

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.

§ 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 es-

tates 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.

§ 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