

# Notice of Proposed Rulemaking

## Generation-Skipping Transfer Tax

**PS-22-96**

**AGENCY:** Internal Revenue Service (IRS), Treasury

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed regulations relating to the final generation-skipping transfer (GST) tax regulations under chapter 13 of the Internal Revenue Code (Code). This document proposes a change to the final regulations and is necessary to provide guidance to taxpayers so that they may comply with chapter 13 of the Code.

**DATES:** Written comments and requests for a public hearing must be received by September 10, 1996.

**ADDRESSES:** Send submissions to: CC:DOM:CORP:R (PS-22-96), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (PS-22-96), Courier's Desk, Internal Revenue Service, 1111 Constitution NW., Washington, DC 20224.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulation, James F. Hogan, (202) 622-3090 (not a toll-free number); concerning submissions, Christina Vasquez, (202) 622-7180, (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

### *Background*

On December 24, 1992, the IRS published a notice of proposed rulemaking in the **Federal Register** (57 FR 61356) containing proposed regulations under sections 2611, 2612, 2613, 2632, 2641, 2642, 2652, 2653, 2654, and 2663. On December 27, 1995, the IRS published final regulations in the **Federal Register**

(60 FR 66898) under sections 2611, 2612, 2613, 2632, 2641, 2642, 2652, 2653, 2654, and 2663. This proposed regulation will delete § 26.2652-1(a)(4) and two related examples.

*Explanation of Provision*

Section 2652(a)(1) provides generally, that 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 is treated as transferring any property with respect to which the individual is the transferor. Under § 26.2652-1(a)(2), a transfer is subject to Federal gift tax if a gift tax is imposed under section 2501(a) and is subject to Federal estate tax if the value of the property is includible in the decedent's gross estate determined under section 2031 or section 2103. Under § 26.2652-1(a)(4), the exercise of a power of appointment that is not a general power of appointment is also treated as a transfer subject to Federal estate or gift tax by the holder of the power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of the creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation.

The purpose of the rule in § 26.2652-1(a)(4) was to apply the GST tax when it may not otherwise have applied. It was never intended to (nor could it) prevent the application of the tax pursuant to the statutory provisions that apply based on the original taxable transfer. To eliminate any uncertainty concerning the proper application of the GST tax, the regulations under section 2652(a) will be clarified by eliminating § 26.2652-1(a)(4) and *Example 9* and *Example 10* in § 26.2652-1(a)(6) from the final regulations.

*Proposed Effective Date*

These amendments apply to transfers to trusts on or after June 12, 1996.

*Special Analysis*

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It has also been

determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to the Small Business Administration for comment on its impact on small business.

*Comments and Requests for a Public Hearing*

Before this proposed regulation is adopted as a final regulation, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

*Drafting Information*

The principal author of this proposed regulation is James F. Hogan, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in its development.

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*Proposed Amendments to the Regulations*

Accordingly, 26 CFR part 26 is proposed to be amended as follows:

**PART 26—GENERATION-SKIPPING TRANSFER TAX REGULATIONS UNDER THE TAX REFORM ACT OF 1986**

Paragraph 1. The authority citation for part 26 continues to read, in part, as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2 Section 26.2652-1 is amended as follows:

1. Paragraph (a)(4) is removed and paragraphs (a)(5) and (a)(6) are redesignated as paragraphs (a)(4) and (a)(5), respectively.

2. In newly designated paragraph (a)(5), *Examples 9* and *10* are removed

and *Example 11* is redesignated as *Example 9*.

Margaret Milner Richardson,  
*Commissioner of Internal Revenue.*

(Filed by the Office of the Federal Register on June 11, 1996, 8:45 a.m., and published in the issue of the Federal Register for June 12, 1996, 61 F.R. 29714)