

AMENDMENTS

1996—Subsec. (a)(3)(B). Pub. L. 104-188, §1702(f)(1)(B), inserted “certain” before “qualified” in heading.

Subsec. (a)(3)(C). Pub. L. 104-188, §1702(f)(1)(A), added subpar. (C).

Subsec. (a)(4)(B)(i). Pub. L. 104-188, §1702(f)(2), inserted “(or, to the extent provided in regulations, the rights as to either income or capital)” after “income and capital”.

Subsec. (b)(2)(C). Pub. L. 104-188, §1702(f)(3)(A), added subpar. (C).

Subsec. (c)(1)(B)(i). Pub. L. 104-188, §1702(f)(4), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows: “a right to distributions with respect to any junior equity interest (as defined in subsection (a)(4)(B)(i)).”

Subsec. (c)(3)(C)(i). Pub. L. 104-188, §1702(f)(5)(A), amended cl. (i) generally. Prior to amendment, cl. (i) read as follows:

“(i) WAIVER OF QUALIFIED PAYMENT TREATMENT.—A transferor or applicable family member may elect with respect to payments under any interest specified in such election to treat such payments as payments which are not qualified payments.”

Subsec. (c)(3)(C)(ii). Pub. L. 104-188, §1702(f)(5)(B), amended first sentence generally. Prior to amendment, first sentence read as follows: “A transferor or any applicable family member may elect to treat any distribution right as a qualified payment, to be paid in the amounts and at the times specified in such election.”

Subsec. (d)(1). Pub. L. 104-188, §1702(f)(1)(C), substituted “subsection (a)(3)(B) or (C)” for “subsection (a)(3)(B)”.

Subsec. (d)(3)(A)(iii). Pub. L. 104-188, §1702(f)(6), struck out “the period ending on the date of” after “with respect to”.

Subsec. (d)(3)(B)(ii)(I). Pub. L. 104-188, §1702(f)(7), inserted “or the exclusion under section 2503(b),” after “section 2523.”

Subsec. (d)(4)(A). Pub. L. 104-188, §1702(f)(1)(C), substituted “subsection (a)(3)(B) or (C)” for “subsection (a)(3)(B)”.

Subsec. (d)(4)(C). Pub. L. 104-188, §1702(f)(9), added subpar. (C).

Subsec. (e)(3). Pub. L. 104-188, §1702(f)(3)(B), substituted “Attribution of indirect holdings and transfers” for “Attribution rules” in par. heading, struck out subpar. (A) designation and heading which read “Indirect holdings and transfers”, and struck out subpar. (B) which read as follows:

“(B) CONTROL.—For purposes of subsections (b)(1), an individual shall be treated as holding any interest held by the individual’s brothers, sisters, or lineal descendants.”

Subsec. (e)(5)(A). Pub. L. 104-188, §1702(f)(8)(A), substituted “such transaction” for “such contribution to capital or such redemption, recapitalization, or other change”.

Subsec. (e)(5)(B). Pub. L. 104-188, §1702(f)(8)(B), substituted “such transaction” for “the transfer”.

Subsec. (e)(6). Pub. L. 104-188, §1702(f)(10), inserted “or to reflect the application of subsection (d)” before period at end.

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.

EFFECTIVE DATE

Pub. L. 101-508, title XI, §11602(e)(1), Nov. 5, 1990, 104 Stat. 1388-500, provided that:

“(A) IN GENERAL.—The amendments made by subsection (a) [enacting this chapter]—

“(i) to the extent such amendments relate to sections 2701 and 2702 of the Internal Revenue Code of

1986 (as added by such amendments), shall apply to transfers after October 8, 1990,

“(ii) to the extent such amendments relate to section 2703 of such Code (as so added), shall apply to—

“(I) agreements, options, rights, or restrictions entered into or granted after October 8, 1990, and

“(II) agreements, options, rights, or restrictions which are substantially modified after October 8, 1990, and

“(iii) to the extent such amendments relate to section 2704 of such Code (as so added), shall apply to restrictions or rights (or limitations on rights) created after October 8, 1990.

“(B) EXCEPTION.—For purposes of subparagraph (A)(i), with respect to property transferred before October 9, 1990—

“(i) any failure to exercise a right of conversion,

“(ii) any failure to pay dividends, and

“(iii) any failure to exercise other rights specified in regulations, shall not be treated as a subsequent transfer.”

TIME FOR ELECTION UNDER SUBSECTION (c)(3)(C)(i)

Pub. L. 104-188, title I, §1702(f)(5)(C), Aug. 20, 1996, 110 Stat. 1871, provided that: “The time for making an election under the second sentence of section 2701(c)(3)(C)(i) of the Internal Revenue Code of 1986 (as amended by subparagraph (A)) shall not expire before the due date (including extensions) for filing the transferor’s return of the tax imposed by section 2501 of such Code for the 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, directed the Secretary of the Treasury to conduct a study of 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 other methods using discretionary rights to distort this valuation, and report to Congress the results of the study, together with any legislative recommendations, not later than Dec. 31, 1992.

§ 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—