

For the purposes of clauses (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) If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which 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) The lapse of 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) Five 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) For the purposes of Minnesota Statutes, Section 292.01, 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.

Approved March 16, 1965.

CHAPTER 89—H. F. No. 388

An act relating to inheritance taxes; amending Minnesota Statutes 1961, Section 291.01, Subdivision 3, as amended.

Be it enacted by the Legislature of the State of Minnesota:

Changes or additions indicated by italics, deletions by ~~strikeout~~.

Subdivision 1, Minnesota Statutes 1961, Section 291.01, Subd. 3, as amended by Laws 1963, Chapter 218, Section 1, is amended to read:

Subd. 3. Inheritance taxes; powers of appointment. A taxable transfer under the provisions of ~~this~~ Minnesota Statutes, Chapter 291 shall be deemed to have been made:

(1) To the extent of any property with respect to which the decedent has at the time of his death a general power of appointment, ~~or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent; such transfer would be taxable under the provisions of this chapter. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.~~ For the purposes of this subparagraph (1), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised: *created on or before October 21, 1942, is exercised by the decedent*

(A) *by will, or*

(B) *by disposition which is of such nature that if it were a transfer of property owned by the decedent, such transfer would be taxable under the provisions of Minnesota Statutes, Chapter 291; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the exercise of such power shall not be deemed to be the exercise of a general power of appointment if*

(a) *such partial release occurred before November 1, 1959, or*

(b) *the donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than 6 months after the termination of such legal disability.*

(2) To the extent of any property with respect to which the decedent ~~by will, or by a disposition which is of such nature that if it were a transfer of property owned by the decedent,~~ such trans-

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fer would be taxable under the provisions of this chapter; exercises a power of appointment by creating another power of appointment which can be validly exercised so as to postpone the vesting of any estate or interest in such property; 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.

has at the time of his death a general power of appointment created after October 21, 1942, or with respect to which the decedent has at any time exercised or released such a power of appointment by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such transfer would be taxable under the provisions of this chapter. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power. For purposes of this paragraph (2), the power of appointment shall be considered to exist on the date of the decedent's death even though the exercise of the power is subject to a precedent giving of notice or even though the exercise of the power takes effect only on the expiration of a stated period after its exercise, whether or not on or before the date of the decedent's death notice has been given or the power has been exercised.

(3) The term "general power of appointment" means a power which is exercisable in favor of the decedent; his estate; his creditors; or the creditors of his estate; except that

(a) A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.

(b) In the case of a power of appointment which is exercisable by the decedent only in conjunction with another person

(A) If the power is not exercisable by the decedent 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 decedent 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 decedent; such power shall not be deemed a general power of appointment. For the purposes of this clause a person who; after the death of the decedent; may be possessed of a power of appointment (with respect to the property subject to the decedent's power) which he may exercise in his own favor shall be

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deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the decedent's power.

(C) If (after the application of clauses (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 decedent) in favor of whom such power is exercisable.

(D) For purposes of clauses (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:

(3) *To the extent of any property with respect to which the decedent:*

(A) *by will, or*

(B) *by a disposition which is of such nature that if it were a transfer of property owned by the decedent such transfer would be taxable under the provisions of this chapter,*

exercises a power of appointment created after October 21, 1942, by creating another power of appointment which can be validly exercised so as to postpone the vesting of any estate or interest in such property, 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.

(4) *The term "general power of appointment" means a power which is exercisable in favor of the decedent, his estate, his creditors or the creditors of his estate; except that:*

(A) *A power to consume, invade, or appropriate property for the benefit of the decedent which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the decedent shall not be deemed a general power of appointment.*

(B) *A power of appointment created on or before October 21, 1942, which is exercisable by the decedent only in conjunction with another person shall not be deemed a general power of appointment.*

(C) *In the case of a power of appointment created after October 21, 1942, which is exercisable by the decedent only in conjunction with another person:*

Changes or additions indicated by italics, deletions by ~~strikeout~~.

(a) *If the power is not exercisable by the decedent 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 decedent 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 decedent, such power shall not be deemed a general power of appointment. For the purposes of this clause a person who, after the death of the decedent, may be possessed of a power of appointment (with respect to the property subject to the decedent'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 decedent's power.*

(c) *If, after the application of clauses (a) and (b), the power is a general power of appointment and is exercisable in favor of such other person, in 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 decedent, in favor of whom such power is exercisable. For purposes of clauses (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.*

~~(4)~~ (5) *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 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, exceeded in value, at the time of such lapse, the greater of the following amounts:*

(a) *\$5,000 or*

(b) *5 percent of the aggregate value, at the time of such lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could have been satisfied.*

(6) *For purposes of this subdivision, a power of appointment created by a will executed on or before October 12, 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.*

Approved March 16, 1965.

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