

Generation-Skipping-Transfer Tax

IRC § 2601

IRC § 2611

Direct skip - IRC § 2612(c)(1)

“Skip person” - IRC § 2613(a)

- Natural person 2 or more generations below transferor
- Trust, all of whose “interests” are held by skip persons
- Trust with no one with an “interest,” but no distribution can be made to a non-skip person

Generation assignment - IRC § 2651

- Is person in question a lineal descendant of transferor's grandparent?
 - If so, count the actual generations
 - If not, count the difference in ages between transferor and transferee
- Generation = 25 years
 - 0-12½ years apart = same generation
 - 12½-37½ years younger = 1st generation after
 - More than 37½ years = “skip”

Direct skip - tax calculation

- Base of tax is “value” received by transferee - IRC § 2623
- “Value” computed at time of GST
 - Tax rate = 40% – IRC § 2641
 - Rate is multiplied by “inclusion ratio” (\$5.43 million exemption)
- Transferor must pay tax - IRC § 2603(a)(3)
- *If GST is during transferor's life, GST tax is treated as an additional gift for gift tax purposes - IRC § 2515*
- Simulates lifetime gift by intermediate generation

Trust as “skip person” - IRC § 2613(a)(2)

- All “interests” held by skip persons, *or*
- No one holds an “interest” and at no time may a distribution be made to a non-skip person
- “Interest” - IRC § 2652(c)
 - Present *right* to income or corpus
 - *Could* receive *current* income or corpus, *or*
 - Charitable beneficiary

Taxable termination

- Any termination of an “interest” in property, *unless*:
 - Immediately afterward, a nonskip person has an “interest,” *or*
 - At no time thereafter may a distribution (including terminating distribution) be made to a skip person
- Base of tax is value of all property in trust - IRC § 2622
 - Deduction similar to IRC § 2053
- Value computed at time of termination
- Trustee must pay tax - IRC § 2603(a)(2)
- Value is not reduced by GST tax paid
- Simulates testamentary transfer by intermediate generation

Taxable distribution

- Base of tax is value of property distributee received - IRC § 2621
 - Deduction for expenses of figuring tax
- Value computed at time of distribution
- Transferee must pay tax - IRC § 2603(a)(1)
 - If trust pays tax, that’s an additional GST - IRC § 2621(b)
- Value is not reduced by the GST tax paid
- Simulates testamentary transfer by intermediate generation