

a transfer is subject to Federal gift tax if a gift tax is imposed under section 2501(a). A transfer is subject to Federal estate tax if the value of the property is includible in the decedent's gross estate as determined under section 2031 or section 2103.

(3) *Special rule for certain QTIP trusts.* Solely for purposes of chapter 13, if a transferor of qualified terminable interest property (QTIP) elects under § 26.2652-2(a) to treat the property as if the QTIP election had not been made (reverse QTIP election), the identity of the transferor of the property is determined without regard to the application of sections 2044, 2207A, and 2519.

(4) *Exercise of certain nongeneral powers of appointment.* The exercise of a power of appointment that is not a general power of appointment (as defined in section 2041(b)) is treated as a transfer subject to Federal estate or gift tax by the holder of the power if the power is exercised in a manner that may postpone or suspend the vesting, absolute ownership, or power of alienation of an interest in property for a period, measured from the date of creation of the trust, extending beyond any specified life in being at the date of creation of the trust plus a period of 21 years plus, if necessary, a reasonable period of gestation (perpetuities period). For purposes of this paragraph (a)(4), the exercise of a power of appointment that validly postpones or suspends the vesting, absolute ownership, or power of alienation of an interest in property for a term of years that will not exceed 90 years (measured from the date of creation of the trust) is not an exercise that may extend beyond the perpetuities period.

(5) *Split-gift transfers.* In the case of a transfer with respect to which the donor's spouse makes an election under section 2513 to treat the gift as made one-half by the spouse, the electing spouse is treated as the transferor of one-half of the entire value of the property transferred by the donor, regardless of the interest the electing spouse is actually deemed to have transferred under section 2513. The donor is treated as the transferor of one-half of the value of the entire property. See § 26.2632-1(c)(5) *Example 3*, regarding allocation of GST exemption with respect to split-gift transfers subject to an ETIP.

(6) *Examples.* The following examples illustrate the principles of this paragraph (a):

Example 1. Identity of transferor. T transfers \$100,000 to a trust for the sole benefit of T's grandchild. The transfer is a completed gift under § 25.2511-2 of this

chapter. Thus, for purposes of chapter 13, T is the transferor of the \$100,000. It is immaterial that a portion of the transfer is excluded from the total amount of T's taxable gift by reason of section 2503(b).

Example 2. Gift splitting and identity of transferor. The facts are the same as in Example 1, except T's spouse, S, consents under section 2513 to split the gift with T. For purposes of chapter 13, S and T are each treated as a transferor of \$50,000 to the trust.

Example 3. Change of transferor on subsequent transfer tax event. T transfers \$100,000 to a trust providing that all the net trust income is to be paid to T's spouse, S, for S's lifetime. T elects under section 2523(f) to treat the transfer as a transfer of qualified terminable interest property, and T does not make the reverse QTIP election under section 2652(a)(3). On S's death, the trust property is included in S's gross estate under section 2044. Thus, S becomes the transferor at the time of S's death.

Example 4. Effect of transfer of an interest in trust on identity of the transferor. T transfers \$100,000 to a trust providing that all of the net income is to be paid to T's child, C, for C's lifetime. At C's death, the trust property is to be paid to T's grandchild. C transfers the income interest to X, an unrelated party, in a transfer that is a completed transfer for Federal gift tax purposes. Because C's transfer is a transfer of a term interest in the trust that does not affect the rights of other parties with respect to the trust property, T remains the transferor with respect to the trust.

Example 5. Effect of lapse of withdrawal right on identity of transferor. T transfers \$10,000 to a new trust providing that the trust income is to be paid to T's child, C, for C's life and, on the death of C, the trust principal is to be paid to T's grandchild, GC. The trustee has discretion to distribute principal for GC's benefit during C's lifetime. C has a right to withdraw \$10,000 from the trust for a 60-day period following the transfer. Thereafter, the power lapses. C does not exercise the withdrawal right. The transfer by T is a completed transfer within the meaning of § 25.2511-2 of this chapter and, thus, T is treated as having transferred the entire \$10,000 to the trust. On the lapse of the withdrawal right, C becomes a transferor to the extent C is treated as having made a completed transfer for purposes of chapter 12. Therefore, except to the extent that the amount with respect to which the power of withdrawal lapses exceeds the greater of \$5,000 or 5% of the value of the trust property, T remains the transferor of the trust property for purposes of chapter 13.

Example 6. Effect of reverse QTIP election on identity of the transferor. T establishes a testamentary trust having a principal of \$500,000. Under the terms of the trust, all trust income is payable to T's surviving spouse, S, during S's lifetime. T's executor makes an election to treat the trust property as qualified terminable interest property and also makes the reverse QTIP election. For purposes of chapter 13, T is the transferor with respect to the trust. On S's death, the then full fair market value of the trust is includible in S's gross estate under section 2044. However, because of the reverse QTIP

election, S does not become the transferor with respect to the trust; T continues to be the transferor.

Example 7. Effect of reverse QTIP election on constructive additions. The facts are the same as in Example 6, except the inclusion of the QTIP trust in S's gross estate increased the Federal estate tax liability of S's estate by \$200,000. The estate does not exercise the right of recovery from the trust granted under section 2207A. Under local law, the beneficiaries of S's residuary estate (which bears all estate taxes under the will) could compel the executor to exercise the right of recovery but do not do so. Solely for purposes of chapter 13, the beneficiaries of the residuary estate are not treated as having made an addition to the trust by reason of their failure to exercise their right of recovery. Because of the reverse QTIP election, for GST purposes, the trust property is not treated as includible in S's gross estate and, under those circumstances, no right of recovery exists.

Example 8. Effect of reverse QTIP election on constructive additions. S, the surviving spouse of T, dies testate. At the time of S's death, S was the beneficiary of a trust with respect to which T's executor made a QTIP election under section 2056(b)(7). Thus, the trust is includible in S's gross estate under section 2044. T's executor also made the reverse QTIP election with respect to the trust. S's will provides that all death taxes payable with respect to the trust are payable from S's residuary estate. Since the transferor of the property is determined without regard to section 2044 and section 2207A, S is not treated as making a constructive addition to the trust by reason of the tax apportionment clause in S's will.

Example 9. Exercise of a nongeneral power of appointment. On May 15, 1990, T established an irrevocable trust under which the trust income is to be paid to T's child, C, for life. C is given a testamentary power to appoint the remainder in further trust for the benefit of C's issue. In default of C's exercise of the power, the remainder is to pass to charity. C dies on February 3, 1997, survived by two children and a sibling, S (who was born prior to May 15, 1990). C exercises the power in a manner that validly extends the trust in favor of C's issue until the later of May 15, 2070 (80 years from the date the trust was created), or the death of S. C's exercise of the power is considered a transfer by C that is subject to the estate or gift tax because it may extend the term of the trust beyond the perpetuities period.

Example 10. Exercise of a nongeneral power of appointment. The facts are the same as in Example 9, except local law provides that the effect of C's exercise is to extend the term of the trust until May 15, 2070, whether or not S survives that date. C is not treated as having made a transfer to the trust as a result of the exercise of the power because the exercise of the power does not extend the term of the trust beyond a period of 90 years measured from the creation of the trust. The result would be the same if the effect of C's exercise is either to extend the term of the trust until the death of S or to extend the term of the trust until the first to occur of May 15, 2070, or the death of S.