

first calendar year ending after the date of enactment [probably means the date of enactment of Pub. L. 104-188, Oct. 20, 1996].”

STUDY OF METHODS USED TO DISTORT VALUATION OF PROPERTY FOR PURPOSES OF ESTATE AND GIFT TAX

Pub. L. 101-508, title XI, §11602(d), Nov. 5, 1990, 104 Stat. 1388-500, provided that: “The Secretary of the Treasury shall conduct a study of—

“(1) the prevalence and types of options and agreements used to distort the valuation of property for purposes of subtitle B of the Internal Revenue Code of 1986, and

“(2) other methods using discretionary rights to distort the value of property for such purposes.

The Secretary shall, not later than December 31, 1992, report the results of such study, together with such legislative recommendations as the Secretary considers necessary, to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.”

**§ 2702. Special valuation rules in case of transfers of interests in trusts**

**(a) Valuation rules**

**(1) In general**

Solely for purposes of determining whether a transfer of an interest in trust to (or for the benefit of) a member of the transferor’s family is a gift (and the value of such transfer), the value of any interest in such trust retained by the transferor or any applicable family member (as defined in section 2701(e)(2)) shall be determined as provided in paragraph (2).

**(2) Valuation of retained interests**

**(A) In general**

The value of any retained interest which is not a qualified interest shall be treated as being zero.

**(B) Valuation of qualified interest**

The value of any retained interest which is a qualified interest shall be determined under section 7520.

**(3) Exceptions**

**(A) In general**

This subsection shall not apply to any transfer—

- (i) if such transfer is an incomplete gift,
- (ii) if such transfer involves the transfer of an interest in trust all the property in which consists of a residence to be used as a personal residence by persons holding term interests in such trust, or
- (iii) to the extent that regulations provide that such transfer is not inconsistent with the purposes of this section.

**(B) Incomplete gift**

For purposes of subparagraph (A), the term “incomplete gift” means any transfer which would not be treated as a gift whether or not consideration was received for such transfer.

**(b) Qualified interest**

For purposes of this section, the term “qualified interest” means—

- (1) any interest which consists of the right to receive fixed amounts payable not less frequently than annually,
- (2) any interest which consists of the right to receive amounts which are payable not less

frequently than annually and are a fixed percentage of the fair market value of the property in the trust (determined annually), and

(3) any noncontingent remainder interest if all of the other interests in the trust consist of interests described in paragraph (1) or (2).

**(c) Certain property treated as held in trust**

For purposes of this section—

**(1) In general**

The transfer of an interest in property with respect to which there is 1 or more term interests shall be treated as a transfer of an interest in a trust.

**(2) Joint purchases**

If 2 or more members of the same family acquire interests in any property described in paragraph (1) in the same transaction (or a series of related transactions), the person (or persons) acquiring the term interests in such property shall be treated as having acquired the entire property and then transferred to the other persons the interests acquired by such other persons in the transaction (or series of transactions). Such transfer shall be treated as made in exchange for the consideration (if any) provided by such other persons for the acquisition of their interests in such property.

**(3) Term interest**

The term “term interest” means—

- (A) a life interest in property, or
- (B) an interest in property for a term of years.

**(4) Valuation rule for certain term interests**

If the nonexercise of rights under a term interest in tangible property would not have a substantial effect on the valuation of the remainder interest in such property—

- (A) subparagraph (A) of subsection (a)(2) shall not apply to such term interest, and
- (B) the value of such term interest for purposes of applying subsection (a)(1) shall be the amount which the holder of the term interest establishes as the amount for which such interest could be sold to an unrelated third party.

**(d) Treatment of transfers of interests in portion of trust**

In the case of a transfer of an income or remainder interest with respect to a specified portion of the property in a trust, only such portion shall be taken into account in applying this section to such transfer.

**(e) Member of the family**

For purposes of this section, the term “member of the family” shall have the meaning given such term by section 2704(c)(2).

(Added Pub. L. 101-508, title XI, §11602(a), Nov. 5, 1990, 104 Stat. 1388-497; amended Pub. L. 104-188, title I, §1702(f)(11), Aug. 20, 1996, 110 Stat. 1872.)

AMENDMENTS

1996—Subsec. (a)(3)(A)(i). Pub. L. 104-188, §1702(f)(11)(A)(i), (ii), (B)(i), substituted “if” for “to the extent” and “incomplete gift” for “incomplete transfer”, and struck out “or” at end.

Subsec. (a)(3)(A)(ii). Pub. L. 104-188, §1702(f)(11)(A)(iii), substituted “, or” for period at end.

Subsec. (a)(3)(A)(iii). Pub. L. 104-188, § 1702(f)(11)(A)(iv), added cl. (iii).

Subsec. (a)(3)(B). Pub. L. 104-188, § 1702(f)(11)(B), substituted “incomplete gift” for “incomplete transfer” in heading and text.

**EFFECTIVE DATE OF 1996 AMENDMENT**

Amendment by Pub. L. 104-188 effective, except as otherwise expressly provided, as if included in the provision of the Revenue Reconciliation Act of 1990, Pub. L. 101-508, title XI, to which such amendment relates, see section 1702(i) of Pub. L. 104-188, set out as a note under section 38 of this title.

**§ 2703. Certain rights and restrictions disregarded**

**(a) General rule**

For purposes of this subtitle, the value of any property shall be determined without regard to—

(1) any option, agreement, or other right to acquire or use the property at a price less than the fair market value of the property (without regard to such option, agreement, or right), or

(2) any restriction on the right to sell or use such property.

**(b) Exceptions**

Subsection (a) shall not apply to any option, agreement, right, or restriction which meets each of the following requirements:

(1) It is a bona fide business arrangement.

(2) It is not a device to transfer such property to members of the decedent's family for less than full and adequate consideration in money or money's worth.

(3) Its terms are comparable to similar arrangements entered into by persons in an arms' length transaction.

(Added Pub. L. 101-508, title XI, § 11602(a), Nov. 5, 1990, 104 Stat. 1388-498.)

**§ 2704. Treatment of certain lapsing rights and restrictions**

**(a) Treatment of lapsed voting or liquidation rights**

**(1) In general**

For purposes of this subtitle, if—

(A) there is a lapse of any voting or liquidation right in a corporation or partnership, and

(B) the individual holding such right immediately before the lapse and members of such individual's family hold, both before and after the lapse, control of the entity,

such lapse shall be treated as a transfer by such individual by gift, or a transfer which is includible in the gross estate of the decedent, whichever is applicable, in the amount determined under paragraph (2).

**(2) Amount of transfer**

For purposes of paragraph (1), the amount determined under this paragraph is the excess (if any) of—

(A) the value of all interests in the entity held by the individual described in paragraph (1) immediately before the lapse (determined as if the voting and liquidation rights were nonlapsing), over

(B) the value of such interests immediately after the lapse.

**(3) Similar rights**

The Secretary may by regulations apply this subsection to rights similar to voting and liquidation rights.

**(b) Certain restrictions on liquidation disregarded**

**(1) In general**

For purposes of this subtitle, if—

(A) there is a transfer of an interest in a corporation or partnership to (or for the benefit of) a member of the transferor's family, and

(B) the transferor and members of the transferor's family hold, immediately before the transfer, control of the entity,

any applicable restriction shall be disregarded in determining the value of the transferred interest.

**(2) Applicable restriction**

For purposes of this subsection, the term “applicable restriction” means any restriction—

(A) which effectively limits the ability of the corporation or partnership to liquidate, and

(B) with respect to which either of the following applies:

(i) The restriction lapses, in whole or in part, after the transfer referred to in paragraph (1).

(ii) The transferor or any member of the transferor's family, either alone or collectively, has the right after such transfer to remove, in whole or in part, the restriction.

**(3) Exceptions**

The term “applicable restriction” shall not include—

(A) any commercially reasonable restriction which arises as part of any financing by the corporation or partnership with a person who is not related to the transferor or transferee, or a member of the family of either, or

(B) any restriction imposed, or required to be imposed, by any Federal or State law.

**(4) Other restrictions**

The Secretary may by regulations provide that other restrictions shall be disregarded in determining the value of the transfer of any interest in a corporation or partnership to a member of the transferor's family if such restriction has the effect of reducing the value of the transferred interest for purposes of this subtitle but does not ultimately reduce the value of such interest to the transferee.

**(c) Definitions and special rules**

For purposes of this section—

**(1) Control**

The term “control” has the meaning given such term by section 2701(b)(2).

**(2) Member of the family**

The term “member of the family” means, with respect to any individual—