

§ 25.2702-1

(8) Disposition of trust assets on cessation as qualified personal residence trust.

(d) Examples.

§ 25.2702-6 *Reduction in taxable gifts.*

(a) Transfers of retained interests in trust.

(1) Inter vivos transfers.

(2) Testamentary transfers.

(3) Gift splitting.

(b) Amount of reduction.

(1) In general.

(2) Treatment of annual exclusion.

(3) Overlap with section 2001.

(c) Examples.

§ 25.2702-7 *Effective dates.*

§ 25.2702-1 Special valuation rules in the case of transfers of interests in trust.

(a) *Scope of section 2702.* Section 2702 provides special rules to determine the amount of the gift when an individual makes a transfer in trust to (or for the benefit of) a member of the individual's family and the individual or an applicable family member retains an interest in the trust. Section 25.2702-4 treats certain transfers of property as transfers in trust. Certain transfers, including transfers to a personal residence trust, are not subject to section 2702. See paragraph (c) of this section. Member of the family is defined in § 25.2702-2(a)(1). Applicable family member is defined in § 25.2701-1(d)(2).

(b) *Effect of section 2702.* If section 2702 applies to a transfer, the value of any interest in the trust retained by the transferor or any applicable family member is determined under § 25.2702-2(b). The amount of the gift, if any, is then determined by subtracting the value of the interests retained by the transferor or any applicable family member from the value of the transferred property. If the retained interest is not a qualified interest (as defined in § 25.2702-3), the retained interest is generally valued at zero, and the amount of the gift is the entire value of the property.

(c) *Exceptions to section 2702.* Section 2702 does not apply to the following transfers.

(1) *Incomplete gift.* A transfer no portion of which would be treated as a completed gift without regard to any consideration received by the transferor. If a transfer is wholly incomplete as to an undivided fractional share of the property transferred (without regard to any consideration received by

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the transferor), for purposes of this paragraph the transfer is treated as incomplete as to that share.

(2) *Personal residence trust.* A transfer in trust that meets the requirements of § 25.2702-5.

(3) *Charitable remainder trust.* (i) For transfers made on or after May 19, 1997, a transfer to a pooled income fund described in section 642(c)(5); a transfer to a charitable remainder annuity trust described in section 664(d)(1); a transfer to a charitable remainder unitrust described in section 664(d)(2) if under the terms of the governing instrument the unitrust amount can be computed only under section 664(d)(2)(A); and a transfer to a charitable remainder unitrust if under the terms of the governing instrument the unitrust amount can be computed under section 664(d)(2) and (3) and either there are only two consecutive noncharitable beneficial interests and the transferor holds the second of the two interests, or the only permissible recipients of the unitrust amount are the transferor, the transferor's U.S. citizen spouse, or both the transferor and the transferor's U.S. citizen spouse.

(ii) For transfers made before May 19, 1997, a transfer in trust if the remainder interest in the trust qualifies for a deduction under section 2522.

(4) *Pooled income fund.* A transfer of property to a pooled income fund (as defined in section 642(c)(5)).

(5) *Charitable lead trust.* A transfer in trust if the only interest in the trust, other than the remainder interest or a qualified annuity or unitrust interest, is an interest that qualifies for deduction under section 2522.

(6) *Certain assignments of remainder interests.* The assignment of a remainder interest if the only retained interest of the transferor or an applicable family member is as the permissible recipient of distributions of income in the sole discretion of an independent trustee (as defined in section 674(c)).

(7) *Certain property settlements.* A transfer in trust if the transfer of an interest to a spouse is deemed to be for full and adequate consideration by reason of section 2516 (relating to certain

property settlements) and the remaining interests in the trust are retained by the other spouse.

(8) *Transfer or assignment to a Qualified Domestic Trust.* A transfer or assignment (as described in section 2056(d)(2)(B)) by a noncitizen surviving spouse of property to a Qualified Domestic Trust under the circumstances described in § 20.2056A-4(b) of this chapter, where the surviving spouse retains an interest in the transferred property that is not a qualified interest and the transfer is not described in sections 2702(a)(3)(A)(ii) or 2702(c)(4).

[T.D. 8395, 57 FR 4265, Feb. 4, 1992, as amended by T.D. 8612, 60 FR 43554, Aug. 22, 1995; T.D. 8791, 63 FR 68194, Dec. 10, 1998]

§ 25.2702-2 Definitions and valuation rules.

(a) *Definitions.* The following definitions apply for purposes of section 2702 and the regulations thereunder.

(1) *Member of the family.* With respect to any individual, member of the family means the individual's spouse, any ancestor or lineal descendant of the individual or the individual's spouse, any brother or sister of the individual, and any spouse of the foregoing.

(2) *Transfer in trust.* A transfer in trust includes a transfer to a new or existing trust and an assignment of an interest in an existing trust. Transfer in trust does not include—

(i) The exercise, release or lapse of a power of appointment over trust property that is not a transfer under chapter 12; or

(ii) The execution of a qualified disclaimer (as defined in section 2518).

(3) *Retained.* Retained means held by the same individual both before and after the transfer in trust. In the case of the creation of a term interest, any interest in the property held by the transferor immediately after the transfer is treated as held both before and after the transfer.

(4) *Interest.* An interest in trust includes a power with respect to a trust if the existence of the power would cause any portion of a transfer to be treated as an incomplete gift under chapter 12.

(5) *Qualified interest.* Qualified interest means a qualified annuity interest, a qualified unitrust interest, or a quali-

fied remainder interest. Retention of a power to revoke a qualified annuity interest (or unitrust interest) of the transferor's spouse is treated as the retention of a qualified annuity interest (or unitrust interest).

(6) *Qualified annuity interest.* Qualified annuity interest means an interest that meets all the requirements of § 25.2702-3(b) and (d).

(7) *Qualified unitrust interest.* Qualified unitrust interest means an interest that meets all the requirements of § 25.2702-3(c) and (d).

(8) *Qualified remainder interest.* Qualified remainder interest means an interest that meets all the requirements of § 25.2702-3(f).

(9) *Governing instrument.* Governing instrument means the instrument or instruments creating and governing the operation of the trust arrangement.

(b) *Valuation of retained interests—(1) In general.* Except as provided in paragraphs (b)(2) and (c) of this section, the value of any interest retained by the transferor or an applicable family member is zero.

(2) *Qualified interest.* The value of a qualified annuity interest and a qualified remainder interest following a qualified annuity interest are determined under section 7520. The value of a qualified unitrust interest and a qualified remainder interest following a qualified unitrust interest are determined as if they were interests described in section 664.

(c) *Valuation of a term interest in certain tangible property—(1) In general.* If section 2702 applies to a transfer in trust of tangible property described in paragraph (c)(2) of this section (“tangible property”), the value of a retained term interest (other than a qualified interest) is not determined under section 7520 but is the amount the transferor establishes as the amount a willing buyer would pay a willing seller for the interest, each having reasonable knowledge of the relevant facts and neither being under any compulsion to buy or sell. If the transferor cannot reasonably establish the value of the term interest pursuant to this paragraph (c)(1), the interest is valued at zero.