

(B) paragraph (1) shall not apply for purposes of applying section 1297.

**(4) Recharacterization of purported gifts**

In the case of any transfer directly or indirectly from a partnership or foreign corporation which the transferee treats as a gift or bequest, the Secretary may recharacterize such transfer in such circumstances as the Secretary determines to be appropriate to prevent the avoidance of the purposes of this subsection.

**(5) Special rule where grantor is foreign person**

If—

(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made (directly or indirectly) transfers of property (other than in a sale for full and adequate consideration) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

**(6) Regulations**

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this subsection, including regulations providing that paragraph (1) shall not apply in appropriate cases.

(Aug. 16, 1954, ch. 736, 68A Stat. 226; Pub. L. 99-514, title XIV, §1401(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100-647, title I, §1014(a)(1), Nov. 10, 1988, 102 Stat. 3559; Pub. L. 101-508, title XI, §11343(a), Nov. 5, 1990, 104 Stat. 1388-472; Pub. L. 104-188, title I, §1904(a), Aug. 20, 1996, 110 Stat. 1910; Pub. L. 105-206, title VI, §6011(c)(1), July 22, 1998, 112 Stat. 818.)

AMENDMENTS

1998—Subsec. (f)(3)(B). Pub. L. 105-206 substituted “section 1297” for “section 1296”.

1996—Subsec. (c). Pub. L. 104-188, §1904(a)(2), inserted “subsection (f) and” before “sections 674” in closing provisions.

Subsec. (f). Pub. L. 104-188, §1904(a)(1), amended subsec. (f) generally. Prior to amendment, subsec. (f) read as follows: “SPECIAL RULE WHERE GRANTOR IS FOREIGN PERSON.—

“(1) IN GENERAL.—If—

“(A) but for this subsection, a foreign person would be treated as the owner of any portion of a trust, and

“(B) such trust has a beneficiary who is a United States person,

such beneficiary shall be treated as the grantor of such portion to the extent such beneficiary has made transfers of property by gift (directly or indirectly) to such foreign person. For purposes of the preceding sentence, any gift shall not be taken into account to the extent such gift would be excluded from taxable gifts under section 2503(b).

“(2) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection.”

1990—Subsec. (f). Pub. L. 101-508 added subsec. (f).

1988—Subsec. (e). Pub. L. 100-647 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as fol-

lows: “For purposes of this subpart, if a grantor’s spouse is living with the grantor at the time of the creation of any power or interest held by such spouse, the grantor shall be treated as holding such power or interest.”

1986—Subsec. (e). Pub. L. 99-514 added subsec. (e).

EFFECTIVE DATE OF 1998 AMENDMENT

Amendment by Pub. L. 105-206 effective, except as otherwise provided, as if included in the provisions of the Taxpayer Relief Act of 1997, Pub. L. 105-34, to which such amendment relates, see section 6024 of Pub. L. 105-206, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104-188 effective Aug. 20, 1996, with exception for certain trusts, see section 1904(d) of Pub. L. 104-188, set out as a note under section 643 of this title.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-508, title XI, §11343(b), Nov. 5, 1990, 104 Stat. 1388-472, provided that: “The amendments made by this section [amending this section] shall apply to—

“(1) any trust created after the date of the enactment of this Act [Nov. 5, 1990], and

“(2) any portion of a trust created on or before such date which is attributable to amounts contributed to the trust after such date.”

EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XIV, §1401(b), Oct. 22, 1986, 100 Stat. 2711, provided that: “The amendment made by this section [amending this section] shall apply with respect to transfers in trust made after March 1, 1986.”

**§ 673. Reversionary interests**

**(a) General rule**

The grantor shall be treated as the owner of any portion of a trust in which he has a reversionary interest in either the corpus or the income therefrom, if, as of the inception of that portion of the trust, the value of such interest exceeds 5 percent of the value of such portion.

**(b) Reversionary interest taking effect at death of minor lineal descendant beneficiary**

In the case of any beneficiary who—

(1) is a lineal descendant of the grantor, and

(2) holds all of the present interests in any portion of a trust,

the grantor shall not be treated under subsection (a) as the owner of such portion solely by reason of a reversionary interest in such portion which takes effect upon the death of such beneficiary before such beneficiary attains age 21.

**(c) Special rule for determining value of reversionary interest**

For purposes of subsection (a), the value of the grantor’s reversionary interest shall be determined by assuming the maximum exercise of discretion in favor of the grantor.

**(d) Postponement of date specified for reacquisition**

Any postponement of the date specified for the reacquisition of possession or enjoyment of the

reversionary interest shall be treated as a new transfer in trust commencing with the date on which the postponement is effective and terminating with the date prescribed by the postponement. However, income for any period shall not be included in the income of the grantor by reason of the preceding sentence if such income would not be so includible in the absence of such postponement.

(Aug. 16, 1954, ch. 736, 68A Stat. 227; Pub. L. 91-172, title II, §201(c), Dec. 30, 1969, 83 Stat. 560; Pub. L. 99-514, title XIV, §1402(a), Oct. 22, 1986, 100 Stat. 2711; Pub. L. 100-647, title I, §1014(b), Nov. 10, 1988, 102 Stat. 3559.)

#### AMENDMENTS

1988—Subsecs. (c), (d). Pub. L. 100-647 added subsecs. (c) and (d).

1986—Pub. L. 99-514 amended section generally, substituting “the value of such interest exceeds 5 percent of the value of such portion” for “the interest will or may reasonably be expected to take effect in possession or enjoyment within 10 years commencing with the date of the transfer of that portion of the trust” in subsec. (a), adding subsec. (b), striking out subsec. (c) which provided that the grantor not be treated under subsec. (a) as the owner of any portion of a trust where his reversionary interest in such portion was not to take effect in possession or enjoyment until the death of the persons to whom the income therefrom was payable, and subsec. (d) which provided that any postponement of the date specified for the reacquisition of possession or enjoyment of the reversionary interest be treated as a new transfer in trust commencing with the date on which the postponement was effected and terminating with the date prescribed by the postponement.

1969—Subsec. (b). Pub. L. 91-172 struck out provisions relating to trusts where the income was payable to a charitable beneficiary for at least a two-year period.

#### EFFECTIVE DATE OF 1988 AMENDMENT

Amendment by Pub. L. 100-647 effective, except as otherwise provided, as if included in the provision of the Tax Reform Act of 1986, Pub. L. 99-514, to which such amendment relates, see section 1019(a) of Pub. L. 100-647, set out as a note under section 1 of this title.

#### EFFECTIVE DATE OF 1986 AMENDMENT

Pub. L. 99-514, title XIV, §1402(c), Oct. 22, 1986, 100 Stat. 2712, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section and sections 674, 676, and 677 of this title] shall apply with respect to transfers in trust made after March 1, 1986.

“(2) TRANSFERS PURSUANT TO PROPERTY SETTLEMENT AGREEMENT.—The amendments made by this section shall not apply to any transfer in trust made after March 1, 1986, pursuant to a binding property settlement agreement entered into on or before March 1, 1986, which required the taxpayer to establish a grantor trust and for the transfer of a specified sum of money or property to the trust by the taxpayer. This paragraph shall apply only to the extent of the amount required to be transferred under the agreement described in the preceding sentence.”

#### EFFECTIVE DATE OF 1969 AMENDMENT

Amendment by Pub. L. 91-172 applicable to transfers in trust made after April 22, 1969, see section 201(g)(3) of Pub. L. 91-172, set out as a note under section 170 of this title.

### § 674. Power to control beneficial enjoyment

#### (a) General rule

The grantor shall be treated as the owner of any portion of a trust in respect of which the

beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

#### (b) Exceptions for certain powers

Subsection (a) shall not apply to the following powers regardless of by whom held:

##### (1) Power to apply income to support of a dependent

A power described in section 677(b) to the extent that the grantor would not be subject to tax under that section.

##### (2) Power affecting beneficial enjoyment only after occurrence of event

A power, the exercise of which can only affect the beneficial enjoyment of the income for a period commencing after the occurrence of an event such that a grantor would not be treated as the owner under section 673 if the power were a reversionary interest; but the grantor may be treated as the owner after the occurrence of the event unless the power is relinquished.

##### (3) Power exercisable only by will

A power exercisable only by will, other than a power in the grantor to appoint by will the income of the trust where the income is accumulated for such disposition by the grantor or may be so accumulated in the discretion of the grantor or a nonadverse party, or both, without the approval or consent of any adverse party.

##### (4) Power to allocate among charitable beneficiaries

A power to determine the beneficial enjoyment of the corpus or the income therefrom if the corpus or income is irrevocably payable for a purpose specified in section 170(c) (relating to definition of charitable contributions) or to an employee stock ownership plan (as defined in section 4975(e)(7)) in a qualified gratuitous transfer (as defined in section 664(g)(1)).

##### (5) Power to distribute corpus

A power to distribute corpus either—

(A) to or for a beneficiary or beneficiaries or to or for a class of beneficiaries (whether or not income beneficiaries) provided that the power is limited by a reasonably definite standard which is set forth in the trust instrument; or

(B) to or for any current income beneficiary, provided that the distribution of corpus must be chargeable against the proportionate share of corpus held in trust for the payment of income to the beneficiary as if the corpus constituted a separate trust.

A power does not fall within the powers described in this paragraph if any person has a power to add to the beneficiary or beneficiaries or to a class of beneficiaries designated to receive the income or corpus, except where such action is to provide for after-born or after-adopted children.

##### (6) Power to withhold income temporarily

A power to distribute or apply income to or for any current income beneficiary or to accu-