

FEATURES	GIFT TAX TRANSFERS	ESTATE TAX TRANSFERS	GENERATION-SKIPPING TRANSFER TAX	
			GIFTS	BEQUESTS
Applies to	Lifetime Transfers	Transfers at Death	Lifetime Transfers to Skip Persons	Transfers at Death to Skip Persons
Calculation of Transfer Includes	Value of Lifetime Transfers plus any GSTT Paid	Value of Transfers at Death plus any GSTT Paid	Value of Lifetime Transfers to Skip Persons	Value of Transfers at Death to Skip Persons
Annual Exclusion (2007)	\$12,000	N/A	\$12,000	N/A
Lifetime Exemption for 2007	\$1,000,000 Cannot allocate	\$2,000,000 Note: Includes Gift Transfers	\$2,000,000 Can Allocate	\$2,000,000 Note: Includes GST Gifts
Nature of Tax Rate	Progressive	Progressive	Highest Gift Tax Rate (Flat) 45% for 2007	Highest Estate Tax Rate (Flat) 45% for 2007
Annual Exclusion Available for Transfers under Crummey Power	Yes	N/A	Possible (See Annual Exclusions)	N/A

N/A = Not applicable

PARTIES INVOLVED IN GENERATION-SKIPPING TRANSFERS

When discussing generation-skipping transfers, it is important to understand how each individual is associated with the transfer and their impact on the GSTT system. Accordingly, the parties involved are specifically defined for GSTT purposes.

TRANSFEROR

Whether or not a transfer is subject to GSTT depends on whether the transferor is two or more generations older than the transferee. Thus, in order to determine the GSTT consequences of a particular transfer, one must first identify the transferor. When property is transferred during life and is subject to gift tax, the transferor is the donor. When the property is transferred at death and is subject to estate tax, the transferor is the decedent. If the property is subject to estate tax or gift tax at some future time, usually a new transferor is determined.

Theresa creates an irrevocable trust with income for life to her daughter, Catherine. When Catherine dies, the remainder will transfer to her daughter, Haley. If Catherine was given a general power of appointment over the trust assets, then the trust assets would be included in Catherine's gross estate when Catherine dies. Since the trust is an irrevocable trust, Theresa's transfer to create the trust was subject to gift tax. Therefore, Theresa is the original transferor of the trust assets for GSTT purposes. However, upon Catherine's death, Catherine becomes the transferor of the trust assets because the assets are included in Catherine's gross estate (due to the general power of appointment she held at her death) and subject to estate tax.

TRANSFeree

The transferee is the individual who receives the property. For GSTT purposes, individuals are categorized into two groups: (1) non-skip persons and (2) skip persons. Broadly defined, non-skip persons are those individuals to whom transfers do not result in generation-skipping transfer tax consequences, whereas skip persons are those individuals to whom the same transfers would result in GSTT consequences.

Skip Person

A skip person, or the person to whom a transfer may result in a generation-skipping transfer tax, is broadly defined as a transferee who is two or more generations younger than the transferor. To determine where the transferee falls within the generations, the IRC separates lineal descendants and non-lineal descendants.

The IRC defines a skip person as any one of the following:

1. Any lineal descendent of the transferor's grandparent (or the transferor's spouse's grandparent) who is two or more generations younger than the transferor. (Certain exclusions may apply and are discussed below.)
2. Any person who is not a lineal descendent (as described in #1 above), is not the spouse of the transferor, and is two or more generations younger than the transferor based on age ($37\frac{1}{2}$ years).

For the purpose of applying these rules, any spouse or former spouse of a transferor and all charitable organizations are always considered to be in the same generation as the transferor. Also, adopted relatives are considered the same as blood relatives.



Key Concepts

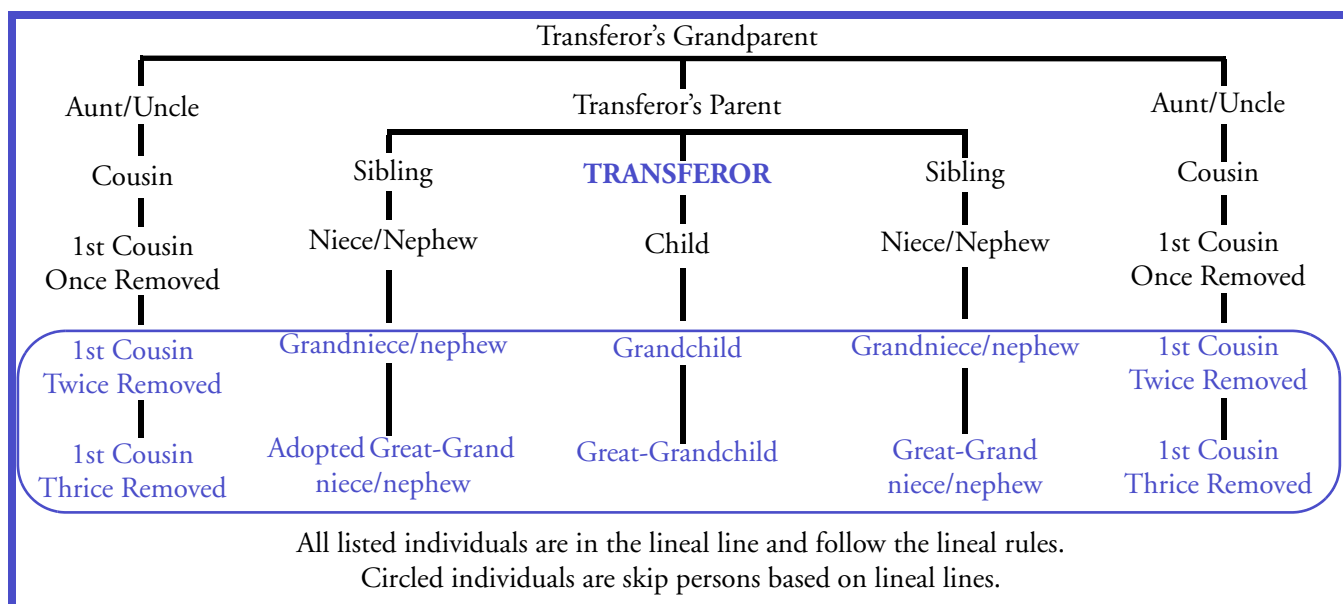
Underline/highlight the answers to these questions as you read:

1. Describe who is a skip person and who is not a skip person for both lineal and nonlineal descendants.
2. Explain the predeceased ancestor exception.

Lineal Descendents

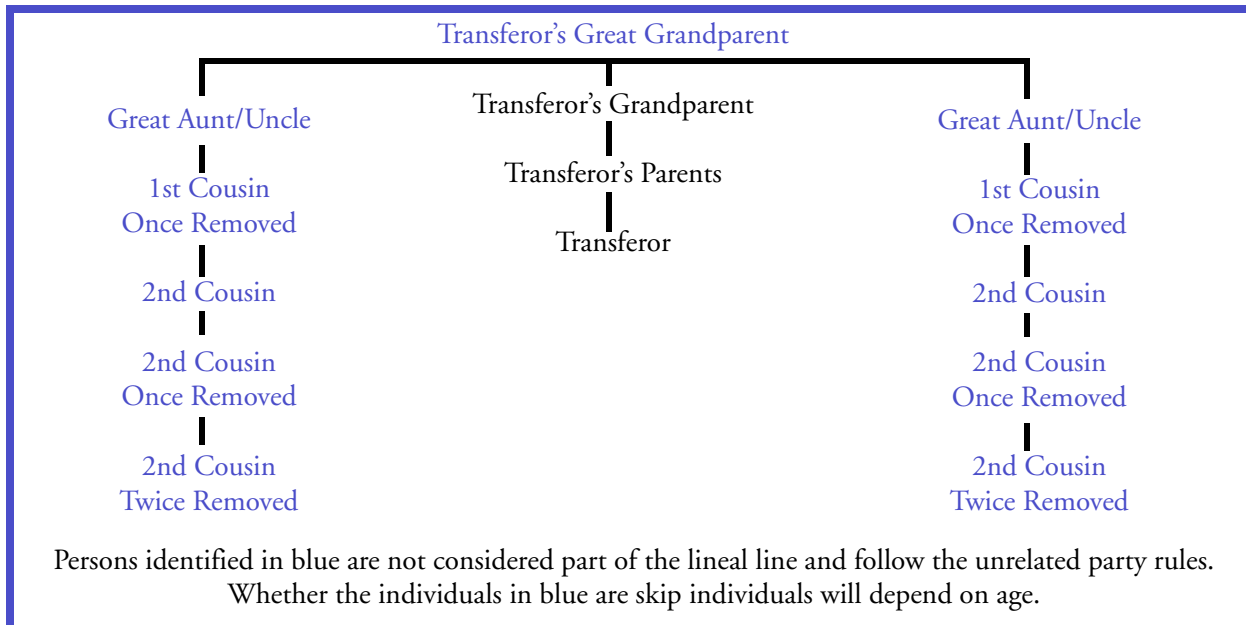
To determine if an individual is considered a lineal descendent, consider the family tree below. The tree only considers those individuals who are descendents of the transferor's grandparent, and for purposes of lineal descendents, age is irrelevant. Exhibit 13.2 illustrates those individuals who are skip persons (two or more generations younger than the transferor) in relation to the transferor; the 1st cousins twice removed and 1st cousins thrice removed, the grand and great-grand niece and nephew and the grand and great-grandchild. Note that the adopted great-grand niece/nephew is considered to be in the same category as a nonadopted great-grand niece/nephew. Also, spouses of each of these individuals would be placed in the same category as their spouse.

EXHIBIT 13.2 LINEAL DESCENDENTS



Unrelated and Non-Lineal Descendents for GSTT Purposes

Unrelated individuals are those individuals who are not related to the transferor. Non-lineal descendents, for GSTT purposes, are relatives who are more distant than the lineal descendents of the transferor's grandparents. To determine whether unrelated individuals or nonlineal descendents are skip persons, the individual's age is the only relevant factor; where the individual falls in relation to the transferor's family tree is irrelevant.

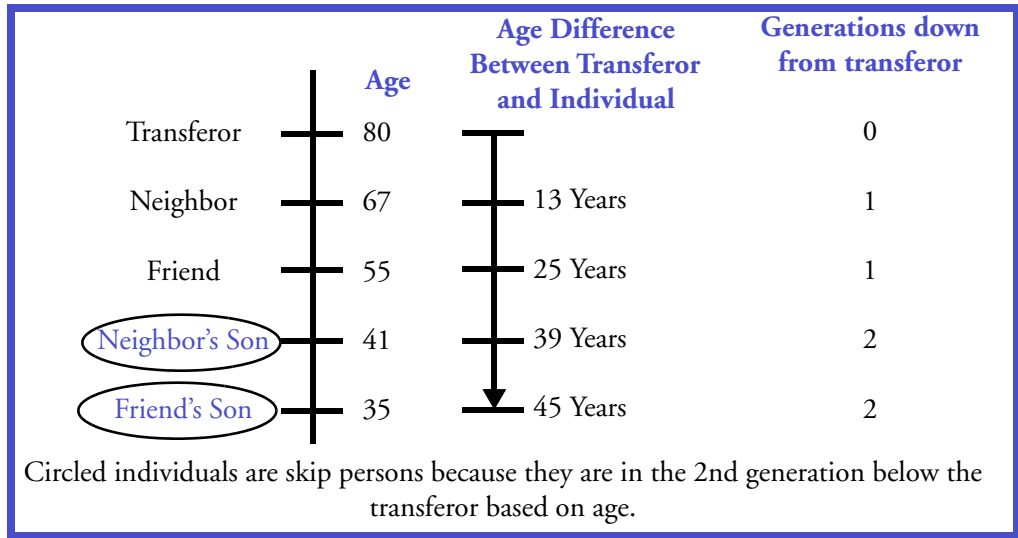


A generation is defined as a 25 year time period. Exhibit 13.4 illustrates an 80-year-old transferor. His generation would include all individuals $12\frac{1}{2}$ years older than him and $12\frac{1}{2}$ years younger than him. The next generation includes all individuals born within the next 25 years below the first $12\frac{1}{2}$ years. Therefore, all individuals between the ages $67\frac{1}{2}$ and $42\frac{1}{2}$ would be one generation below the transferor. Since neighbor is 67 (13 years younger than transferor), neighbor is one generation below transferor. Friend, age 55, also falls one generation below transferor. Individuals between the ages of $42\frac{1}{2}$ and $17\frac{1}{2}$ are two generations below transferor, and are therefore skip individuals. Thus, both neighbor's son and friend's son are skip persons, and any transfer from transferor to neighbor's son and/or friend's son are generation-skipping transfers.

If transferor had a child the same age as neighbor's son, the child would not be considered a skip person because the child is a lineal descendent. As detailed above, lineal descendents are deemed skip persons based on the transferor's family tree. Therefore, transferor may have a child the same age as neighbor's son, and transferor's child would not be a skip person even though neighbor's son would be a skip person.

EXHIBIT 13.4

UNRELATED PERSONS AND NONLINEAL DESCENDENTS



Trusts

A trust may also be considered a skip person (1) if all interests in the trust are held by skip persons, or (2) if the trust distributions can only be made to skip persons. For purposes of the first definition, a person is deemed to have an interest in a trust if he has the present right to receive income or principal distributions from the trust.

EXAMPLE 13.2

Anthony recently established an irrevocable trust for his grandson, Allen. The trust will pay income to Allen for his life, and at Allen's death the remaining trust assets will be distributed to Allen's children. Since Allen and his children are all skip persons and they are the only individuals that can receive distributions, the trust is also a skip person.

EXAMPLE 13.3

Beau created an irrevocable trust to pay income to his daughter, Joann, and his grandson, David. In this instance the trust is not a skip person because Joann, who is not a skip person holds an interest. Remember that if you have one person holding an interest in the trust that is not a skip person then the trust will NOT be a skip person for GSTT purposes until the last non-skip beneficiary's interest expires.

As mentioned, charitable organizations are considered to be in the same generation as the transferor. If a charitable organization holds an interest in a trust, then the trust cannot be a skip person. For this purpose, a charitable organization is deemed to have an interest in a trust (1) if it has a present, nondiscretionary right to receive income or principal, or (2) if the organization is the remainder beneficiary of a qualified charitable remainder trust or pooled income fund (as defined in Chapter 9).

Brett decided to participate in a pooled income fund benefiting his local church (a qualified charitable organization). Brett's grandson, Blake, will receive an annuity for his life, and the remainder will be paid to the church. Because of its remainder interest, the church has an interest in the pooled income fund and the pooled income fund is not considered a skip person since the charity is deemed to be in the same generation as the transferor.

EXAMPLE 13.4

Brett decided to create a charitable remainder trust naming his grandson, Blake, as the income beneficiary and giving the trustee the discretion to select the remainder charitable beneficiary. Because a specific charitable organization has not been declared, no charitable organization has an interest in the trust. Therefore, the trust would be considered a skip person.

EXAMPLE 13.5

Predeceased Ancestor Exception

If a child of the transferor is deceased at the time of a transfer, then that child's descendants are moved up one generation for purposes of determining whether any transfer constitutes a GST. As a result, certain transfers that, absent this rule, would be GSTs, will not be treated as GSTs.

Terrell gave \$100,000 to his grandson, Willie. At the time the gift is made, Terrell's child, Charlotte, who is also Willie's mother, is deceased. For GSTT purposes, Willie is treated as being in Charlotte's generation (i.e., Willie is treated as being Terrell's child rather than Terrell's grandchild) and the \$100,000 gift from Terrell to Willie is not a GST.

EXAMPLE 13.6

Margaret establishes an irrevocable trust for the benefit of her granddaughter, Sally. The trust instrument provides that Sally is to receive all of the trust's annual income until she reaches age 35, at which time the trust will terminate and distribute its principal to Sally. At the time Margaret establishes the trust, Margaret's child, Maxwell, who is also Sally's father, is dead. Therefore, for GSTT purposes, Sally is treated as Margaret's daughter rather than granddaughter, and neither the initial transfer to the trust nor any distributions from the trust to Sally are GSTs.

EXAMPLE 13.7

Assume the same facts as the above example, except that Celeste, Maxwell's surviving spouse, is the income beneficiary of the trust for her life. Upon Celeste's death, the trust will terminate and distribute its principal to Sally. Because Maxwell was dead at the time the trust was created, the termination of Celeste's interest in the trust will not be a GST.

EXAMPLE 13.8