



**ACTION:** Final Regulations.

**SUMMARY:** This document contains final regulations relating to the generation-skipping transfer (GST) tax regulations under chapter 13 of the Internal Revenue Code (Code). This document amends the final regulations under section 2652 and is necessary to provide guidance to taxpayers so that they may comply with chapter 13 of the Code.

**DATES:** This regulation is effective on May 20, 1997.

For dates of applicability of these regulations, see *Effective Date* under Supplementary Information.

**FOR FURTHER INFORMATION CONTACT:** James F. Hogan, (202) 622-3090 (not a toll-free number),

**SUPPLEMENTARY INFORMATION:**

*Background*

On December 27, 1995, the IRS published final regulations in the **Federal Register** (60 FR 66898 [T.D. 8644 C.B. 200]) under sections 2611, 2612, 2613, 2632, 2641, 2642, 2652, 2653, 2654, and 2663. On June 12, 1996, a notice of proposed rulemaking deleting § 26.2652-1(a)(4) and two related examples was published in the **Federal Register** (61 FR 29714 [PS-22-96, 1996-33 I.R.B. 15]). No comments responding to the notice of proposed rulemaking were received, and no public hearing was requested or held. The final regulations are adopted as proposed.

*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 impose 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) are clarified by eliminating § 26.2652-1(a)(4) and *Example 9* and *Example 10* in § 26.2652-1(a)(6) from the regulations.

*Effective Date*

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

*Special Analyses*

It has been determined that this Treasury Decision 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) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. 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.

*Drafting Information*

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

\* \* \* \* \*

*Amendments to the Regulations*

Accordingly, 26 CFR part 26 is amended as follows:

**Section 2652.—Other Definitions**

26 CFR 26.2652-1: *Transferor defined; other definitions.*

**T.D. 8720**

**DEPARTMENT OF THE TREASURY**  
**Internal Revenue Service**  
**26 CFR Part 26**

**Generation-Skipping Transfer Tax**

AGENCY: Internal Revenue Service (IRS), Treasury

PART 26—GENERATION-SKIPPING  
TRANSFER TAX REGULATIONS UN-  
DER 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.*

Approved May 1, 1997.

Donald C. Lubick,  
*Assistant Secretary of the Treasury.*

(Filed by the Office of the Federal Register on  
May 19, 1997, 8:45 a.m., and published in the  
issue of the Federal Register for May 20, 1997, 62  
F.R. 27496)

---