

(iv) The applicable fraction with respect to the trust, as of April 15, 1998, is .805 computed as follows: \$78,100 (the nontax portion immediately prior to the allocation (.355 × \$220,000)) plus \$99,000 (the amount of the late allocation) ÷ \$220,000 = \$177,100 ÷ \$220,000 = .805.

**EXAMPLE 5. Redetermination of inclusion ratio on ETIP termination.** (i) T transfers \$100,000 to an irrevocable trust. The trust instrument provides that trust income is to be paid to T for 9 years or until T's prior death. The trust principal is to be paid to T's grandchild, GC, on the termination of T's income interest. The trustee has the power to invade trust principal for the benefit of GC during the term of T's income interest. The trust is subject to an ETIP while T holds the retained income interest. T files a timely Form 709 reporting the transfer and allocates \$100,000 of GST exemption to the trust. In year 4, when the value of the trust is \$200,000, the trustee distributes \$15,000 to GC. The distribution is a taxable distribution. Because of the existence of the ETIP, the inclusion ratio with respect to the taxable distribution is determined immediately prior to the occurrence of the GST. Thus, the inclusion ratio applicable to the year 4 GST is .50 (1 - (\$100,000/\$200,000)).

(ii) In year 5, when the value of the trust is again \$200,000, the trustee distributes another \$15,000 to GC. Because the trust is still subject to the ETIP in year 5, the inclusion ratio with respect to the year 5 GST is again computed immediately prior to the GST. In computing the new inclusion ratio, the numerator of the applicable fraction is reduced by the nontax portion of prior GSTs occurring during the ETIP. Thus, the numerator of the applicable fraction with respect to the GST in year 5 is \$92,500 (\$100,000 - (.50 × \$15,000)) and the inclusion ratio applicable with respect to the GST in year 5 is .537 (1 - (\$92,500/\$200,000) = .463). Any additional GST exemption allocated on a timely ETIP return with respect to the GST in year 5 is effective immediately prior to the transfer.

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

#### § 26.2642-5 Finality of inclusion ratio.

(a) *Direct skips.* The inclusion ratio applicable to a direct skip becomes final when no additional GST tax (including additional GST tax payable as a result of a cessation, etc. of qualified use under section 2032A(c)) may be assessed with respect to the direct skip.

(b) *Other GSTs.* With respect to taxable distributions and taxable terminations, the inclusion ratio for a trust becomes final, on the later of—

(1) The expiration of the period for assessment with respect to the first

GST tax return filed using that inclusion ratio (unless the trust is subject to an election under section 2032A in which case the applicable date under this subsection is the expiration of the period of assessment of any additional GST tax due as a result of a cessation, etc. of qualified use under section 2032A); or

(2) The expiration of the period for assessment of Federal estate tax with respect to the estate of the transferor. For purposes of this paragraph (b)(2), if an estate tax return is not required to be filed, the period for assessment is determined as if a return were required to be filed and as if the return were timely filed within the period prescribed by section 6075(a).

[T.D. 8644, 60 FR 66903, Dec. 27, 1995, as amended at 61 FR 43656, Aug. 26, 1996]

#### § 26.2652-1 Transferor defined; other definitions.

(a) *Transferor defined*—(1) *In general.* Except as otherwise provided in paragraph (a)(3) of this section, the individual with respect to whom property was most recently subject to Federal estate or gift tax is the transferor of that property for purposes of chapter 13. An individual is treated as transferring any property with respect to which the individual is the transferor. Thus, an individual may be a transferor even though there is no transfer of property under local law at the time the Federal estate or gift tax applies. For purposes of this paragraph, a surviving spouse is the transferor of a qualified domestic trust created by the deceased spouse that is included in the surviving spouse's gross estate, provided the trust is not subject to the election described in § 26.2652-2 (reverse QTIP election). A surviving spouse is also the transferor of a qualified domestic trust created by the surviving spouse pursuant to section 2056(d)(2)(B).

(2) *Transfers subject to Federal estate or gift tax.* For purposes of this chapter, a transfer is subject to Federal gift tax if a gift tax is imposed under section 2501(a) (without regard to exemptions, exclusions, deductions, and credits). A transfer is subject to Federal estate tax if the value of the property is includible in the decedent's gross estate

as determined under section 2031 or section 2103.

(3) *Special rule for certain QTIP trusts.* Solely for purposes of chapter 13, if a transferor of qualified terminable interest property (QTIP) elects under § 26.2652-2(a) to treat the property as if the QTIP election had not been made (reverse QTIP election), the identity of the transferor of the property is determined without regard to the application of sections 2044, 2207A, and 2519.

(4) *Split-gift transfers.* In the case of a transfer with respect to which the donor's spouse makes an election under section 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513. The donor is treated as the transferor of one-half of the value of the entire property. See § 26.2632-1(c)(5) *Example 3*, regarding allocation of GST exemption with respect to split-gift transfers subject to an ETIP.

(5) *Examples.* The following examples illustrate the principles of this paragraph (a):

**EXAMPLE 1.** *Identity of transferor.* T transfers \$100,000 to a trust for the sole benefit of T's grandchild. The transfer is subject to Federal gift tax because a gift tax is imposed under section 2501(a) (without regard to exemptions, exclusions, deductions, and credits). Thus, for purposes of chapter 13, T is the transferor of the \$100,000. It is immaterial that a portion of the transfer is excluded from the total amount of T's taxable gift by reason of section 2503(b).

**EXAMPLE 2.** *Gift splitting and identity of transferor.* The facts are the same as in EXAMPLE 1, except T's spouse, S, consents under section 2513 to split the gift with T. For purposes of chapter 13, S and T are each treated as a transferor of \$50,000 to the trust.

**EXAMPLE 3.** *Change of transferor on subsequent transfer tax event.* T transfers \$100,000 to a trust providing that all the net trust income is to be paid to T's spouse, S, for S's lifetime. T elects under section 2523(f) to treat the transfer as a transfer of qualified terminable interest property, and T does not make the reverse QTIP election under section 2652(a)(3). On S's death, the trust property is included in S's gross estate under section 2044. Thus, S becomes the transferor at the time of S's death.

**EXAMPLE 4.** *Effect of transfer of an interest in trust on identity of the transferor.* T transfers \$100,000 to a trust providing that all of the net income is to be paid to T's child, C, for C's lifetime. At C's death, the trust property is to be paid to T's grandchild. C transfers the income interest to X, an unrelated party, in a transfer that is a completed transfer for Federal gift tax purposes. Because C's transfer is a transfer of a term interest in the trust that does not affect the rights of other parties with respect to the trust property, T remains the transferor with respect to the trust.

**EXAMPLE 5.** *Effect of lapse of withdrawal right on identity of transferor.* T transfers \$10,000 to a new trust providing that the trust income is to be paid to T's child, C, for C's life and, on the death of C, the trust principal is to be paid to T's grandchild, GC. The trustee has discretion to distribute principal for GC's benefit during C's lifetime. C has a right to withdraw \$10,000 from the trust for a 60-day period following the transfer. Thereafter, the power lapses. C does not exercise the withdrawal right. The transfer by T is subject to Federal gift tax because a gift tax is imposed under section 2501(a) (without regard to exemptions, exclusions, deductions, and credits) and, thus, T is treated as having transferred the entire \$10,000 to the trust. On the lapse of the withdrawal right, C becomes a transferor to the extent C is treated as having made a completed transfer for purposes of chapter 12. Therefore, except to the extent that the amount with respect to which the power of withdrawal lapses exceeds the greater of \$5,000 or 5% of the value of the trust property, T remains the transferor of the trust property for purposes of chapter 13.

**EXAMPLE 6.** *Effect of reverse QTIP election on identity of the transferor.* T establishes a testamentary trust having a principal of \$500,000. Under the terms of the trust, all trust income is payable to T's surviving spouse, S, during S's lifetime. T's executor makes an election to treat the trust property as qualified terminable interest property and also makes the reverse QTIP election. For purposes of chapter 13, T is the transferor with respect to the trust. On S's death, the then full fair market value of the trust is includible in S's gross estate under section 2044. However, because of the reverse QTIP election, S does not become the transferor with respect to the trust; T continues to be the transferor.

**EXAMPLE 7.** *Effect of reverse QTIP election on constructive additions.* The facts are the same as in Example 6, except the inclusion of the QTIP trust in S's gross estate increased the Federal estate tax liability of S's estate by \$200,000. The estate does not exercise the right of recovery from the trust granted under section 2207A. Under local law, the beneficiaries of S's residuary estate (which

bears all estate taxes under the will) could compel the executor to exercise the right of recovery but do not do so. Solely for purposes of chapter 13, the beneficiaries of the residuary estate are not treated as having made an addition to the trust by reason of their failure to exercise their right of recovery. Because of the reverse QTIP election, for GST purposes, the trust property is not treated as includible in S's gross estate and, under those circumstances, no right of recovery exists.

**EXAMPLE 8.** *Effect of reverse QTIP election on constructive additions.* S, the surviving spouse of T, dies testate. At the time of S's death, S was the beneficiary of a trust with respect to which T's executor made a QTIP election under section 2056(b)(7). Thus, the trust is includible in S's gross estate under section 2044. T's executor also made the reverse QTIP election with respect to the trust. S's will provides that all death taxes payable with respect to the trust are payable from S's residuary estate. Since the transferor of the property is determined without regard to section 2044 and section 2207A, S is not treated as making a constructive addition to the trust by reason of the tax apportionment clause in S's will.

**EXAMPLE 9.** *Split-gift transfers.* T transfers \$100,000 to an inter vivos trust that provides T with an annuity payable for ten years or until T's prior death. The annuity satisfies the definition of a qualified interest under section 2702(b). When the trust terminates, the corpus is to be paid to T's grandchild, GC. T's spouse, S, consents under section 2513 to have the gift treated as made one-half by S. Under section 2513, only the actuarial value of the gift to GC is eligible to be treated as made one-half by S. However, because S is treated as the donor of one-half of the gift to GC, S becomes the transferor of one-half of the entire trust (\$50,000) for purposes of Chapter 13.

(b) *Trust defined—(1) In general.* A trust includes any arrangement (other than an estate) that has substantially the same effect as a trust. Thus, for example, arrangements involving life estates and remainders, estates for years, and insurance and annuity contracts are trusts. Generally, a transfer as to which the identity of the transferee is contingent upon the occurrence of an event is a transfer in trust; however, a transfer of property included in the transferor's gross estate, as to which the identity of the transferee is contingent upon an event that must occur within 6 months of the transferor's death, is not considered a transfer in trust solely by reason of the existence of the contingency.

(2) *Examples.* The following examples illustrate the provisions of this paragraph (b):

**EXAMPLE 1.** *Uniform gifts to minors transfers.* T transfers cash to an account in the name of T's child, C, as custodian for C's child, GC (who is a minor), under a state statute substantially similar to the Uniform Gifts to Minors Act. For purposes of chapter 13, the transfer to the custodial account is treated as a transfer to a trust.

**EXAMPLE 2.** *Contingent transfers.* T bequeaths \$200,000 to T's child, C, provided that if C does not survive T by more than 6 months, the bequest is payable to T's grandchild, GC. C dies 4 months after T. The bequest is not a transfer in trust because the contingency that determines the recipient of the bequest must occur within 6 months of T's death. The bequest to GC is a direct skip.

**EXAMPLE 3.** *Contingent transfers.* The facts are the same as in Example 2, except C must survive T by 18 months to take the bequest. The bequest is a transfer in trust for purposes of chapter 13, and the death of C is a taxable termination.

(c) *Trustee defined.* The trustee of a trust is the person designated as trustee under local law or, if no such person is so designated, the person in actual or constructive possession of property held in trust.

(d) *Executor defined.* For purposes of chapter 13, the executor is the executor or administrator of the decedent's estate. However, if no executor or administrator is appointed, qualified or acting within the United States, the executor is the fiduciary who is primarily responsible for payment of the decedent's debts and expenses. If there is no such executor, administrator or fiduciary, the executor is the person in actual or constructive possession of the largest portion of the value of the decedent's gross estate.

(e) *Interest in trust.* See § 26.2612-1(e) for the definition of *interest in trust*.

[T.D. 8644, 60 FR 66903, Dec. 27, 1995; 61 FR 29654, June 12, 1996, as amended by T.D. 8720, 62 FR 27498, May 20, 1997]

#### § 26.2652-2 Special election for qualified terminable interest property.

(a) *In general.* If an election is made to treat property as qualified terminable interest property (QTIP) under section 2523(f) or section 2056(b)(7), the person making the election may, for purposes of chapter 13, elect to treat the property as if the QTIP election