

Pub. L. 91-614, set out as a note under section 2501 of this title.

§ 2514. Powers of appointment

(a) Powers created on or before October 21, 1942

An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

- (1) such partial release occurred before November 1, 1951, or
- (2) the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(b) Powers created after October 21, 1942

The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power.

(c) Definition of general power of appointment

For purposes of this section, the term “general power of appointment” means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the “possessor”), his estate, his creditors, or the creditors of his estate; except that—

- (1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.
- (2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.
- (3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(A) if the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(B) if the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall

be deemed adverse to such exercise of the possessor's power;

(C) if (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(d) Creation of another power in certain cases

If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(e) Lapse of power

The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

- (1) \$5,000, or
- (2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(f) Date of creation of power

For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

(Aug. 16, 1954, ch. 736, 68A Stat. 407; Pub. L. 94-455, title XX, § 2009(b)(4)(F), Oct. 4, 1976, 90 Stat. 1894.)

AMENDMENTS

1976—Subsec. (b). Pub. L. 94-455 struck out “A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.”

EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by Pub. L. 94-455 applicable to transfers creating an interest in person disclaiming made after

Dec. 31, 1976, see section 2009(e)(2) of Pub. L. 94-455, set out as a note under section 2518 of this title.

§ 2515. Treatment of generation-skipping transfer tax

In the case of any taxable gift which 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 such gift.

(Added Pub. L. 99-514, title XIV, § 1432(d)(1), Oct. 22, 1986, 100 Stat. 2730.)

PRIOR PROVISIONS

A prior section, acts Aug. 16, 1954, ch. 736, 68A Stat. 409; Dec. 31, 1970, Pub. L. 91-614, title I, § 102(b)(3), 84 Stat. 1841; Oct. 4, 1976, Pub. L. 94-455, title XX, § 2002(c)(2), 90 Stat. 1855; Nov. 6, 1978, Pub. L. 95-600, title VII, § 702(k)(1)(B), 92 Stat. 2932, related to tenancies by the entirety in real property, prior to repeal applicable to gifts made after Dec. 31, 1981, by Pub. L. 97-34, title IV, § 403(c)(3)(B), (e)(2), Aug. 13, 1981, 95 Stat. 302, 305.

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.

[§ 2515A. Repealed. Pub. L. 97-34, title IV, § 403(c)(3)(B), Aug. 13, 1981, 95 Stat. 302]

Section, added Pub. L. 95-600, title VII, § 702(k)(1)(A), Nov. 6, 1978, 92 Stat. 2932, related to tenancies by the entirety in personal property.

EFFECTIVE DATE OF REPEAL

Repeal applicable to gifts made after Dec. 31, 1981, see section 403(e)(2) of Pub. L. 97-34, set out as an Effective Date of 1981 Amendment note under section 2056 of this title.

§ 2516. Certain property settlements

Where a husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within the 3-year period beginning on the date 1 year before such agreement is entered into (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

- (1) to either spouse in settlement of his or her marital or property rights, or
- (2) to provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

(Aug. 16, 1954, ch. 736, 68A Stat. 409; Pub. L. 98-369, div. A, title IV, § 425(b), July 18, 1984, 98 Stat. 804.)

AMENDMENTS

1984—Pub. L. 98-369 substituted in introductory text “within the 3-year period beginning on the date 1 year before such agreement is entered into” for “within 2 years thereafter”.

EFFECTIVE DATE OF 1984 AMENDMENT

Section 425(c)(2) of Pub. L. 98-369 provided that: “The amendment made by subsection (b) [amending this sec-

tion] shall apply to transfers after the date of the enactment of this Act [July 18, 1984].”

[§ 2517. Repealed. Pub. L. 99-514, title XVIII, § 1852(e)(2)(A), Oct. 22, 1986, 100 Stat. 2868]

Section, added and amended Pub. L. 85-866, title I, §§ 23(f), 68(a), Sept. 2, 1958, 72 Stat. 1623, 1659; Pub. L. 87-792, § 7(j), Oct. 10, 1962, 76 Stat. 830; Mar. 8, 1966, Pub. L. 89-365, § 2(b), 80 Stat. 33; Dec. 30, 1969, Pub. L. 91-172, title I, § 101(j)(24), 83 Stat. 528; Pub. L. 94-455, title XX, § 2009(c) (4), (5), Oct. 4, 1976, 90 Stat. 1895, 1896; Pub. L. 97-34, title III, § 311(d)(2), Aug. 13, 1981, 95 Stat. 280; Pub. L. 98-369, div. A, title IV, § 491(d)(35), July 18, 1984, 98 Stat. 851, related to the transfers of certain annuities under qualified plans.

EFFECTIVE DATE OF REPEAL

Repeal applicable to transfers after Oct. 22, 1986, see section 1852(e)(2)(E) of Pub. L. 99-514, set out as an Effective Date of 1986 Amendment note under section 406 of this title.

§ 2518. Disclaimers

(a) General rule

For purposes of this subtitle, if a person makes a qualified disclaimer with respect to any interest in property, this subtitle shall apply with respect to such interest as if the interest had never been transferred to such person.

(b) Qualified disclaimer defined

For purposes of subsection (a), the term “qualified disclaimer” means an irrevocable and unqualified refusal by a person to accept an interest in property but only if—

- (1) such refusal is in writing,
- (2) such writing is received by the transferor of the interest, his legal representative, or the holder of the legal title to the property to which the interest relates not later than the date which is 9 months after the later of—
 - (A) the day on which the transfer creating the interest in such person is made, or
 - (B) the day on which such person attains age 21,
- (3) such person has not accepted the interest or any of its benefits, and
- (4) as a result of such refusal, the interest passes without any direction on the part of the person making the disclaimer and passes either—
 - (A) to the spouse of the decedent, or
 - (B) to a person other than the person making the disclaimer.

(c) Other rules

For purposes of subsection (a)—

(1) Disclaimer of undivided portion of interest

A disclaimer with respect to an undivided portion of an interest which meets the requirements of the preceding sentence shall be treated as a qualified disclaimer of such portion of the interest.

(2) Powers

A power with respect to property shall be treated as an interest in such property.

(3) Certain transfers treated as disclaimers

A written transfer of the transferor's entire interest in the property—

- (A) which meets requirements similar to the requirements of paragraphs (2) and (3) of subsection (b), and