

**§ 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.

## MODIFICATION OF GENERATION-SKIPPING TRANSFER TAX

Pub. L. 111-312, title III, § 302(c), Dec. 17, 2010, 124 Stat. 3302, provided that: “In the case of any generation-skipping transfer made after December 31, 2009, and before January 1, 2011, the applicable rate determined under section 2641(a) of the Internal Revenue Code of 1986 shall be zero.”

**§ 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 sever-

ance 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 creation (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