

**INTERNAL REVENUE SERVICE**  
**NATIONAL OFFICE TECHNICAL ADVICE MEMORANDUM**

July 31, 2001

Number: **200147021**  
Release Date: 11/23/2001  
Index (UIL) No.: 2513.00-00; 2515.00-00  
CASE MIS No.: TAM-107125-01/CC:PSI:B4

Taxpayer's Name:

Taxpayer's Identification No:  
Years Involved:  
Date of Conference:

**LEGEND:**

Taxpayer =  
Spouse =  
Year =  
Amount 1 =  
Amount 2 =

**ISSUE(S):**

Is the deemed gift under § 2515 of the generation-skipping transfer tax imposed on a direct skip split between spouses if the spouses have elected under § 2513 to split all gifts made to third parties during the calendar year?

**CONCLUSION:**

Taxpayer and Spouse must split the deemed gift under § 2515 of the generation-skipping transfer tax imposed on a direct skip because Taxpayer and Spouse elected under § 2513 to split all gifts made to third parties during the calendar year.

**FACTS:**

Taxpayer and Spouse are husband and wife. During Year, Taxpayer and Spouse made gifts to Taxpayer's grandchildren. Prior to Year, Taxpayer gifted over Amount 1 to third parties and, therefore, at the time of the gifts to the grandchildren in the instant case, Taxpayer had completely utilized his unified credit as well as his generation-skipping transfer tax exemption. Prior to Year, Wife gifted Amount 2. Thus, Wife had not completely utilized her unified credit or her generation-skipping transfer tax exemption. Taxpayer and Spouse filed separate Forms 709, "United States Gift (and Generation-Skipping Transfer) Tax Return." Both Taxpayer and Spouse executed

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the consents required by §2513 and elected to treat the gifts to Taxpayer's grandchildren as made one-half by each spouse. In addition, each treated the deemed gift under § 2515 of the generation-skipping transfer tax as an additional gift that must be split under § 2513.

#### LAW AND ANALYSIS:

Section 2513(a) provides that a gift made by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. The gifts are treated as made one-half by each spouse only if both spouses consent to gift-splitting on all gifts made during the calendar year by either while married to the other.

Section 2515 provides that, in the case of any taxable gift that is a direct skip (within the meaning of chapter 13), the amount of such gift shall be increased by the amount of any tax imposed on the transferor under chapter 13 with respect to the gift. Thus, any generation-skipping transfer tax imposed is treated as an additional gift that is also subject to gift tax.

Section 2601(a)(3) provides that, in the case of a direct skip, the tax shall be paid by the transferor.

Under § 2652(a)(2), if, under § 2513, one-half of a gift is treated as made by an individual and one-half of such gift is treated as made by the spouse of such individual, such gift shall be so treated for purposes of chapter 13.

Section 26.2652-1(a)(4) provides that, in the case of a transfer with respect to which the donor's spouse makes an election under § 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under § 2513. The donor is treated as the transferor of one-half of the value of the entire property. In § 26.2652-1(a)(5), Example 2, T transfers \$100,000 to a trust for the sole benefit of T's grandchild. S, T's spouse, consents under § 2513 to split the gift with T. For purposes of chapter 13, S and T are each treated as a transferor of \$50,000 to the trust.

In the instant case, Taxpayer and Spouse elected under § 2513 to treat all gifts made during the calendar year by either to be treated as made one-half by each spouse. The statutory language of § 2515 deems the generation-skipping tax imposed on the transferor to be an additional gift that is subject to gift tax. If both spouses have consented to gift-splitting for a calendar year, § 2513 requires all gifts made during the calendar year to be treated as made one-half by each spouse. Therefore, because Taxpayer and Spouse made an election under § 2513 to split all gifts made to third parties during Year, Taxpayer and Spouse must split the deemed gift under § 2515 of

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generation-skipping transfer tax imposed on the direct skip gift to Taxpayer's grandchildren.

CAVEAT(S)

A copy of this technical advice memorandum is to be given to the taxpayer(s). Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.