Greater Boca Raton Estate Planning Council
Tuesday November 12, 2024

GENERATION-SKIPPING TRANSFER TAX

In Plain English

... FOR 99% OF THE CIRCUMSTANCES YOU WILL COME ACROSS ...

Lester B. Law, Esq.
Franklin Karibjanian & Law PLLC
Washington DC, Boca Raton FL, Naples FL



HELLO!

Franklin Karibjanian & Law PLLC

Short Bio

- Spent 11 years in school – got 4 degrees
- Been doing this stuff for 31 + years (34 + i f you count my years as a CPA)
- Work with really smart people whom you may know – George Karibjanian & Richard Franklin Member of ACTEC
- Board Certified Wills Trust & Estates Lawyer by the FL Bar
- Was once a CPA (worked with one of the Big 8, b/f becoming an attorney – now in retirement status)
- Work in FL and DC
- Taught this stuff; Love to do learn this stuff
- Oh, and I like to golf, too!

HISTORY OF THE ESTATE, GIFT AND GST TAX



- Estate Tax – 1916
- Gift Tax – 1924, repealed in 1926, re-introduced in 1932
- GST Tax – 1976, repealed in 1977, re-introduced in 1986

- Historical reference - Income tax – introduced by Congress 1909, ratified by the 16th Amendment to the Constitution 1913.

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PURPOSE OF THE GIFT TAX

- Be a backstop to the estate tax.
- Historically, how would you avoid the estate tax?
- Just give your money away **before you die**.
- Note: Today, that's how we avoid state estate taxes in DC and Maryland (by example).

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WHAT IS THE PURPOSE OF THE GST TAX?

- Backstop the Estate and Gift Tax



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G1, G2, G3, G4 and G5...

Generational Assignments:



- **G1** – Parent of G2, Grandparent of G3, Great-Grandparent of G4, etc.
- **G2** – Child of G1, Parent of G3, Grandparent of G4, etc.
- **G3** – Grandchild of G1, Child of G2, Parent of G4, etc.
- **G4** – Great-Grandchild of G1, Grandchild of G2, Child of G3, etc.
- **G5** – Child of G4

EXAMPLE OF AVOIDING ESTATE TAX

Assume that

- the GST Tax does not exist and the estate tax rate is 40%.
- G1 is worth $1.0 B
- G2 is worth $1.0 B
- G3 has no net worth
- There is no G4 or G5 yet.

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EXAMPLE OF AVOIDING ESTATE TAX







1.0 B

IRS



400 mm

1.0 B + 0.6 B = $1.6 B

640 mm

0.96 B

1.040 B

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EXAMPLE OF AVOIDING ESTATE TAX







1.0B

1.0B

0.6 B

0.6 B

1.2B

IRS



400 mm

400 mm

800 mm

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EXAMPLE OF AVOIDING ESTATE TAX

COMPARE RESULTS

PLAN A – $0.96 B to G3
PLAN B – $1.20 B to G3

Explanation of Difference

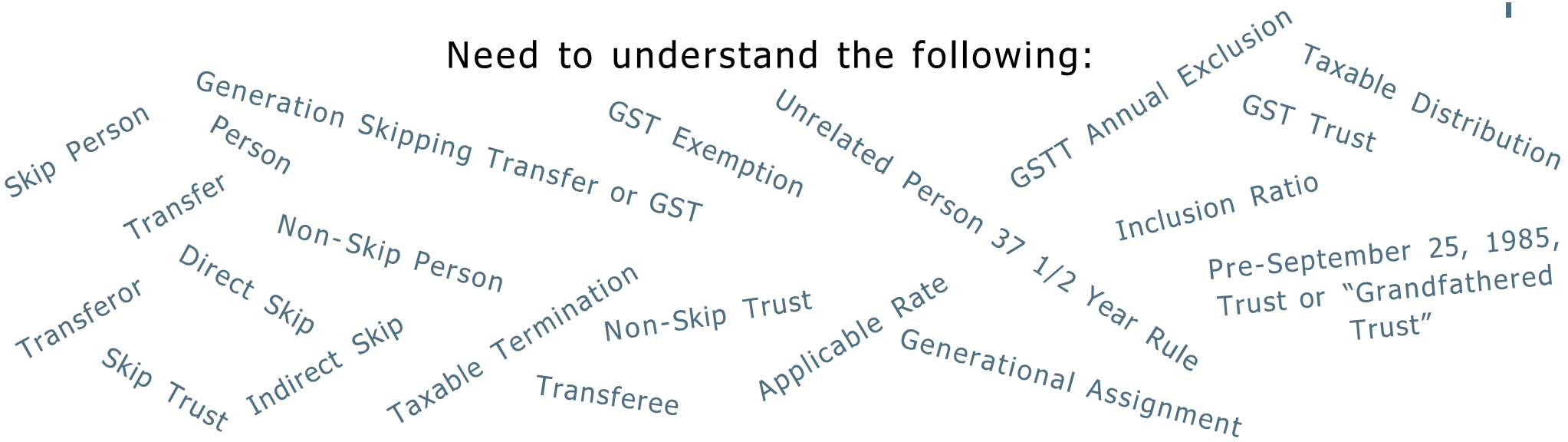
$1.2 B – $0.96 B = $0.24 B

$0.24 B ÷ 40% Tax Rate = $0.6 B (i.e., the untaxed amount at G2 level in Plan B

TO UNDERSTAND THE GST TAX...

You must understand the terminology and the rules

Need to understand the following:



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Definitions

Person:

In the GST rules, a "**Person**" is an **individual**, **trust**, **estate**, **partnership**, **association**, **company** or **corporation**. IRC § 7701(b)(1).

Generally, for **GST purposes**, a '**person**' is

- an **individual** when looking at '**Transferors**' and '**Beneficiaries**';
- Either a **trust** or an **individual** when you are looking at '**Transferees**'!

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Definitions

Transfer:

A Transfer of assets that has **the possibility of skipping a generation** without transfer taxation (gift or estate tax) at the skipped generation level.



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Definitions

What is a "Transfer"?



In the world of tax, there are four (4) possible tax implications when one TRANSFERS assets to another. What are they?

1. ?
2. ?
3. ?
4. ?

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4 Types of Transfers

- In the world of tax, there are four (4) possible tax implications when one TRANSFERS assets to another.

1. Income (for goods or services)
2. Borrowing money (no tax implications)
3. Repaying borrowed money (no tax implications)
4. **Gift (this is what we are talking about)!**

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Definition - Transferor

For GST purposes, it is critical that you know who the "**Transferor**" is …

So, who is the "**Transferor?**" POP QUIZ

- How many types of Transferors are there?

Answer

… Next slide



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Definition - Transferor

There are **Four (4) Types of Transferors**

- **One (1) Actual Transferor**
  - The person who make the transferor (for a lifetime gift, the donor, for a testamentary gift, the decedent).
- **Three (3) "Deemed" Transferors**
  - Gift Splitting Transferor
  - Reverse QTIP Election Transferor
  - New Deemed Transferor after a taxable event (such as a Taxable Termination) – we cover this in the 'New Transferor Rule' below

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Definition - Transferee

- **Transferee** is that person who receives the property from the transferor (or the person who is deemed to be the transferor).
- Person could be either (a) an individual or (b) a trust.
- Transferee is either a "Skip Person" or a "Non-Skip Person"

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Definitions - Generation Skipping Transfer

Example 1:

G1, the grandparent of G3, makes a gift of $20,000 to G3, her grandchild.

The transfer (which is a gift) **is** a generation-skipping transfer.

Note: There may be a GST exclusion and/or a GST exemption that may be allocated to the skip, so it won't trigger a GST tax liability.

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Definitions - Generation Skipping Transfer

Example 2:

G1 creates a "dynasty trust" that lasts for 1,000 years, for the benefit of her "descendants, *per stirpes*" (i.e., G2, G3, G4 and G5).

Because the trust has the **possibility** of passing assets beyond that of G1's children (i.e., it can pass beyond G2, to G3, G4 and G5), there **is a transfer**, BUT the transfer **is not** a generation-skipping transfer, **future transfers** from the trust **could be generation-skipping transfers**.

Note: It does not mean that there is a tax liability; like the estate and gift tax, the GST tax has an exemption amount called the "GST Exemption", this exemption is used to mitigate the tax liability effect of the gift.

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Transfers v. Generation Skipping Transfers

Transfer –gift where there is the **possibility** of being a GST

GST – when there is a transfer to a "SKIP PERSON" (if there is a transfer to a Trust where one of the beneficiaries is NOT a skip person (or there is a "NON-SKIP Person), then it is merely a Transfer, and not a GST

Example 1 – G3 is a SKIP person, so we have a Transfer that is a Generation Skipping Transfer

Example 2 – G2 is a NON-SKIP person, so all we have is a 'Transfer' and not a 'Generation-Skipping Transfer'

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Definitions - Generation Skipping Transfer

Two (2) Transfers that are specifically Excluded from being GSTs

- **Section 2503(e) Transfers**
  - Medical / Tuition Exclusion
- **No Double Tax Transfers**
  - Can only occur when three (3) requirements are met:
    - The property transferred in a prior transfer was subject to the GSTT;
    - The transferee in the prior transfer was assigned to the same generational assignment (or a lower generational assignment) as the transferee of the current transfer; and
    - The prior transfer and the current transfer do not have the effect of avoiding the GSTT Code § 2611(b)(2)(A).

Do NOT confuse with the GST Exclusion for Annual Exclusion Gifts!

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Definitions - Generation Skipping Transfer

- **Tax Liability ...**

Just because there is a generation skipping transfer, **does NOT mean that there is a tax liability**. It means that there **could be** a tax ability, either at the time of transfer or at a later point in time.

The GST Tax Liability is calculated as follows:

Amount Transferred **X** Inclusion Ratio **X** Tax Rate **=** **GST Tax Liability**

If the **Inclusion Ratio** is **Zero (0)**, even i f there is a transfer, there is no liability.

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Definitions - POP QUIZ

- If there is a Generation Skipping Transfer, and there is NO GST tax liability, is there any IRS filing Requirement?
- Only 2 possible answers:



YES

NO

Which one is it? Everyone must raise a hand (only once)!

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Definitions - POP QUIZ

YES



- What form? We'll get to that later …

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Definition - Types of GSTs

There are **three (3) types** of Generation-Skipping Transfers

1. Direct Skip ("**DS**")
2. Taxable Distribution ("**TD**")
3. Taxable Termination ("**TT**")

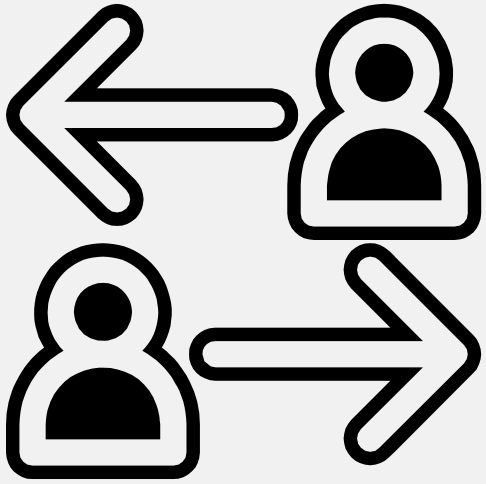
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Definitions - Direct Skip

Direct skips happen when the **Transferor** makes a **Transfer** to a **Skip Person**

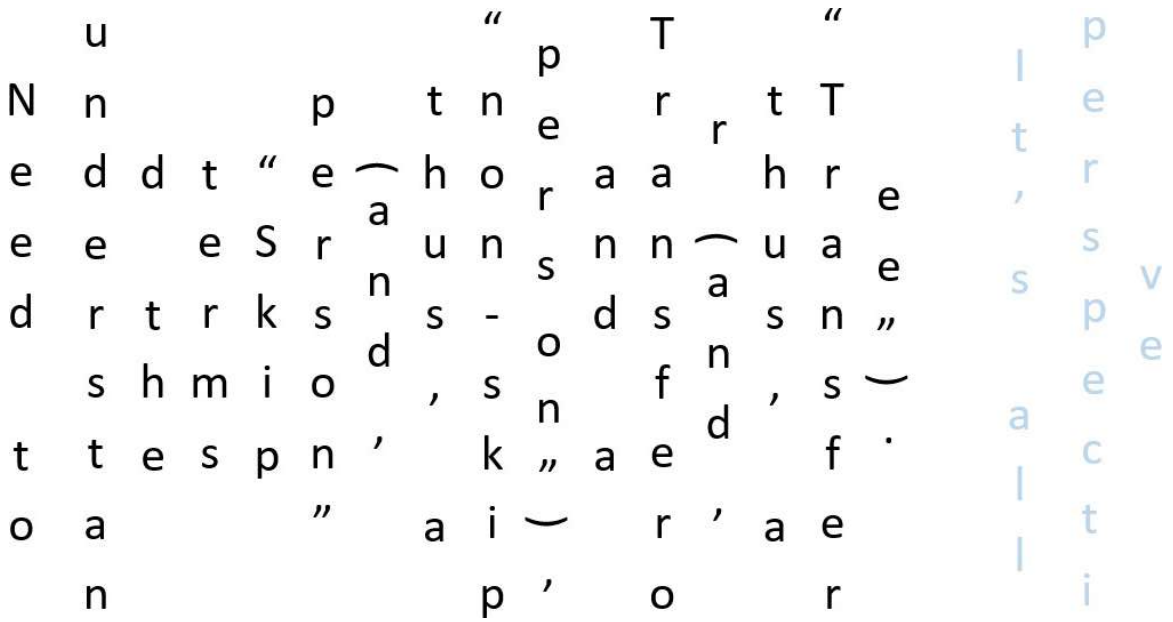
New word -

- **Skip Person**



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Definition - Digression from Direct Skip



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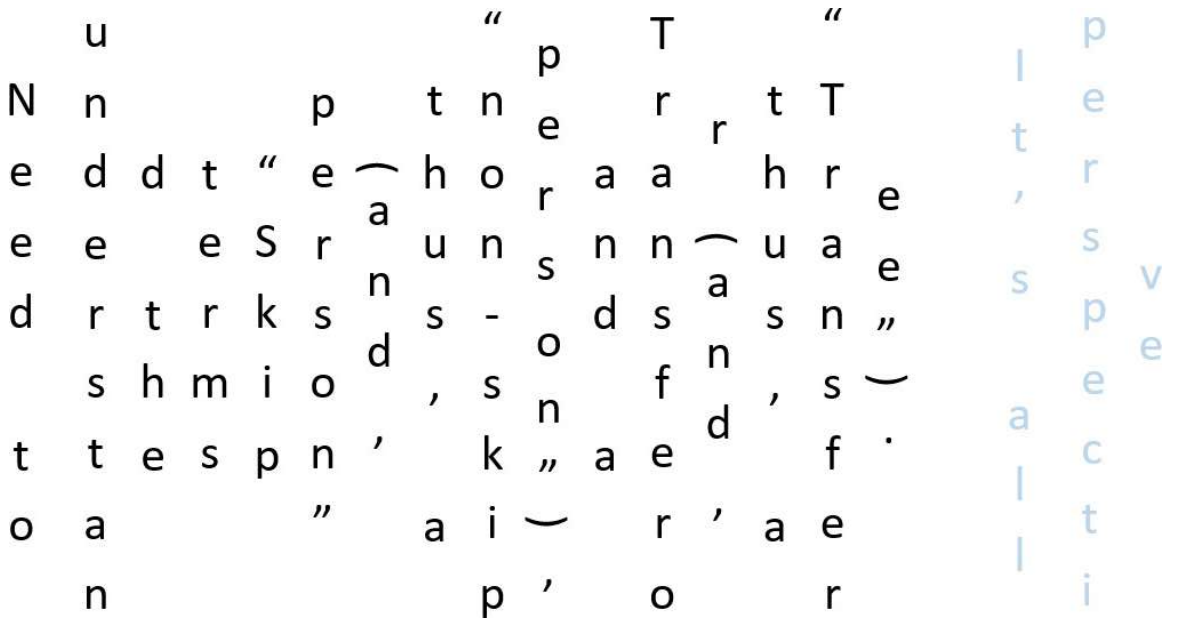
Definition - Digression from Direct Skip

Need to understand the terms "**Skip Person**" (and, thus, a "**Non-Skip Person**"), and a **Transferor** (and, thus, a "**Transferee**").

It's all perspective

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Definition - Digression from Direct Skip



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Definitions - Skip Person and Non-Skip Person

Skip Persons - **Two (2) Types**

1. Natural Person (i.e., individual, like you and me)
2. Trust (called a "Skip Trust")



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Definitions - Skip Person and Non-Skip Person

Skip person - 2 definitions –

- one by **generational assignment**;
- one by **age**.

Natural Person -

"A natural person assigned to a generation which is 2 or more generations below the generational assignment of the Transferor"

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Definitions - Skip Person

Concepts

- Natural Person
- "assigned to a generation" below the
- "generation assignment of the transferor"

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Definitions - Skip Person

Natural Person – easy … it's a human being

Example 3:

G1 (a human being), gives G2 (G1's child) and G3 (G1's grandchild) a gift of $1 million

G1, G2 and G3 are all natural persons

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Definitions - Skip Person

" … assigned to a generation which is 2 or more below the generation assignment of the transferor …"

Look to the recipient … if the recipient of the property (called the "Transferee") has a "generational assignment" that is 2 or more below the generational assignment of the transferor, then the recipient/transferee is a "Skip Person"

In our example, **G3 is a Skip Person**, and **G2 is a Non-Skip Person**.

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Definitions
Skip Person - Skip Trust

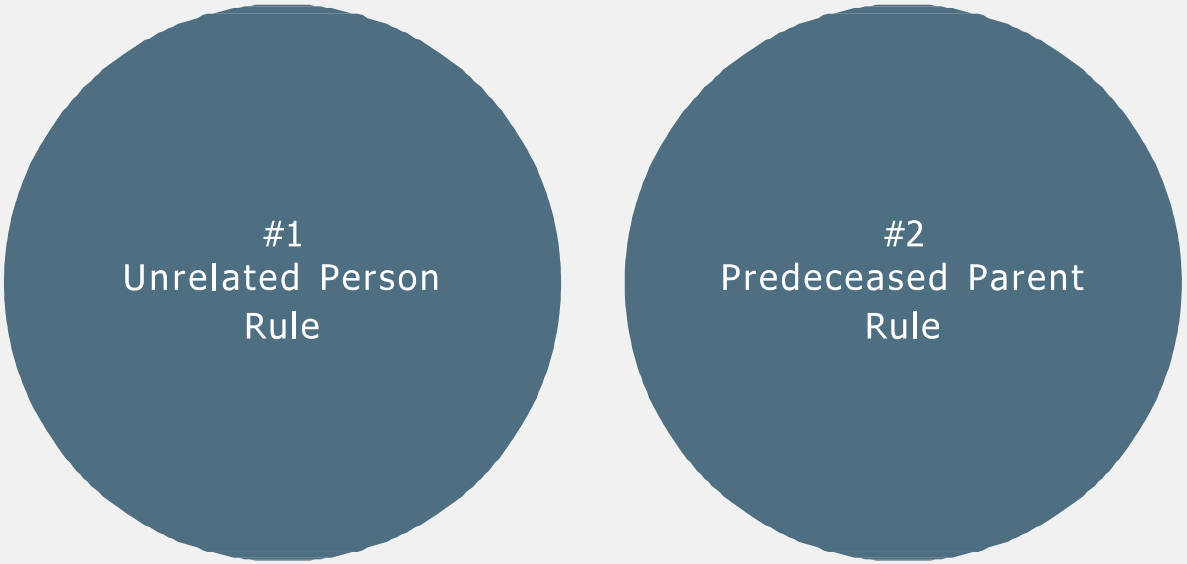
Skip Trust – is a trust where **all of the interests** in the trust are held **ONLY** by "**Skip Persons**" (i.e., the only beneficiaries are natural persons who are skip persons (relative to the **Transferor**)



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Definitions - Skip Person

- Two Rules:



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Definitions - Skip Person



- **Rule 1 - Unrelated Person Rule**
  - If the Transferee (natural person) is UNRELATED to the Transferor, then to determine if a person is a "Skip Person" (or a "Non-Skip Person") you look to the relative ages of the Transferor and Transferee.
  - If the age difference is more than **37 ½ years** … then the Transferee is deemed to be two(2) or more generations below the Transferor, therefore, the transferee is a Skip Person, relative to the Transferor

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Definitions - Skip Person

- **Rule 1 - Unrelated Person Rule**
  - **Example 4**
    - My unrelated friend, Kevin, and I are the same age. Kevin has two children, Molly, who is 35 years younger than me and Jack who is 40 years younger than me.
    - I make a gift to each of Molly and Jack.
    - RESULT: Jack is a Skip Person relative to me (because he is more than 37 ½ years younger). Molly is a Non-Skip Person relative to me (because she is less than 37 ½ years
    - younger)

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Definitions - Skip Person

- Rule 2 - Predeceased Parent Rule



  - Only applies to Transferees who are related to Transferors!
  - If, at the time of the transfer, the Parent of the Transferee has died, then the Transferee/Grandchild stands in the shoes of the Transferee/Child (parent of the grandchild).

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Definitions - Skip Person Examples



Example 5

- G1, G2 and G3 are all alive.
- G1 makes a gift of $100,000 to his grandchild, G3.

- G3 is a Skip Person, because relative to G1, G3 is a natural person assigned to a generation which is two (2)or more generations below the assignment of the transferor (G1)

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Definitions - Skip Person Examples

- **Example 6**
  - G1 and G3 are alive. **G2 has died**.
  - G1 makes a gift of $100,000 to his grandchild, G3.
  - G3 is **not** a Skip Person, because of the predeceased parent rule, that says, if at the time of the Transfer, the Transferee's parent has died, then the Transferee stands in the place of the pre-deceased parent. In this case, G3,moves up in generational assignment to G2, and G2, relative to G1 is not two (2) or more generations below G1.
- Note, if G4 was alive, G4 would move up to G3 (and so forth for G5, etc.)



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Definitions - Skip Person Examples



- **Example 7**
  - G1 makes a gift to a person, X, an unrelated person to G1, who is 50 years G1's junior.
  - X is a skip person, because X is more than 37 ½ years younger than G1.
- Note: If X's parent, who was G1's age had died, X will still be a skip person **(the Predeceased Parent Rule does not apply to unrelated Transferors and unrelated Transferees)**.

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Definitions - Skip Person Examples

Example 8

- G1, G2 and G3 are alive. G3 is only 36 years younger than G1.
- G1 makes a gift of $100,000 to his grandchild, G3.

- G3 is a skip person

Note: **with related persons, age is irrelevant.** By example, if G1 made a gift to her son, G2, who is 50 years younger than G1, the gift is to a non-skip person, because G2 is not 2 or more generations below G1 (i.e., age is irrelevant with related persons).

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Definitions Skip Trust

- Recall – Skip persons are either "natural persons" or "trusts."
- By definition, a "Skip Trust" is a "Skip Person," if the only natural person beneficiaries of the trust, relative to the transferor are skip persons.
- Stated otherwise, if there is at least one (1) Non- Skip Person, then the trust cannot be a Skip Trust, and thus cannot be a Skip Person.

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Definitions Skip Trust

Example 9



- Facts:
  - G1, is G2's parent, G3's Grandparent, and G4's great grand parent
  - T, a trust is created for the benefit of all of G1's descendants
  - G1, G2, G3 and G4 are all alive.
  - G1 makes a transfer into T of $1,000,000

Result:

- G2 is **not** a skip person, because G2 is not two (2) or more generations below G1. Thus, because **NOT all the beneficiaries are skip persons**, T is NOT a skip trust; therefore, T is not a skip person.

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Definitions Skip Trust

Example 10

- Facts:
  - G1, is G2's parent, G3's Grandparent, and G4's great grand parent
  - T, a trust is created for the benefit of all of G1's descendants
  - G1, G3 and G4 are alive. **G2 predeceased G1**.
  - G1 makes a transfer into T of $1,000,000.



Result:

- Note that G2 is dead. Because of the predeceased parent rule, at the time of the transfer, G3 is not a skip person, because G3 steps into the shoes of G2 (i.e., a non-skip person), and G3, is thus DEEMED to be not two (2) or more generations below G1. Thus, because NOT all the beneficiaries are skip persons, T is NOT a skip trust; therefore, T is not a skip person.

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Definitions Skip Trust

Example 11

- Facts:
  - G1, is G2's parent, G3's grandparent, and G4's great grand parent
  - T, a trust is created for the benefit of G3 and G4 (i.e., **G2 is NOT a beneficiary**)
  - G1, G2, G3 and G4 are alive.
  - G1 makes a transfer into T of $1,000,000



Result:

- In this case, all of the beneficiaries of the trust are skip persons relative to G1 (i.e., G3 and G4 are two or more generations below G1), the trust, T, is a Skip Trust.

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Definitions Skip Trust

Example 12

- Facts:
  - G1, is G2's parent, G3's grandparent, and G4's great grand parent
  - T, a trust is created for the benefit of G3 and G4 (i.e., **G2 is NOT a beneficiary**)
  - G1, G3 and G4 are alive. **G2 has died.**
  - G1 makes a transfer into T of $1,000,000



Result:

- In this case, because the predeceased parent rule, recall that G3 steps into the shoes of G2, and thus, relative to G1, G3 is not DEEMED to be two (2) or more generations below G1. Thus, not all of the beneficiaries of the trust are skip persons relative to G1 (i.e., G3 is not, and G4 is); thus, the trust, T, is a not a Skip Trust, and the trust, T, is not a skip person.

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Definitions - Non-Skip Person



- A Non-Skip Person, is

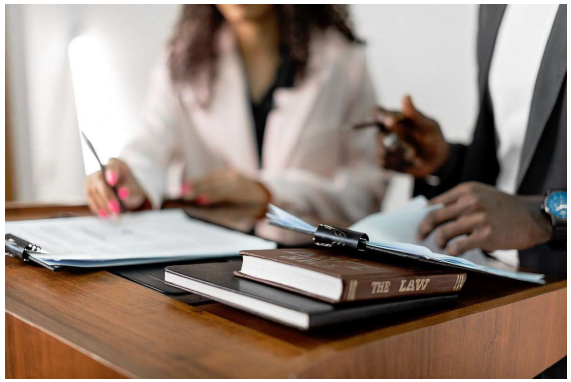
"any person who is not a skip person."

(Note: that is literally what the law says!)

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Definitions - now... back to Direct Skips

A " **Direct Skip**" occurs when the Transferor makes a transfer directly to a skip person (recall that a Skip Trust is a skip person).



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Definitions - Direct Skips

Example 13

- G1, G2 and G3 are all alive.
- G1 makes a gift of $100,000 to her grandchild, G3.

Result

- The transfer from G1 to G3 **is a direct skip**.

Reason

- G3 is a skip person, because relative to G1, G3 is a natural person assigned to a generation which is two (2) or more generations below the assignment of the transferor (G1).

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Definitions - Direct Skips

Example 14

- G1, G2 and G3 are all alive.
- G1 makes a gift of $100,000 to her child, G2.

Result

- The transfer from G1 to G2 **is NOT a direct skip**.

Reason

- **G2 is a non-skip person**, because relative to G1, G2 is a natural person assigned to a generation which is **not** two (2) or more generations below the assignment of the transferor (G1).
- A **Transfer** from a **Transferor** to a **Non-skip Person** is **not** a **Direct Skip**. It may be a gift for gift tax purposes, but **not** a **Generation-Skipping Transfer**.

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Definitions - Direct Skips

Example 15

- G1 and G3 are alive. G2 (G3's parent) has died
- G1 makes a gift of $100,000 to her grandchild, G3.

Result

- The transfer from G1 to G3 **is NOT a direct skip**.

Reason

- **G3 is a Non-Skip Person**, because of the predeceased parent rule.

Thus, even though in reality G1 is G3's grandchild, for GST tax purposes, relative to G1, G3 is DEEMED to move into G2's shoes, thus, G3 is not a Skip-Person, and the transfer is not a direct skip.

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Definitions - Direct Skips

Example 16

- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive.
- G1 makes a transfer into T of $1,000,000

Result

- The transfer is NOT a direct skip.

Reason

- T, a trust, is not a Skip Trust, because G2 (one of the trust's beneficiaries) is not a Skip Person, because G2 is not two (2) or more generations below G1.
- Thus, because NOT all the beneficiaries are skip persons, T is NOT a skip trust; therefore, T is not a skip person, and there is no direct skip.

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Definitions - Direct Skips

Example 17

Facts:

- T, a trust is created for the benefit of all of G1's descendants
- G1, G3 and G4 are all alive. **G2 has died.**
- G1 makes a transfer into T of $1,000,000

Result

The transfer is NOT a direct skip.

Reason

T, a trust, is not a skip trust, because G 3 (one of the trust' s beneficiaries) is not a skip person, because of the pre- deceased parent rule. G 3 stands in the shoes of G2, who would not be a person who is two (2) or more generations below G 1 . Thus, because NOT all the beneficiaries are skip persons, T is NOT a skip trust; therefore, T is not a skip person, and there is no direct skip.

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Some Random Thoughts



Example 16 is a common situation … why then do we worry about GST Taxes, when this is **not** a Direct Skip?

- Remember the facts:
  - T, a trust is created for the benefit of all of G1's descendants
  - G1, G2, G3 and G4 are all alive.
  - G1 makes a transfer into T of $1,000,000 Result:

The transfer is NOT a direct skip.

Then why worry?

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More Random Thoughts



Because … **in Example 16, when funds are DISTRIBUTED** from the trust (to one or more beneficiaries), the DISTRIBUTION (i.e., transfer) could be a "Generation Skipping Transfer" … it could be one of the two (2) other Generation Skipping Transfers …

1. **Taxable Distribution** ("**TD**"); or
2. **Taxable Termination** ("**TT**")

reverse

Let's discuss "Taxable distributions" and "Taxable terminations" (in reverse order)

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Definitions

Taxable Termination



A taxable termination occurs when, in a Non-Skip Trust, the last Non-Skip Person's interest ends (i.e., terminates), and, at that moment in time, the Non-Skip Trust has only Skip Persons as beneficiaries.

GENERALLY (**99+%** of the time), a Taxable Termination **occurs when the ONLY remaining Non-Skip Person** (i.e., beneficiary) of a Non-Skip Trust dies.

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Taxable Distributions and Taxable Termination

MUST REMEMBER THIS (think Casablanca)

A Taxable Distribution and/or Taxable Termination can ONLY apply IF there has been a TRANSFER FROM a trust TO a beneficiary.

A Taxable Distribution and/or Taxable Termination CANNOT apply IF there is a CONTRIBUTION INTO a TRUST.

CONTRIBUTIONS can ONLY be Direct Skips (if at all).
CONTRIBUTIONS could be a non-event for GST purposes.

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Definitions - Taxable Termination

Three (3) important concepts:

1. A "**Taxable Termination**" can **only** occur in Non-Skip Trusts.
2. A "**Taxable Termination**" can **only** occur when the last Non-Skip Person is no longer a beneficiary (most cases this is when the LAST (or only) Non-Skip Person dies).
3. A "**Taxable Termination**" does **not necessarily mean** that the trust terminates. It just means that a person (the only Non- Skip Person) who was a beneficiary is no longer a beneficiary. The trust could terminate, but it is not required that the trust terminate. And, there may be, or may not be a tax liability … it depends if the trust is GST Exempt … or not!

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Definitions - Taxable Termination



A Fourth Concept

The " **New Transferor Rule**" : The " Move Up" Rule or the " Changing Transferor" Rule occurs whenever there is a Taxable Termination:

The New Transferor Rule provides that the person who was the transferor immediately before the Taxable Termination is no longer the Transferor immediately after the Taxable Termination, the NEW Transferor (immediately after the Taxable Termination) will be the person who is exactly one (1) generation above the Beneficiary who has the most senior generational assignment.

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Definitions - Taxable Termination

A Fourth Concept

WHAT DOES THAT MEAN????

Again, best explained with an Example … Example 18 …



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Definitions - Taxable Termination

Example 18: (This is **Example 16** taken to the next level)

Facts of **Example 16**:

- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are **all** alive.
- G1 makes a transfer into T of $1,000,000

Additional Facts

- G2 dies X number of years later (it is irrelevant how many years later).

Result

- At the time of gift for GST tax this **was not** a Generation-Skipping Transfer. For gift taxes, it was a gift and GST Tax it was a Transfer
- At time of G2's death – This **is** a Generation-Skipping Transfer; this is a "**Taxable Termination**"!

See next page for explanation …

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Definitions - Taxable Termination

The Four Concepts

1. T was not a Skip Trust (at the time of the original contribution (i.e., the Transfer) up until the moment before G2's death, T, the trust, was a Non-Skip Person, and thus was not a Skip Trust
2. G2, the decedent, was the **only** Non-Skip Person, thus, **at the instant of G2's death,** there were **only** Skip-Persons (i.e., G3 and G4).
3. T, the trust, did NOT terminate after G2's death, it simply continued (for G3 and G4).
4. **As a result of G2's death**,
   - the New Transferor Rule applied, thus, G2 became the new Transferor. That is, G2 is the person who is exactly (1) one generation above the beneficiary who is the most senior generation (i.e., G2 is one generation above G3 (the most senior generation). (Note: With G2 as the Transferor, G3 is a Non-Skip person, so the trust is once again **not** a skip trust (i.e., it is a non-skip trust)!
   - YES, G2 became the Transferor, even though G2 died!

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Taxable Terminations

- **Example 19**: (This is **Example 16** taken to the next level)
  - T, a trust is created for the benefit of all of G1's descendants
  - G1, G2, G3 and G4 are **all** alive.
  - G1 makes a transfer into T of $1,000,000

  Additional Facts
  - G3 (not G2) dies X number of years later (it is irrelevant how many years later).
- **Result at the time of gift** - this **was not a GST**.
- **Result at time of G3's death** – this **is also NOT a GST**, because G2 (the only non-skip person, is still alive) – Death of a Skip Person generally does **NOT** trigger a Taxable Termination.

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Taxable Terminations

Example 20: This is **Example 18** to the next level

- T, a trust is created for the benefit of G1's descendants.
- G1, G2 , G3 and G4 are all alive (at the time of contribution).
- G1 makes a transfer into T of $ 1,000,000
- G 2 dies X number of years later.

Additional Facts

- G3 dies a few years after G2 dies (it is irrelevant how many years later).

Result at the time of gift - this **was not a GST**.

Result at time of G2's death – this **was a Generation-Skipping Transfer**. This was a "**Taxable Termination**"!

Result at time of G3 ' s death – This **is also a Generation-Skipping Transfer**. This is also a "**Taxable Termination**"!

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Taxable Terminations

The Four Concepts (Again)

1. T was not a Skip Trust; thus, at G 2 ' s death, with the New Transferor Rule, G1 was no longer the Transferor, and G2 was the New Transferor. Thus, G3, relative to G2 was a Non-Skip Person, thus, the trust was a Non-Skip Trust (again).
2. After G2's death, G3, the new Decedent, was the **only** Non-Skip Person; thus, at the instant of G3's death there were only Skip Persons (i.e., G4, G5, etc.) .
3. T, the trust, did **not** terminate after G2's death or at G3's death, it simply continued (for G4, G5, etc.).
4. However, because of G3's death, the New Transferor Rule applies **AGAIN**; thus, G3 becomes the New Transferor. That is, G3 is the person who is exactly one generation above the beneficiary who is the most senior generation (i.e., G3 is one generation above G4 (the current most senior generation). (Note: With G3 as the Transferor, G4 (as the Non-Skip Person / beneficiary), and now the Trust becomes a Non-Skip Trust again.

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Definitions - Taxable Termination Transition to Distributions

The NEW TRANSFEROR RULE is important, more so for "Taxable Distributions" than for "Taxable Terminations" …

Let's now transition to **Taxable DISTRIBUTIONS**

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Definitions - POP QUIZ

What are the the THREE (3) types of Generation Skipping Transfers (i.e., GST)?

1.
2.
3.



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Definitions - POP QUIZ

What are the the THREE (3) types of Generation Skipping Transfers (i.e., GST)?

Answers

1. Direct Skip
2. Taxable Distribution
3. Taxable Termination



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Definitions - POP QUIZ

What type of GST Happens at the time of Contribution?

1.

What types of GSTs happen at the time of Distributions?

1.

2.



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Definitions - POP QUIZ

What type of GST Happens at the time of Contribution?

1. Direct Skip

What types of GSTs happen at the time of Distributions?

1. Taxable Termination
2. Taxable Distribution



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Definitions - Taxable Distribution

Taxable Distribution: It is a **non-liquidating distribution** from a trust that is Non-Skip Trust (i.e., a trust that is not a Skip Trust), to a Skip Person.



2 Things

- **Thing 1**: Trust must be a Non-Skip Person (or a Non-Skip Trust)
- **Thing 2**: The distribution FROM the Non-Skip Trust must be made to a person who is a Skip Person, relative to the Transferor.

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Taxable Distributions

Example 21:

Revisiting **Example 16** again!

- T, a trust is created for the benefit of all of G 1 ' s descendants
- G 1 , G 2 , G 3 and G 4 are all alive (at the time of the contribution).
- G 1 makes a transfer into T of $ 1,000,000

Result

- At contribution the transfer is NOT a GST.

Reason

T, a trust, is not a Skip Trust, because G2 (one of the trust' s beneficiaries) is not a Skip Person,

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Taxable Distribution

Example 21 (con't):

Revisiting **Example 16** again

Additional Facts
- G1 dies

Result
- No impact. It is irrelevant if G1 dies,
- Even in death, G1 stays the Transferor until a Taxable Termination occurs (and the New Transferor Rule kicks in).
- Remember, the death of the settlor is not relevant, it is the death of a Non-Skip beneficiary that MAY be relevant …

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Taxable Distributions

- **Example 22:**
  - **Example 21's** facts and More Additional Facts
    - G1 dies
    - There is a distribution of some of the income to G2 (i.e., the trust does not terminate as a result of the termination)
- Result
  - No impact as to G1.
  - No impact as to G2. The distribution to G2, who is a Non-Skip Person, is not a Taxable Distribution. Recall –A Taxable Distribution is a distribution TO a Skip-Person FROM a Non-Skip Trust.

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Taxable Distributions

Example 23:

Revisiting **Example 21** and Even More Facts

- G1 dies
- There is a distribution of some income to G2 (i.e., the trust does not terminate as a result of the termination)
- **And** …there is also a distribution of the remaining income to G3 (i.e., the trust does not termination as a result of the distribution)

Result

- G1 - No impact.
- G2 - No impact. The distribution to G2, who is a Non-Sip person, is not a Taxable Distribution.
- **G3 – Taxable Distribution. WHY? Because G3 is a Skip Person (i.e., G3 is two or more generation below G1 (i.e., the Transferor), and the transfer to G2 was made from a Non-Skip Trust.**

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Taxable Distributions

Example 24:

(This is **Example 18** (which is based on **Example 16**) taken to the next level)

Facts of **Example 18** (revisited):

- T, a trust is created for the benefit of all of G1's descendants
- G1, G2, G3 and G4 are all alive (at the time of the contribution).
- G1 makes a transfer into T of $1,000,000
- G2 dies X number of years later (it is irrelevant how many years later).

Result at the time of gift - this **was not a GST**.

Result at the the time of G2's death – this **was a GST**, because at the time of G2's death, G2 was the only Non-Skip Person.

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Taxable Distributions

Example 24 (con't):

Additional Facts:

- After G2's death, the trustee of T distributed all of the income to G3.

Result

- At G2's death, as a result of the New Transferor Rule, G2 became the New Transferor. Thus, at that point in time, G3 shifted from being a Skip-Person (relative to G1 who was the original Transferor) to a Non-Skip Person as to G2 (the New Transferor).
- Thus, a distribution to G3 (who is NOW a Non-Skip Person) is **NOT a Taxable Distribution** (or a direct skip or a taxable termination). Thus, this **is NOT a GST**.

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Definitions - Taxable Distribution

Example 25:

- Same facts as **Example 24**, and the Trustee of T **distributes some principal to G4**

Result

- In this case, G4, is a Skip Person (relative to the New Transferor … (i.e., G2).

Thus, a distribution (which does not liquidate the trust), **is a Generation-Skipping Transfer**, which **is a Taxable Distribution**.

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GST Exemption

Year	Amount	Year	Amount
2009	$ 3.50 MM	2017	$ 5.49 MM
2010	$ 5.0 MM	2018	$11.18 MM
2011	$ 5.00 MM	2019	$11.40 MM
2012	$ 5.12 MM	2020	$11.58 MM
2013	$ 5.25 MM	2021	$11.70 MM
2014	$ 5.23 MM	2022	$12.06 MM
2015	$ 5.43 MM	2023	$12.92 MM
2016	$ 5.45 MM	**2024**	**$13.61 MM**
		2025	**$13.99 MM unofficial**

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Inclusion Ratio

- **Inclusion Ratio** – is a fraction

$$\frac{\text{Amount of GST Exemption Allocated}}{\text{Value of the Assets Transferred}}$$

Should either be Zero (0) or One (1)

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Inclusion Ratio



Inclusion Ratio of Zero (0) = Wholly GST Exempt

Inclusion Ratio of One (1) = Wholly NON-GST Exempt

Inclusion Ratio between Zero (0) and One (1) = Partially GST Exempt

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Definitions – GST Tax Rate

Years	Rate
2000 - 2001	55%
2002 – 2006	From 50% to 46%
2007 – 2009	45%
2010	0%
2011 – 2013	35%
2014 – 2024	40%
2025 onward	40%

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Applicable Rate

AR = GSTT x IR

AR = Applicable Rate

GSTTR = GST Tax Rate

IR = Inclusion Ratio

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Grandfathered Trusts

Irrevocable Trust created / funded BEFORE September 25, 1985

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Definition- Exclusions

Applies ONLY for Direct Skips

- **Deeming Rule** – Inclusion Ratio is Zero (0); thus, Applicable Rate is Zero; thus, tax liability is Zero ($0)

- **Transfers to Individuals** – Annual Exclusion under § 2503(b) and Medical and Tuition Exclusion under § 2503(e) - See IRC § 2642(c)(1) –

- **Transfers to Trusts** – IRC § 2642(c)(3) – For Transfers to Trusts with
  Single Beneficiary; and
  Includable in Bene's Gross Estate if Bene dies before trust is terminated

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Definition- Exclusions

DON'T CONFUSE typical *Crummey* Dynasty Trusts

This does NOT meet the 2642(c) exception

Still NEED to allocate GST Exemption

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Definition- GST Trust

GST Trust is a special type of Trust –
Defined in Code § 2632(c)(3) - in the Negative

If the Trust does NOT meet the 6 requirements, then the Trust is NOT a GST Trust
(see page 43 of outline for 6 requirements)

(Typically, it would be a trust where a Taxable Distribution or Taxable Termination would occur before death of a beneficiary)

If the Trust is a GST Trust, then the "**automatic allocation**" rules apply.

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Allocation of GST Exemption

Automatic Allocation

Timely Allocations

Late Allocations

Opt in / Opt Out

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Basis Adjustment

Taxable Distributions – Akin to Gift Tax Basis Adjustment - § 2654(a)(1)

Taxable Terminations by Reason of Death – Akin to Estate Tax Basis Adjustment - §2654(a)(2)

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Reporting TDs and TTs

Just because no tax is due does not mean that you don't have to report!



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Some Planning Thoughts

- **Late Allocations:**

  If client is not planning to use up all of client's GST Exemption before 2026 and there are Non-Exempt Trusts (i.e., Trusts with an Inclusion Ratio of greater than zero (0); do a late allocation and use up the unused GST Exemption



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More Planning Thoughts

- **Grantor Trusts:**
  If you have GRANTOR TRUST that are GST and Non-GST Exempt Trusts – do sales between the trusts – Sell assets from the Non-Exempt Trust to the GST Exempt Trust



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Even MORE Planning Thoughts

- **Large Non-GST Exempt Dynasty Trusts – Poorer Non-Skip Persons**
  Decant / Distribute to Non-Skip Person / Non-Skip Person Create GST Exempt Trust (use up Lifetime Exclusion and GST Exemption)

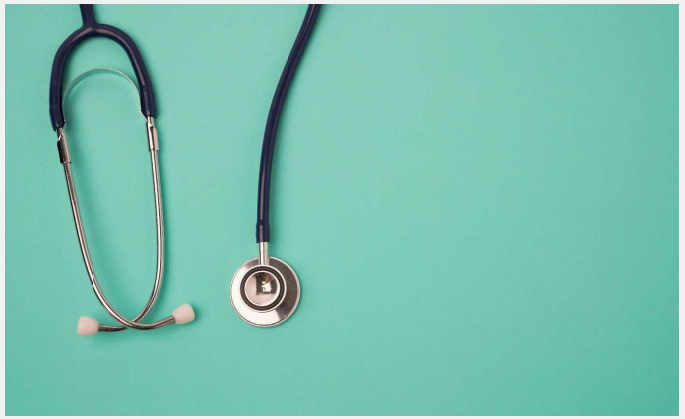


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Yet MORE Planning Thoughts

- **Make Distributions From Non-Exempt Trust for Qualified Medical (§ 2503(e)(1)) and Qualified Education / Tuition (§2503(e)(2))**





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Finally, One More Planning Thought

- **<u>Surrogate Non-Skip Persons</u>:**
  If you want to make gifts to Skip Persons in Trust, consider having a surrogate Non-Skip person – one caveat

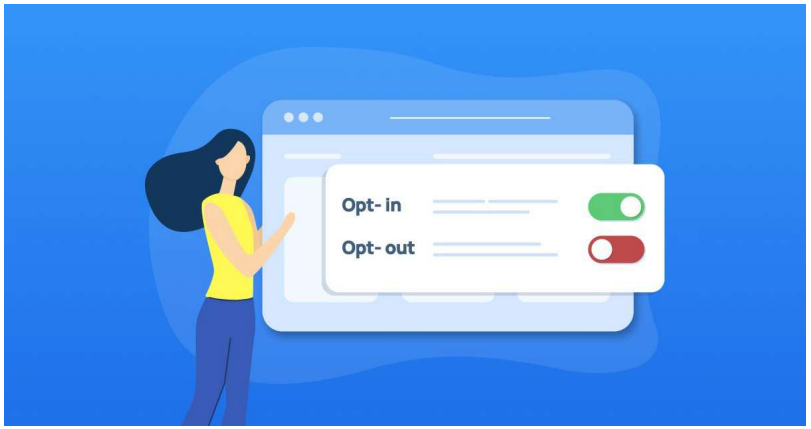


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OK … just one more Planning Thought

Opting IN / Opting OUT

- **Trusts with ETIPs (e.g., GRATs, QPRTs, etc.) – Always Opt OUT.**
  - **If it will be successful, determine if you want to:**
    - **Do a 'timely allocation' after the term, or**
    - **Opt IN before the ETIP ends.**
  - **If it will be unsuccessful, do nothing.**



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THANK YOU

If you have any questions, please call me at

239-202-0416 (work)
239-290-1234 (cell)

Or Email me at

lblaw@fkl-law.com

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LESTER's Biography in a Nutshell

- Founding co-member of Franklin Karibjanian & Law PLLC
- Member of the Florida and DC Bars; Board Certified in Wills Trust and Estates by the Florida Bar
- ACTEC Fellow
- Prior adjunct professor at the University of Miami School of Law Graduate Estate Planning School (2015 – 2022); Lecturer at the Florida Banker's Wealth Management Trust School (2005 to date); Lectured at numerous national conferences, including the Montana Tax Institute, the Heckerling Institute, the Notre Dame Institute, the Southern Federal Tax Institute, the Hawaii Tax Institute, and dozens of estate planning councils and various state bar association conferences.
- Former co-chair of the Income and Transfer Tax Planning Group for the American Bar Association's Real Property Trust and Estate Law Section. Former chair of numerous committees under that group. Former chair of various committees in the Real Property Probate and Trust Law Section of the Florida Bar.
- Written numerous articles for the Florida Bar Journal, Bloomberg, Estate Planning, Probate and Property, LISI, and many other periodicals. Quoted in numerous media, including the Wall Street Journal, BNA Bloomberg, and other national, state and local news media.
- Retired CPA. Before law school, was an associate at Price Waterhouse (nka Price Waterhouse Coopers).
- Graduated with an LLM (1st in class) at the University of Florida, a JD at The University of North Carolina School of Law, an MST at the University of Miami, and a BBA (accounting) at Florida International University.
- Lives in Naples Florida (and works in both Naples and DC). Husband to his loving wife Janet (who works and puts up with him), proud father to his wonderful son, Jordan (who is at Lester's *alma mater*, UNC).
- Lester enjoys golf, but he is not very good at it!

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