

(B) which is to a person or persons who would have received the property had the transferor made a qualified disclaimer (within the meaning of subsection (b)),

shall be treated as a qualified disclaimer.

(Added Pub. L. 94-455, title XX, §2009(b)(1), Oct. 4, 1976, 90 Stat. 1893; amended Pub. L. 95-600, title VII, §702(m)(1), Nov. 6, 1978, 92 Stat. 2935; Pub. L. 97-34, title IV, §426(a), Aug. 13, 1981, 95 Stat. 318; Pub. L. 97-448, title I, §104(e), Jan. 12, 1983, 96 Stat. 2384.)

#### AMENDMENTS

1983—Subsec. (c)(3). Pub. L. 97-448 substituted “A written transfer” for “For purposes of subsection (a), a written transfer”.

1981—Subsec. (c)(3). Pub. L. 97-34 added par. (3).

1978—Subsec. (b)(4). Pub. L. 95-600 inserted provision relating to spouse of decedent.

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, §426(b), Aug. 13, 1981, 95 Stat. 318, provided that: “The amendment made by subsection (a) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1981.”

#### EFFECTIVE DATE OF 1978 AMENDMENT

Pub. L. 95-600, title VII, §702(m)(2), Nov. 6, 1978, 92 Stat. 2935, provided that: “The amendment made by paragraph (1) [amending this section] shall apply to transfers creating an interest in the person disclaiming made after December 31, 1976.”

#### EFFECTIVE DATE

Pub. L. 94-455, title XX, §2009(e)(2), Oct. 4, 1976, 90 Stat. 1896, provided that: “The amendments made by subsection (b) [enacting this section and section 2046 of this title and amending sections 2041, 2055, 2056, and 2514 of this title] shall apply with respect to transfers creating an interest in the person disclaiming made after December 31, 1976.”

### § 2519. Dispositions of certain life estates

#### (a) General rule

For purposes of this chapter and chapter 11, any disposition of all or part of a qualifying income interest for life in any property to which this section applies shall be treated as a transfer of all interests in such property other than the qualifying income interest.

#### (b) Property to which this subsection applies

This section applies to any property if a deduction was allowed with respect to the transfer of such property to the donor—

- (1) under section 2056 by reason of subsection (b)(7) thereof, or
- (2) under section 2523 by reason of subsection (f) thereof.

#### (c) Cross reference

**For right of recovery for gift tax in the case of property treated as transferred under this section, see section 2207A(b).**

(Added Pub. L. 97-34, title IV, §403(d)(3)(B)(i), Aug. 13, 1981, 95 Stat. 304; amended Pub. L.

97-448, title I, §104(a)(3), (7), Jan. 12, 1983, 96 Stat. 2380, 2381.)

#### AMENDMENTS

1983—Pub. L. 97-448, §104(a)(3)(B), amended directory language of Pub. L. 97-34, §403(d)(3)(B)(i), to clarify that this section be inserted at end of subchapter B of chapter 12, rather than at end of subchapter B of chapter 11, and did not involve any change in text.

Subsec. (a). Pub. L. 97-448, §104(a)(3)(A), substituted “For purposes of this chapter and chapter 11, any disposition” for “Any disposition” and “treated as a transfer of all interests in such property other than the qualifying income interest” for “treated as a transfer of such property”.

Subsec. (c). Pub. L. 97-448, §104(a)(7), added subsec. (c).

#### EFFECTIVE DATE OF 1983 AMENDMENT

Amendment by Pub. L. 97-448 effective, except as otherwise provided, as if it had been included in the provision of the Economic Recovery Tax Act of 1981, Pub. L. 97-34, to which such amendment relates, see section 109 of Pub. L. 97-448, set out as a note under section 1 of this title.

#### EFFECTIVE DATE

Section 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.

### Subchapter C—Deductions

Sec.	
[2521.	Repealed.]
2522.	Charitable and similar gifts.
2523.	Gift to spouse.
2524.	Extent of deductions.

#### AMENDMENTS

1976—Pub. L. 94-455, title XX, §2001(c)(2)(B)(ii), Oct. 4, 1976, 90 Stat. 1853, struck out item 2521 “Specific exemption”.

### **[§ 2521. Repealed. Pub. L. 94-455, title XX, § 2001(b)(3), Oct. 4, 1976, 90 Stat. 1849]**

Section, act Aug. 16, 1954, ch. 736, 68A Stat. 410, allowed a deduction, in the case of a citizen or resident, an exemption of \$30,000, less amounts claimed and allowed for calendar year 1932 and calendar years intervening between that year and year for which tax is being computed.

### § 2522. Charitable and similar gifts

#### (a) Citizens or residents

In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment), including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any pri-

vate shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

Rules similar to the rules of section 501(j) shall apply for purposes of paragraph (2).

**(b) Nonresidents**

In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) the United States, any State, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office;

(3) a trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation, and which does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) a fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) posts or organizations of war veterans, or auxiliary units or societies of any such posts

or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

**(c) Disallowance of deductions in certain cases**

(1) No deduction shall be allowed under this section for a gift to or<sup>1</sup> for the use of an organization or trust described in section 508(d) or 4948(c)(4) subject to the conditions specified in such sections.

(2) Where a donor transfers an interest in property (other than an interest described in section 170(f)(3)(B)) to a person, or for a use, described in subsection (a) or (b) and an interest in the same property is retained by the donor, or is transferred or has been transferred (for less than an adequate and full consideration in money or money's worth) from the donor to a person, or for a use, not described in subsection (a) or (b), no deduction shall be allowed under this section for the interest which is, or has been transferred to the person, or for the use, described in subsection (a) or (b), unless—

(A) in the case of a remainder interest, such interest is in a trust which is a charitable remainder annuity trust or a charitable remainder unitrust (described in section 664) or a pooled income fund (described in section 642(c)(5)), or

(B) in the case of any other interest, such interest is in the form of a guaranteed annuity or is a fixed percentage distributed yearly of the fair market value of the property (to be determined yearly).

(3) Rules similar to the rules of section 2055(e)(4) shall apply for purposes of paragraph (2).

**(4) Reforms to comply with paragraph (2)**

**(A) In general**

A deduction shall be allowed under subsection (a) in respect of any qualified reformation (within the meaning of section 2055(e)(3)(B)).

**(B) Rules similar to section 2055(e)(3) to apply**

For purposes of this paragraph, rules similar to the rules of section 2055(e)(3) shall apply.

**(5) Contributions to donor advised funds**

A deduction otherwise allowed under subsection (a) for any contribution to a donor advised fund (as defined in section 4966(d)(2)) shall only be allowed if—

(A) the sponsoring organization (as defined in section 4966(d)(1)) with respect to such donor advised fund is not—

(i) described in paragraph (3) or (4) of subsection (a), or

(ii) a type III supporting organization (as defined in section 4943(f)(5)(A)) which is not a functionally integrated type III supporting organization (as defined in section 4943(f)(5)(B)), and

(B) the taxpayer obtains a contemporaneous written acknowledgment (determined

<sup>1</sup> So in original. Probably should be "or".

under rules similar to the rules of section 170(f)(8)(C)) from the sponsoring organization (as so defined) of such donor advised fund that such organization has exclusive legal control over the assets contributed.

**(d) Special rule for irrevocable transfers of easements in real property**

A deduction shall be allowed under subsection (a) in respect of any transfer of a qualified real property interest (as defined in section 170(h)(2)(C)) which meets the requirements of section 170(h) (without regard to paragraph (4)(A) thereof).

**(e) Special rules for fractional gifts**

**(1) Denial of deduction in certain cases**

**(A) In general**

No deduction shall be allowed for a contribution of an undivided portion of a taxpayer's entire interest in tangible personal property unless all interests in the property are held immediately before such contribution by—

- (i) the taxpayer, or
- (ii) the taxpayer and the donee.

**(B) Exceptions**

The Secretary may, by regulation, provide for exceptions to subparagraph (A) in cases where all persons who hold an interest in the property make proportional contributions of an undivided portion of the entire interest held by such persons.

**(2) Recapture of deduction in certain cases; addition to tax**

**(A) In general**

The Secretary shall provide for the recapture of an amount equal to any deduction allowed under this section (plus interest) with respect to any contribution of an undivided portion of a taxpayer's entire interest in tangible personal property—

(i) in any case in which the donor does not contribute all of the remaining interests in such property to the donee (or, if such donee is no longer in existence, to any person described in section 170(c)) on or before the earlier of—

(I) the date that is 10 years after the date of the initial fractional contribution, or

(II) the date of the death of the donor, and

(ii) in any case in which the donee has not, during the period beginning on the date of the initial fractional contribution and ending on the date described in clause (i)—

(I) had substantial physical possession of the property, and

(II) used the property in a use which is related to a purpose or function constituting the basis for the organizations' exemption under section 501.

**(B) Addition to tax**

The tax imposed under this chapter for any taxable year for which there is a recapture under subparagraph (A) shall be in-

creased by 10 percent of the amount so recaptured.

**(C) Initial fractional contribution**

For purposes of this paragraph, the term "initial fractional contribution" means, with respect to any donor, the first gift of an undivided portion of the donor's entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).

**(f) Cross references**

**(1) For treatment of certain organizations providing child care, see section 501(k).**

**(2) For exemption of certain gifts to or for the benefit of the United States and for rules of construction with respect to certain bequests, see section 2055(f).**

**(3) For treatment of gifts to or for the use of Indian tribal governments (or their subdivisions), see section 7871.**

(Aug. 16, 1954, ch. 736, 68A Stat. 410; Pub. L. 85-866, title I, §30(d), Sept. 2, 1958, 72 Stat. 1631; Pub. L. 91-172, title II, §201(d)(3), (4)(C), (D), Dec. 30, 1969, 83 Stat. 561, 562; Pub. L. 91-614, title I, §102(c)(2), Dec. 31, 1970, 84 Stat. 1841; Pub. L. 94-455, title XII, §§1307(d)(1)(B)(iv), (v), 1313(b)(3), title XIX, §1902(a)(11), (12)(D), title XXI, §2124(e)(3), Oct. 4, 1976, 90 Stat. 1727, 1730, 1805, 1806, 1920; Pub. L. 97-34, title IV, §§423(b), 442(c), Aug. 13, 1981, 95 Stat. 317, 322; Pub. L. 97-248, title II, §286(b)(3), Sept. 3, 1982, 96 Stat. 570; Pub. L. 97-473, title II, §202(b)(7), Jan. 14, 1983, 96 Stat. 2610; Pub. L. 98-369, div. A, title X, §§1022(c), 1032(b)(3), July 18, 1984, 98 Stat. 1028, 1034; Pub. L. 99-514, title XIV, §1422(b), Oct. 22, 1986, 100 Stat. 2717; Pub. L. 100-203, title X, §10711(a)(5), (6), Dec. 22, 1987, 101 Stat. 1330-464; Pub. L. 109-280, title XII, §§1218(c), 1234(c), Aug. 17, 2006, 120 Stat. 1082, 1101; Pub. L. 110-172, §§3(d)(2), 11(a)(16), Dec. 29, 2007, 121 Stat. 2474, 2485.)

**CODIFICATION**

Sections 1218(c) and 1234(c) of Pub. L. 109-280, which directed the amendment of section 2522 without specifying the act to be amended, were executed to this section, which is section 2522 of the Internal Revenue Code of 1986, to reflect the probable intent of Congress. See 2006 Amendment notes below.

**AMENDMENTS**

2007—Subsec. (e)(1)(A). Pub. L. 110-172, §11(a)(16)(A), in introductory provisions, substituted "all interests in the property are" for "all interest in the property is".

Subsec. (e)(2). Pub. L. 110-172, §3(d)(2)(A), (B), redesignated par. (3) as (2) and struck out heading and text of former par. (2). Text read as follows: "In the case of any additional contribution, the fair market value of such contribution shall be determined by using the lesser of—

"(A) the fair market value of the property at the time of the initial fractional contribution, or

"(B) the fair market value of the property at the time of the additional contribution."

Subsec. (e)(2)(A)(i). Pub. L. 110-172, §11(a)(16)(B), substituted "interests" for "interest" and "on or before" for "before".

Subsec. (e)(2)(C). Pub. L. 110-172, §3(d)(2)(C), added subpar. (C).

Subsec. (e)(3). Pub. L. 110-172, §3(d)(2)(B), redesignated par. (3) as (2).

Subsec. (e)(4). Pub. L. 110-172, §3(d)(2)(A), struck out heading and text of par. (4). Text read as follows: "For purposes of this subsection—

“(A) ADDITIONAL CONTRIBUTION.—The term ‘additional contribution’ means any gift for which a deduction is allowed under subsection (a) or (b) of any interest in a property with respect to which the donor has previously made an initial fractional contribution.

“(B) INITIAL FRACTIONAL CONTRIBUTION.—The term ‘initial fractional contribution’ means, with respect to any donor, the first gift of an undivided portion of the donor’s entire interest in any tangible personal property for which a deduction is allowed under subsection (a) or (b).”

2006—Subsec. (c)(5). Pub. L. 109-280, §1234(c), added par. (5). See Codification note above.

Subsecs. (e), (f). Pub. L. 109-280, §1218(c), added subsec. (e) and redesignated former subsec. (e) as (f). See Codification note above.

1987—Subsecs. (a)(2), (b)(2), (3). Pub. L. 100-203 inserted “(or in opposition to)” after “on behalf of”.

1986—Subsecs. (d), (e). Pub. L. 99-514 added subsec. (d) and redesignated former subsec. (d) as (e).

1984—Subsec. (c)(4). Pub. L. 98-369, §1022(c), added par. (4).

Subsec. (d). Pub. L. 98-369, §1032(b)(3), added par. (1) and redesignated former pars. (1) and (2) as (2) and (3), respectively.

1983—Subsec. (d). Pub. L. 97-473 designated existing provisions as par. (1), substituted “bequests” for “gifts” second time appearing in par. (1) as so designated, and added par. (2).

1982—Subsec. (a). Pub. L. 97-248 inserted provision that rules similar to rules of section 501(j) apply for purposes of par. (2).

1981—Subsec. (a). Pub. L. 97-34, §442(c), substituted “year” for “quarter” in two places in provision preceding par. (1).

Subsec. (b). Pub. L. 97-34, §442(c), substituted “year” for “quarter” in provision preceding par. (1).

Subsec. (c)(3). Pub. L. 97-34, §423(b), added par. (3).

1976—Subsec. (a)(1). Pub. L. 94-455, §1902(a)(12)(D), struck out “Territory” after “any State”.

Subsec. (a)(2). Pub. L. 94-455, §§1307(d)(1)(B)(iv), 1313(b)(3), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “shareholder or individual” and inserted “or to foster national or international amateur sports competition (but only if no part of its activities involve the provision of athletic facilities or equipment)” after “or educational purposes”.

Subsec. (b)(1). Pub. L. 94-455, §1902(a)(12)(D), struck out “Territory” after “any State”.

Subsec. (b)(2). Pub. L. 94-455, §1307(d)(1)(B)(v), substituted “which is not disqualified for tax exemption under section 501(c)(3) by reason of attempting to influence legislation” for “no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation” after “shareholder or individual”.

Subsec. (c)(2). Pub. L. 94-455, §2124(e)(3), substituted “(other than an interest described in section 170(f)(3)(B))” for “(other than a remainder interest in a personal residence or farm or an undivided portion of the donor’s entire interest in property)” after “an interest in property”.

Subsec. (d). Pub. L. 94-455, §1902(a)(11), substituted subsec. (d) for former subsec. (d), pars. (1) through (10), which dealt with cross references to specific exemptions and rules of construction for gifts to the United States and its instrumentalities.

1970—Pub. L. 91-614 substituted “quarter” for “year” in three places.

1969—Subsecs. (a)(2), (b)(2), (3). Pub. L. 91-172, §201(d)(4)(C), (D), inserted non-participation and non-intervention in political campaigns as an additional qualification.

Subsec. (c). Pub. L. 91-172, §201(d)(3), substituted substantive provisions for simple reference to sections 503

and 681 in which such substantive provisions were formerly set out.

1958—Subsec. (c). Pub. L. 85-866 substituted “503” for “504”.

#### EFFECTIVE DATE OF 2007 AMENDMENT

Amendment by section 3(d)(2) of Pub. L. 110-172 effective as if included in the provisions of the Pension Protection Act of 2006, Pub. L. 109-280, to which such amendment relates, see section 3(j) of Pub. L. 110-172, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 2006 AMENDMENT

Amendment by section 1218(c) of Pub. L. 109-280 applicable to contributions, bequests, and gifts made after Aug. 17, 2006, see section 1218(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

Amendment by section 1234(c) of Pub. L. 109-280 applicable to contributions made after the date which is 180 days after Aug. 17, 2006, see section 1234(d) of Pub. L. 109-280, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1987 AMENDMENT

Amendment by Pub. L. 100-203 applicable with respect to activities after Dec. 22, 1987, see section 10711(c) of Pub. L. 100-203, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Amendment by Pub. L. 99-514 applicable to transfers and contributions made after Dec. 31, 1986, see section 1422(e) of Pub. L. 99-514, set out as a note under section 2055 of this title.

#### EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by section 1022(c) of Pub. L. 98-369 applicable to reformations after Dec. 31, 1978, but inapplicable to any reformation to which section 2055(e)(3) of this title as in effect before July 18, 1984, applies, see section 1022(e)(1) of Pub. L. 98-369, set out as a note under section 2055 of this title.

Amendment by section 1032(b)(3) of Pub. L. 98-369 applicable to taxable years beginning after July 18, 1984, see section 1032(c) of Pub. L. 98-369, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1983 AMENDMENT

For effective date of amendment by Pub. L. 97-473, see section 204(4) of Pub. L. 97-473, set out as an Effective Date note under section 7871 of this title.

#### EFFECTIVE DATE OF 1982 AMENDMENT

Amendment by Pub. L. 97-248 effective Oct. 5, 1976, see section 286(c) of Pub. L. 97-248, set out as a note under section 501 of this title.

#### EFFECTIVE DATE OF 1981 AMENDMENT

Pub. L. 97-34, title IV, §423(c)(2), Aug. 13, 1981, 95 Stat. 317, provided that: “The amendment made by subsection (b) [amending this section] shall apply to transfers after December 31, 1981.”

Amendment by section 442(c) of Pub. L. 97-34 applicable with respect to gifts made after Dec. 31, 1981, see section 442(e) of Pub. L. 97-34, set out as a note under section 2501 of this title.

#### EFFECTIVE DATE OF 1976 AMENDMENT

Amendment by section 2124(e)(3) of Pub. L. 94-455 applicable with respect to contributions or transfers made after June 13, 1976, see section 2124(e)(4) of Pub. L. 94-455, set out as a note under section 170 of this title.

#### EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91-614 applicable with respect to gifts made after Dec. 31, 1970, see section 102(e) of Pub. L. 91-614, set out as a note under section 2501 of this title.

## EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by section 201(d)(3) of Pub. L. 91-172 applicable to gifts made after Dec. 31, 1969, except that the amendment of par. (2) of subsec. (c) applicable to gifts made after July 31, 1969, see section 201(g)(4)(D) of Pub. L. 91-172, set out as a note under section 170 of this title.

Amendment by section 201(d)(4)(C), (D) of Pub. L. 91-172 applicable to gifts and transfers made after Dec. 31, 1969, see section 201(g)(4)(E) of Pub. L. 91-172, set out as a note under section 170 of this title.

## CHARITABLE LEAD TRUSTS AND CHARITABLE REMAINDER TRUSTS IN CASE OF INCOME AND GIFT TAXES

For inclusion of provisions comparable to section 2055(e)(3) of this title in this section, see section 514(b) of Pub. L. 95-600, set out as a note under section 2055 of this title.

**§ 2523. Gift to spouse****(a) Allowance of deduction**

Where a donor transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to its value.

**(b) Life estate or other terminable interest**

Where, on the lapse of time, on the occurrence of an event or contingency, or on the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest—

(1) if the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(2) if the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For purposes of this paragraph, the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or on the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for purposes of paragraph (1), be considered as a transfer by him. Except as provided in subsection (e), where at the time of the transfer it is impossible to ascertain the particular person

or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

**(c) Interest in unidentified assets**

Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for purposes of subsection (a), be reduced by the aggregate value of such particular assets.

**(d) Joint interests**

If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for purposes of subsection (b) as an interest retained by the donor in himself.

**(e) Life estate with power of appointment in donee spouse**

Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of such interest, or such portion, to any person other than the donee spouse—

(1) the interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) no part of the interest, or such portion, so transferred shall, for purposes of subsection (b)(1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events. For purposes of this subsection, the term "specific portion" only includes a portion determined on a fractional or percentage basis.

**(f) Election with respect to life estate for donee spouse****(1) In general**

In the case of qualified terminable interest property—

(A) for purposes of subsection (a), such property shall be treated as transferred to the donee spouse, and

(B) for purposes of subsection (b)(1), no part of such property shall be considered as