

Subsecs. (c) to (e). Pub. L. 107-16, §561(a), added subsecs. (c) and (d) and redesignated former subsec. (c) as (e).

1988—Subsec. (b)(2). Pub. L. 100-647 substituted “paragraph (1) with respect to a prior direct skip” for “paragraph (1) with respect to a prior direct skip”.

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2001 AMENDMENT

Pub. L. 107-16, title V, §561(c), June 7, 2001, 115 Stat. 89, provided that:

“(1) DEEMED ALLOCATION.—Section 2632(c) of the Internal Revenue Code of 1986 (as added by subsection (a)), and the amendment made by subsection (b) [amending this section], shall apply to transfers subject to chapter 11 or 12 made after December 31, 2000, and to estate tax inclusion periods ending after December 31, 2000.

“(2) RETROACTIVE ALLOCATIONS.—Section 2632(d) of the Internal Revenue Code of 1986 (as added by subsection (a)) shall apply to deaths of non-skip persons occurring after December 31, 2000.”

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.

Subchapter E—Applicable Rate; Inclusion Ratio

Sec.	
2641.	Applicable rate.
2642.	Inclusion ratio.

§ 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.)

Statutory Notes and Related Subsidiaries

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 genera-

tion-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 severance 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