

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.