is a permissible current recipient of income or corpus from the trust and is not described in section 2055(a), or

(C) is described in section 2055(a) and the trust is—

(i) a charitable remainder annuity trust,

(ii) a charitable remainder unitrust within the meaning of section 664, or

(iii) a pooled income fund within the meaning of section 642(c)(5).

(2) Certain interests disregarded

For purposes of paragraph (1), an interest which is used primarily to postpone or avoid any tax imposed by this chapter shall be disregarded.

(3) Certain support obligations disregarded

The fact that income or corpus of the trust may be used to satisfy an obligation of support arising under State law shall be disregarded in determining whether a person has an interest in the trust, if—

(A) such use is discretionary, or

(B) such use is pursuant to the provisions of any State law substantially equivalent to the Uniform Gifts to Minors Act.

(d) Executor

For purposes of this chapter, the term “executor” has the meaning given such term by section 2203.

(Added Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2726; amended Pub. L. 100-647, title I, §1014(g)(6), (8), (9), (14), (20), Nov. 10, 1988, 102 Stat. 3565-3567; Pub. L. 105-34, title XIII, §1305(b), Aug. 5, 1997, 111 Stat. 1040; Pub. L. 105-206, title VI, §6013(a)(3), (4)(A), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (b)(1). Pub. L. 105-206, §6013(a)(4)(A), struck out at end “Such term shall not include any trust during any period the trust is treated as part of an estate under section 645.”

Pub. L. 105-206, §6013(a)(3), substituted “section 645” for “section 646”.

1997—Subsec. (b)(1). Pub. L. 105-34 inserted at end “Such term shall not include any trust during any period the trust is treated as part of an estate under section 646.”

1988—Subsec. (a)(1). Pub. L. 100-647, §1014(g)(9), substituted “any property” for “a transfer of a kind” in subpars. (A) and (B) and inserted at end “An individual shall be treated as transferring any property with respect to which such individual is the transferor.”

Subsec. (a)(3). Pub. L. 100-647, §1014(g)(14), substituted “any trust” for “any property” in subpars. (A) and (B) and “may elect to treat all of the property in such trust” for “may elect to treat such property” in closing provisions.

Subsec. (c)(2). Pub. L. 100-647, §1014(g)(8), struck out “nominal” before “interests” in heading and substituted “any tax” for “the tax” in text.

Subsec. (c)(3). Pub. L. 100-647, §1014(g)(6), added par. (3).

Subsec. (d). Pub. L. 100-647, §1014(g)(20), added subsec. (d).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1997 AMENDMENT

Amendment by Pub. L. 105-34 applicable with respect to estates of decedents dying after Aug. 5, 1997, see section 1305(d) of Pub. L. 105-34, set out as an Effective Date note under section 645 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2642, 2663 of this title.

§ 2653. Taxation of multiple skips

(a) General rule

For purposes of this chapter, if—

(1) there is a generation-skipping transfer of any property, and

(2) immediately after such transfer such property is held in trust,

for purposes of applying this chapter (other than section 2651) to subsequent transfers from the

portion of such trust attributable to such property, the trust will be treated as if the transferor of such property were assigned to the first generation above the highest generation of any person who has an interest in such trust immediately after the transfer.

(b) Trust retains inclusion ratio

(1) In general

Except as provided in paragraph (2), the provisions of subsection (a) shall not affect the inclusion ratio determined with respect to any trust. Under regulations prescribed by the Secretary, notwithstanding the preceding sentence, proper adjustment shall be made to the inclusion ratio with respect to such trust to take into account any tax under this chapter borne by such trust which is imposed by this chapter on the transfer described in subsection (a).

(2) Special rule for pour-over trust

(A) In general

If the generation-skipping transfer referred to in subsection (a) involves the transfer of property from 1 trust to another trust (hereinafter in this paragraph referred to as the “pour-over trust”), the inclusion ratio for the pour-over trust shall be determined by treating the nontax portion of such distribution as if it were a part of a GST exemption allocated to such trust.

(B) Nontax portion

For purposes of subparagraph (A), the nontax portion of any distribution is the amount of such distribution multiplied by the applicable fraction which applies to such distribution.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2727.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2652 of this title.

§ 2654. Special rules

(a) Basis adjustment

(1) In general

Except as provided in paragraph (2), if property is transferred in a generation-skipping transfer, the basis of such property shall be increased (but not above the fair market value of such property) by an amount equal to that portion of the tax imposed by section 2601 (computed without regard to section 2604) with respect to the transfer which is attributable to the excess of the fair market value of such property over its adjusted basis immediately before the transfer. The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer.

(2) Certain transfers at death

If property is transferred in a taxable termination which occurs at the same time as and

as a result of the death of an individual, the basis of such property shall be adjusted in a manner similar to the manner provided under section 1014(a); except that, if the inclusion ratio with respect to such property is less than 1, any increase or decrease in basis shall be limited by multiplying such increase or decrease (as the case may be) by the inclusion ratio.

(b) Certain trusts treated as separate trusts

For purposes of this chapter—

(1) the portions of a trust attributable to transfers from different transferors shall be treated as separate trusts, and

(2) substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.

Except as provided in the preceding sentence, nothing in this chapter shall be construed as authorizing a single trust to be treated as 2 or more trusts. For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.

(c) Disclaimers

For provisions relating to the effect of a qualified disclaimer for purposes of this chapter, see section 2518.

(d) Limitation on personal liability of trustee

A trustee shall not be personally liable for any increase in the tax imposed by section 2601 which is attributable to the fact that—

(1) section 2642(c) (relating to exemption of certain nontaxable gifts) does not apply to a transfer to the trust which was made during the life of the transferor and for which a gift tax return was not filed, or

(2) the inclusion ratio with respect to the trust is greater than the amount of such ratio as computed on the basis of the return on which was made (or was deemed made) an allocation of the GST exemption to property transferred to such trust.

The preceding sentence shall not apply if the trustee has knowledge of facts sufficient reasonably to conclude that a gift tax return was required to be filed or that the inclusion ratio was erroneous.

(Added Pub. L. 99-514, title XIV, § 1431(a), Oct. 22, 1986, 100 Stat. 2727; amended Pub. L. 100-647, title I, § 1014(g)(12), (13), Nov. 10, 1988, 102 Stat. 3565, 3566; Pub. L. 101-239, title VII, § 7811(j)(2), Dec. 19, 1989, 103 Stat. 2411; Pub. L. 105-206, title VI, § 6013(a)(4)(B), July 22, 1998, 112 Stat. 819.)

AMENDMENTS

1998—Subsec. (b). Pub. L. 105-206 inserted at end “For purposes of this subsection, a trust shall be treated as part of an estate during any period that the trust is so treated under section 645.”

1989—Subsec. (a)(1). Pub. L. 101-239 inserted at end “The preceding shall be applied after any basis adjustment under section 1015 with respect to the transfer.”

1988—Subsec. (a)(2). Pub. L. 100-647, § 1014(g)(12), inserted “or decrease” after “any increase” and “or decrease (as the case may be)” after “such increase”.

Subsec. (b). Pub. L. 100-647, § 1014(g)(13), substituted “Certain trusts” for “Separate shares” in heading and amended text generally. Prior to amendment, text read

as follows: “Substantially separate and independent shares of different beneficiaries in a trust shall be treated as separate trusts.”

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates (see section 1305 of Pub. L. 105-34), see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1989 AMENDMENT

Amendment by Pub. L. 101-239 effective, except as otherwise provided, as if included in the provision of the Technical and Miscellaneous Revenue Act of 1988, Pub. L. 100-647, to which such amendment relates, see section 7817 of Pub. L. 101-239, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

Subchapter G—Administration

| | |
|-------|----------------------|
| Sec. | |
| 2661. | Administration. |
| 2662. | Return requirements. |
| 2663. | Regulations. |
| 2664. | Termination. |

AMENDMENTS

2001—Pub. L. 107-16, title V, §501(c)(2), June 7, 2001, 115 Stat. 69, added item 2664.

§ 2661. Administration

Insofar as applicable and not inconsistent with the provisions of this chapter—

(1) except as provided in paragraph (2), all provisions of subtitle F (including penalties) applicable to the gift tax, to chapter 12, or to section 2501, are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601, as the case may be, and

(2) in the case of a generation-skipping transfer occurring at the same time as and as a result of the death of an individual, all provisions of subtitle F (including penalties) applicable to the estate tax, to chapter 11, or to section 2001 are hereby made applicable in respect of the generation-skipping transfer tax, this chapter, or section 2601 (as the case may be).

(Added Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2728.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2603 of this title.

§ 2662. Return requirements

(a) In general

The Secretary shall prescribe by regulations the person who is required to make the return with respect to the tax imposed by this chapter and the time by which any such return must be filed. To the extent practicable, such regulations shall provide that—

(1) the person who is required to make such return shall be the person liable under section 2603(a) for payment of such tax, and

(2) the return shall be filed—

(A) in the case of a direct skip (other than from a trust), on or before the date on which an estate or gift tax return is required to be filed with respect to the transfer, and

(B) in all other cases, on or before the 15th day of the 4th month after the close of the taxable year of the person required to make such return in which such transfer occurs.

(b) Information returns

The Secretary may by regulations require a return to be filed containing such information as he determines to be necessary for purposes of this chapter.

(Added Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2728.)

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

§ 2663. Regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter, including—

(1) such regulations as may be necessary to coordinate the provisions of this chapter with the recapture tax imposed under section 2032A(c),

(2) regulations (consistent with the principles of chapters 11 and 12) providing for the application of this chapter in the case of transferors who are nonresidents not citizens of the United States, and

(3) regulations providing for such adjustments as may be necessary to the application of this chapter in the case of any arrangement which, although not a trust, is treated as a trust under section 2652(b).

(Added Pub. L. 99-514, title XIV, §1431(a), Oct. 22, 1986, 100 Stat. 2729; amended Pub. L. 100-647, title I, §1014(g)(10), Nov. 10, 1988, 102 Stat. 3565.)

AMENDMENTS

1988—Par. (3). Pub. L. 100-647 added par. (3).

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE

Section applicable to generation-skipping transfers (within the meaning of section 2611 of this title) made

after Oct. 22, 1986, except as otherwise provided, see section 1433 of Pub. L. 99-514, set out as a note under section 2601 of this title.

§ 2664. Termination

This chapter shall not apply to generation-skipping transfers after December 31, 2009.

(Added Pub. L. 107-16, title V, §501(b), June 7, 2001, 115 Stat. 69.)

TERMINATION OF SECTION

For termination of section by section 901 of Pub. L. 107-16, see Effective and Termination Dates note below.

EFFECTIVE AND TERMINATION DATES

Section applicable to the estates of decedents dying, and generation-skipping transfers, after December 31, 2009, see section 501(d) of Pub. L. 107-16, set out as a note under section 2210 of this title.

Section inapplicable to estates of decedents dying, gifts made, or generation skipping transfers, after Dec. 31, 2010, and the Internal Revenue Code of 1986 to be applied and administered to such estates, gifts, and transfers as if it had never been enacted, see section 901 of Pub. L. 107-16, set out as a note under section 1 of this title.

CHAPTER 14—SPECIAL VALUATION RULES

| | |
|-------|--|
| Sec. | |
| 2701. | Special valuation rules in case of transfers of certain interests in corporations or partnerships. |
| 2702. | Special valuation rules in case of transfers of interests in trusts. |
| 2703. | Certain rights and restrictions disregarded. |
| 2704. | Treatment of certain lapsing rights and restrictions. |

§ 2701. Special valuation rules in case of transfers of certain interests in corporations or partnerships

(a) Valuation rules

(1) In general

Solely for purposes of determining whether a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family is a gift (and the value of such transfer), the value of any right—

- (A) which is described in subparagraph (A) or (B) of subsection (b)(1), and
- (B) which is with respect to any applicable retained interest that is held by the transferor or an applicable family member immediately after the transfer,

shall be determined under paragraph (3). This paragraph shall not apply to the transfer of any interest for which market quotations are readily available (as of the date of transfer) on an established securities market.

(2) Exceptions for marketable retained interests, etc.

Paragraph (1) shall not apply to any right with respect to an applicable retained interest if—

- (A) market quotations are readily available (as of the date of the transfer) for such interest on an established securities market,
- (B) such interest is of the same class as the transferred interest, or

(C) such interest is proportionally the same as the transferred interest, without regard to nonlapsing differences in voting power (or, for a partnership, nonlapsing differences with respect to management and limitations on liability).

Subparagraph (C) shall not apply to any interest in a partnership if the transferor or an applicable family member has the right to alter the liability of the transferee of the transferred property. Except as provided by the Secretary, any difference described in subparagraph (C) which lapses by reason of any Federal or State law shall be treated as a nonlapsing difference for purposes of such subparagraph.

(3) Valuation of rights to which paragraph (1) applies

(A) In general

The value of any right described in paragraph (1), other than a distribution right which consists of a right to receive a qualified payment, shall be treated as being zero.

(B) Valuation of certain qualified payments

If—

- (i) any applicable retained interest confers a distribution right which consists of the right to a qualified payment, and
- (ii) there are 1 or more liquidation, put, call, or conversion rights with respect to such interest,

the value of all such rights shall be determined as if each liquidation, put, call, or conversion right were exercised in the manner resulting in the lowest value being determined for all such rights.

(C) Valuation of qualified payments where no liquidation, etc. rights

In the case of an applicable retained interest which is described in subparagraph (B)(i) but not subparagraph (B)(ii), the value of the distribution right shall be determined without regard to this section.

(4) Minimum valuation of junior equity

(A) In general

In the case of a transfer described in paragraph (1) of a junior equity interest in a corporation or partnership, such interest shall in no event be valued at an amount less than the value which would be determined if the total value of all of the junior equity interests in the entity were equal to 10 percent of the sum of—

- (i) the total value of all of the equity interests in such entity, plus
- (ii) the total amount of indebtedness of such entity to the transferor (or an applicable family member).

(B) Definitions

For purposes of this paragraph—

(i) Junior equity interest

The term “junior equity interest” means common stock or, in the case of a partnership, any partnership interest under which the rights as to income and capital (or, to