

§ 25.2503-4

26 CFR Ch. I (4-1-08 Edition)

present interest. The power would not be disregarded to the extent that the trustee during F's life could distribute corpus to persons other than F.

Example (5). The corpus of a trust created by J consists of certain real property, subject to a mortgage. The terms of the trust provide that the net income from the property is to be used to pay the mortgage. After the mortgage is paid in full the net income is to be paid to K during his lifetime. Since K's right to receive the income payments will not begin until after the mortgage is paid in full the transfer in trust represents a gift of a future interest in property against which no exclusion is allowable.

Example (6). L pays premiums on a policy of insurance on his life, all the incidents of ownership in the policy (including the right to surrender the policy) are vested in M. The payment of premiums by L constitutes a gift of a present interest in property.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28727, Dec. 29, 1972; T.D. 7910, 48 FR 40373, Sept. 7, 1983]

§ 25.2503-4 Transfer for the benefit of a minor.

(a) Section 2503(c) provides that no part of a transfer for the benefit of a donee who has not attained the age of 21 years on the date of the gift will be considered a gift of a future interest in property if the terms of the transfer satisfy all of the following conditions:

(1) Both the property itself and its income may be expended by or for the benefit of the donee before he attains the age of 21 years;

(2) Any portion of the property and its income not disposed of under subparagraph (1) of this paragraph will pass to the donee when he attains the age of 21 years; and

(3) Any portion of the property and its income not disposed of under subparagraph (1) of this paragraph will be payable either to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514(c) if he dies before attaining the age of 21 years.

(b) Either a power of appointment exercisable by the donee by will or a power of appointment exercisable by the donee during his lifetime will satisfy the conditions set forth in paragraph (a)(3) of this section. However, if the transfer is to qualify for the exclusion under this section, there must be no restrictions of substance (as distinguished from formal restrictions of the

type described in paragraph (g)(4) of § 25.2523(e)-1 by the terms of the instrument of transfer on the exercise of the power by the donee. However, if the minor is given a power of appointment exercisable during lifetime or is given a power of appointment exercisable by will, the fact that under the local law a minor is under a disability to exercise an *intervivos* power or to execute a will does not cause the transfer to fail to satisfy the conditions of section 2503(c). Further, a transfer does not fail to satisfy the conditions of section 2503(c) by reason of the mere fact that—

(1) There is left to the discretion of a trustee the determination of the amounts, if any, of the income or property to be expended for the benefit of the minor and the purpose for which the expenditure is to be made, provided there are no substantial restrictions under the terms of the trust instrument on the exercise of such discretion;

(2) The donee, upon reaching age 21, has the right to extend the term of the trust; or

(3) The governing instrument contains a disposition of the property or income not expended during the donee's minority to persons other than the donee's estate in the event of the default of appointment by the donee.

(c) A gift to a minor which does not satisfy the requirements of section 2503(c) may be either a present or a future interest under the general rules of § 25.2503-3. Thus, for example, a transfer of property in trust with income required to be paid annually to a minor beneficiary and corpus to be distributed to him upon his attaining the age of 25 is a gift of a present interest with respect to the right to income but is a gift of a future interest with respect to the right to corpus.

§ 25.2503-6 Exclusion for certain qualified transfer for tuition or medical expenses.

(a) *In general.* Section 2503(e) provides that any qualified transfer after December 31, 1981, shall not be treated as a transfer of property by gift for purposes of Chapter 12 of Subtitle B of the