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POWERS OF APPOINTMENT

JUNE 4 (legislative day, MAY 17), 1951.—Ordered to be printed

Mr. GEORGE, from the Committee on Finance, submitted the following

REPORT

[To accompany H. R. 2084]

The Committee on Finance, to whom was referred the bill (H. R. 2084) relating to the treatment of powers of appointment for estate and gift tax purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The committee amendments are as follows:

On page 2, line 8, and on page 3, line 3, insert after "subsection (c)" the following: "or (d)".

On page 2, line 9, and on page 7, line 5, insert after the word "power" the following: "or the complete release of such a power".

On page 2, line 10, and on page 7, line 7, strike out "July 1, 1951" and insert in lieu thereof the following: "November 1, 1951".

On page 7, strike out "or release" on line 17, and insert on line 18 after "October 21, 1942," the following: "or the release after May 31, 1951, of such a power,".

On page 3, strike out the semicolon in line 3 and all that follows through the word "power" in line 6.

On page 6, strike out the quotation marks in line 7, and after line 7, insert the following:

(5) LAPSE OF POWER.—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 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 exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) $5,000, or

(B) 5 per centum 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.

On page 7, strike out the semicolon in line 20 and all that follows through the word "power" in line 23.

On page 10, strike out the quotation marks in line 20, and after line 20, insert the following:

(5) LAPSE OF POWER.—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 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:

(A) $5,000, or

(B) 5 per centum of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

GENERAL STATEMENT

This bill simplifies sections 811 (f) and 1000 (c) of the Internal Revenue Code, relating to estate and gift tax on powers of appointment.

The present law taxes all powers to appoint, whether exercised or not, except two specified classes of powers. One of these exempts powers to appoint to certain near relatives. The other is intended to exempt fiduciary powers but has proved inadequate for the purpose.

The present law is artificial and complicated to apply, and tends to force property dispositions into narrow and rigid patterns. It was enacted in 1942 but applies to powers created before as well as after its enactment. A short period was originally provided for the release of preexisting powers without tax liability where such release was legally possible. This period has been repeatedly extended because of widespread dissatisfaction with various features of the law. The current extension expires June 30, 1951.

The bill would take effect as if its provisions had originally been contained in the 1942 act. It would apply to the estates of decedents dying after October 21, 1942, and to gifts made on or after January 1, 1943.

The bill treats powers created before the effective date of the 1942 act ("preexisting powers") separately from those created thereafter ("future powers"). Before the 1942 act only the exercise of a general power of appointment was taxable. The 1942 act taxed the exercise of such powers, and also the possession of unexercised general powers, the exercise of many limited powers, and the possession of those limited powers although unexercised. It applied to powers already in existence as well as to those to be created in the future. As to powers created before the 1942 act, the bill in substantial effect restores the law as it existed prior to 1942, with one minor change, to eliminate the "passing" problem. The language dealing with the inter vivos exercise of such powers has also been changed to be consistent with the present provisions of sections 811 (c) and (d).

The provisions of the 1942 act, taxing the exercise of limited powers of appointment and the mere possession of unexercised powers, were new to the Federal tax system. They extended, or might be construed to extend, to emergency powers to invade principal, discretionary powers given to trustees, and other types of powers which had theretofore not been regarded as powers of appointment. The prior law, taxing only the exercise of general powers, had been in force for nearly 25 years. In 1942 there were in existence a great many powers which had been created years before, in reliance on the law as it then existed.

Experience with the practical application of the provisions of the 1942 act to preexisting powers has demonstrated that the pre-1942 law should be restored as to those powers, for the above and other reasons, among which are the following: The impracticability of reviewing all wills and trust agreements already in force in 1942, in order to discover whether they did or did not create powers which might be taxable under the new law; the fact that many such powers will not be discovered until it is too late for the donees to do anything about them; the fact that often such powers are not legally releasable, and in many cases where the power is legally releasable the donee (usually a trustee) feels under a moral obligation not to release it, or the release would seriously impair the arrangements made by the creator of the power for the benefit and protection of his family; powers will be released in most cases where it is possible to do so; and application of a new statute to preexisting powers will tend to promote litigation. Little or no revenue will accrue to the Government, and such as is received will come from the unwary or those who are powerless to help themselves.

As to powers created after the passage of the 1942 act, the bill subjects to estate tax the possession of a general power of appointment, whether or not the power is exercised, and subjects to gift tax the exercise or release of such power. The bill defines a general power of appointment as a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. This includes a general beneficial power to appoint by will. It also includes certain rights to consume principal. It provides a test of taxability which is simple, clear-cut, and easy to apply.

Neither the power of appointment provisions of the 1942 act nor the present bill will bring in any appreciable revenue. Your committee believes that the most important consideration is to make the law simple and definite enough to be understood and applied by the average lawyer, and that the present bill will accomplish that purpose.

DISCUSSION OF SPECIFIC PROVISIONS

Section 1 of the bill amends section 811 (f) of the code, relating to estate tax on powers of appointment. The new section 811 (f) (1) deals with preexisting powers, i. e., powers created on or before October 21, 1942, the date of enactment of the 1942 act. As to such powers it restores the situation which existed prior to that date, i. e., only the exercise of a general power of appointment is taxed. An amendment by your committee makes it clear that a complete release of a preexisting power at any time is not taxable.

The former statute taxed property "passing" under a general power of appointment exercised by the decedent. This sometimes gave rise to litigation where the decedent appointed part or all of the property to persons who would also have taken it under the terms of the original instrument creating the power. The bill eliminates this possibility by taxing all property with respect to which the decedent has "exercised" a general power of appointment.

With this exception, the intent of the bill is to restore the law regarding preexisting powers as it existed prior to the 1942 act. The changes made in section 811 (c) by the Technical Changes Act of 1949 have rendered obsolete the wording of the latter part of the pre-1942 section

811 (f) (1), dealing with the inter vivos exercise of preexisting general powers. Accordingly this language has been changed so as to tax any inter vivos exercise of a preexisting general power if it is made by a disposition which is of such a nature that, if it were a transfer of property owned by the decedent, it would be taxable under section 811 (c). Your committee's first amendment extends this provision to cover a disposition which is of such a nature that, if it were a transfer of property owned by the decedent, it would be taxable under section 811 (d). The rules of section 811 (c) and (d) which are to be applied are, of course, those in effect on the date of the decedent's death which are applicable to transfers made on the day on which the inter vivos exercise occurred. For instance, an inter vivos exercise by a decedent dying after the date of the enactment of the Revenue Act of 1950 could not be considered to have been effected in contemplation of death unless it was effected within 3 years prior to death. Similar principles apply to inter vivos exercises or releases of future powers.

The second paragraph of section 811 (f) (1) provides that if a general power of appointment is partially released before November 1, 1951, so that it is no longer a general power, a subsequent exercise of such power shall not be deemed the exercise of a general power. Under the House bill this period would have expired on July 1, 1951, which, in view of the probable date of enactment of this bill, would have allowed little or no time for adjustment of preexisting powers. An amendment by your committee changes this date to November 1, 1951, which appears adequate, particularly since a complete release of a preexisting power at any time after that date will be free of estate and gift tax.

A partial release of a preexisting general power on or after November 1, 1951, would not result in gift tax at that time, but (1) a subsequent exercise of the modified power during life, which leaves in the holder no power to change the disposition of the property, will be a taxable gift, or (2) an exercise of the modified power by will will cause the property to be included in the decedent's gross estate. Similarly (with the exception noted in the following sentence) where a future power is partially released, then (1) a subsequent exercise or release of the modified power during life, which leaves in the holder no power to change the disposition of the property, will be a taxable gift, and (2) the possession of the modified power at death, or the inter vivos exercise or release thereof by a disposition which if it were a transfer would be taxable under section 811 (c) or (d), will cause the property to be included in the decedent's gross estate. However, where a power created after October 21, 1942, was partially released to a special power prior to June 1, 1951, a subsequent inter vivos exercise would not be a taxable gift.

The new section 811 (f) (2) deals with future powers; i. e., powers created after the passage of the 1942 act. Under it there will be included in the decedent's gross estate any property with respect to which he has at the time of his death a general power of appointment created after October 21, 1942, whether the decedent exercises the power or not. If the decedent has such a power of appointment exercisable only by will in favor of his estate, the property subject to the power is taxable. If he has, at the time of his death, such a power of appointment exercisable in his own favor only during his lifetime, the property subject to such power is taxable. The exercise or release of any such power in contemplation of death or to take effect at death

will likewise be taxable, to the extent that transfers of property by similar dispositions are taxable under section 811 (c). As in the case of preexisting powers, your committee's first amendment inserts in this provision a reference to section 811 (d).

Section 811 (f) (3) of the bill contains the definition of a general power of appointment. This definition applies to both preexisting and future powers. It defines a general power as meaning only a power which is exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate. If the decedent has such a power over part but not all of the property, that part of the property is includible in his gross estate.

The definition provides that, if certain limitations or restrictions are present, a power is not a general power even though exercisable by the decedent in his own favor. A power to consume principal which is limited by an ascertainable standard relating to the holder's health, education, support, or maintenance is not considered a general power. In the case of powers created on or before October 21, 1942, a power is not considered a general power if it is a joint power; i. e., not exercisable by the holder except with the consent or joinder of another person or persons.

Some but not all joint powers created after October 21, 1942, are exempt. Three rules for total or partial exemption of these future joint powers are provided. First, a future joint power is totally exempt if it is not exercisable by the decedent except with the consent or joinder of the creator of the power, since in this case the property would be includible in the gross estate of the creator of the power. Secondly, a future joint power is totally exempt if it is not exercisable by the decedent except with the consent or joinder of a person having a substantial interest, in the property subject to the power, which is adverse to the exercise of the power in favor of the decedent, his estate, his creditors, or the creditors of his estate. A taker in default of appointment has an interest which is adverse to such an exercise. Principles developed under the income and gift taxes will be applicable in determining whether an interest is substantial and the amount of property in which the adversity exists. A coholder of the power has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power, since neither the power nor the expectancy as appointee is an "interest" in the property. Nevertheless, the bill expressly provides that a coholder shall be considered as having an adverse interest where he may possess a power after the decedent's death which may be exercised to appoint the property in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if A, B, and C hold a power jointly to appoint to persons including themselves, and on the death of A, the power will pass to B and C jointly, then B and C are considered to have interests adverse to the exercise of the power in favor of A. Thirdly, a power which remains general after application of the foregoing tests will, in effect, be treated as though those holders who are permissible appointees were joint owners of the property subject to the power. The decedent will, therefore, be regarded as possessed of a general power over an aliquot share of the property to be determined with reference to the number of joint holders, including the decedent, who (or whose estates or creditors) are permissible appointees.

If the holder of a power is legally accountable for its exercise or nonexercise, the power is not deemed to be a general power. However, a power which is exercisable in favor of the holder, his estate, his creditors, or the creditors of his estate, is not regarded as a power for which the holder is legally accountable.

A donee of a power of appointment, particularly under a living trust agreement, often does not learn that he has the power until long after the trust was created. Living trusts and wills frequently give powers of appointment to persons not born or unascertainable at the time when the trust is created. The bill therefore provides that a disclaimer or renunciation of a power of appointment shall not be deemed a release of the power. The disclaimer or renunciation must be unequivocal and must be made within a reasonable time after learning of the power. The power may be disclaimed or renounced without disclaiming or renouncing any other interest which the donee may have in the property, if such disclaimer or renunciation is effective under local law.

The second paragraph of section 811 (f) (2) is identical in effect with a corresponding provision of the present statute. It states that a power is considered to exist at the date of death even though exercise is subject to precedent notice or takes effect only after expiration of a stated period after exercise. Under this paragraph, a power of appointment will, of course, be considered to exist on the date of the decedent's death where the time within which the power may be exercised is determined by reference to the decedent's death.

The provisions relating specifically to powers of appointment, which are proposed to be inserted in the Internal Revenue Code by this bill, are not intended to limit the scope of other subdivisions of the code (such as subsecs. (a), (c), and (d) of sec. 811 and subsec. (a) of sec. 1000) which apply to the transfer at death or during life of any interest in property possessed by the taxpayer.

The new section 811 (f) (4) deals with successive powers of appointment. In at least one State a succession of powers of appointment, general or limited, may be created and exercised over an indefinite period without violating the rule against perpetuities. In the absence of some special provision in the statute, property could be handed down from generation to generation without ever being subject to estate tax.

Under section 811 (f) (4) the exercise of any power of appointment created after October 21, 1942, will be taxable if it is exercised by creating another power of appointment which under local law can in turn be exercised so as to postpone the vesting of the property for a period which is ascertainable without regard to the date of the creation of the first power. This is true whether or not the first power is exercisable in favor of the holder of the power or his estate.

The existing statute contains a provision which was intended to cover this situation, but it is too broadly worded. Under it, for example, the exercise of an otherwise exempt power might be taxed if it were exercised by giving a trustee discretionary power to invade principal.

The bill also provides that the failure to exercise a preexisting power shall not be deemed an exercise of the power. The House bill provided that the failure to exercise a future power which lapses during the life of the holder of the power shall not be deemed an exercise or release

of the power. An amendment by your committee modifies this latter provision so as to exempt from estate and gift tax only limited amounts of property subject to lapsed powers. The committee amendment provides an annual exemption with respect to lapsed powers equal to $5,000 or 5 percent of the trust or fund in which the lapsed power existed, whichever is the greater. Thus, for example, if a person has a noncumulative right to withdraw $10,000 a year from the principal of a $200,000 trust fund, failure to exercise this right will not result in either estate or gift tax with respect to the power over $10,000 which lapses each year prior to the year of death. At his death there will be included in his gross estate the $10,000 which he was entitled to draw for the year in which his death occurs, less any sums which he may have taken on account thereof while he was alive during the year. However, if, in the above example, the person had had a right to withdraw $15,000 annually, failure to exercise this right in any year prior to the year of death will be considered a release of a power to the extent of the excess over 5 percent of the trust fund. Since the problem of the termination or lapse of powers of appointment during life arises primarily in the case of dispositions of moderate-sized properties where the donor is afraid the income will be insufficient for the income beneficiary and therefore gives the income beneficiary a noncumulative invasion power, it is believed that the exemption provided in the committee amendment ($5,000 or 5 percent of the principal) will be adequate to cover the usual cases without being subject to possible abuses.

The purpose of the new section 811 (f) (5), added by this committee amendment, is to provide a determination, as of the date of the lapse of the power, of the proportion of the property over which the power lapsed which is not to be considered as a taxable disposition for estate tax purposes and the proportion thereof which, if other requirements of section 811 are satisfied, will be considered as a taxable disposition. Once the proportion of any disposition which is to be considered as taxable has been determined, the valuation of that portion as of the date of the decedent's death (or, if the executor has elected the valuation provided by sec. 811 (j), the value as of the date therein provided) is to be ascertained in accordance with the principles which are applicable to the valuation of transfers of property by the decedent under the corresponding provisions of sections 811 (c) and (d). Thus, for example, assume that a person who is life tenant of a trust has the right, exercisable only in the calendar year 1952, to appropriate $50,000 of trust principal and that the principal of the trust at the end of 1952 is worth $1,000,000. Under section 811 (f) (5) no part of the disposition by reason of the lapse of the power will be treated as a taxable disposition; it is, therefore, immaterial whether the trust corpus later declines or increases in value. However, if in this example, the value of the trust has been $800,000 at the end of 1952, then the lapse of the power over $10,000 (or one-fifth of the amount which could have been appropriated) will be treated under section 811 (f) (5) as a taxable disposition; accordingly, under valuation principles applicable in determining the amount includible in gross estate in case of a transfer intended to take effect in possession or enjoyment at or after death, if the trust corpus had declined in value to $600,000 at the date of death, then $7,500 would be includible in the decedent's gross estate by reason of the lapse.

Conversely, if the value of the trust had risen to $1,200,000 at the date of death, then $15,000 would be includible in the decedent's gross estate by reason of the lapse.

Section 1 (b) of the bill provides that a power of appointment created by a will executed on or before October 21, 1942, the date of enactment of the 1942 act, shall be considered a preexisting power if the testator dies before July 1, 1949, without having republished the will, by codicil or otherwise, after October 21, 1942. This merely continues in force a provision which was enacted in 1948 (Public Law 635, 80th Cong.).

The amendments made by the bill will take effect as if they had originally been contained in the 1942 act at the time of its enactment. Thus they will apply to the estates of all decedents dying after October 21, 1942.

Section 2 of the bill amends section 1000 (c) of the code, relating to gift tax on powers of appointment. These amendments follow closely the theory and wording of the estate tax amendments, so far as applicable. They also take effect as if originally contained in the 1942 act, and will apply to gifts made on or after January 1, 1943. An amendment made by your committee prevents the retroactive imposition of gift tax upon releases prior to June 1, 1951, of powers of appointment created after October 21, 1942. This amendment is necessary because the extensions since 1942 of the period for tax-free release of powers have, with respect to the gift tax, but not with respect to the estate tax, been applicable to powers created after, as well as before, October 21, 1942.

CHANGES IN EXISTING LAW

In compliance with subsection 4 of rule XXIX of the Standing Rules of the Senate, changes in existing law made by the bill are shown as follows (existing law proposed to be omitted is enclosed in black brackets; new matter is printed in italics; existing law in which no change is proposed is shown in roman):

SECTIONS 811 (F) AND 1000 (C) OF THE INTERNAL REVENUE CODE

SEC. 811. GROSS ESTATE.

* * * * * * *

[(f) POWERS OF APPOINTMENT.—

[(1) IN GENERAL.—To the extent of any property (A) with respect to which the decedent has at the time of his death a power of appointment, or (B) with respect to which he has at any time exercised or released a power of appointment in contemplation of death, or (C) with respect to which he has at any time exercised or released a power of appointment by a disposition intended to take effect in possession or enjoyment at or after his death, or by a disposition under which he has retained for his life or any period not ascertainable without reference to his death or for any period which does not in fact end before his death (i) the possession or enjoyment of, or the right to the income from, the property, or (ii) the right, either alone or in conjunction with any person, to designate the persons who shall possess or enjoy the property or the income therefrom; except in case of a bona fide sale for an adequate and full consideration in money or money's worth.

[(2) DEFINITION OF POWER OF APPOINTMENT.—For the purposes of this subsection the term "power of appointment" means any power to appoint exercisable by the decedent either alone or in conjunction with any person, except

[(A) a power to appoint within a class which does not include any others than the spouse of the decedent, spouse of the creator of the

power, descendants of the decedent or his spouse, descendants (other than the decedent) of the creator of the power or his spouse, spouses of such descendants, donees described in section 812 (d), and donees described in section 861 (a) (3). As used in this subparagraph, the term "descendant" includes adopted and illegitimate descendants, and the term "spouse" includes former spouse; and

[(B) a power to appoint within a restricted class if the decedent did not receive any beneficial interest, vested or contingent, in the property from the creator of the power or thereafter acquire any such interest, and if the power is not exercisable to any extent for the benefit of the decedent, his estate, his creditors, or the creditors of his estate.

If a power to appoint is exercised by creating another power to appoint, such first power shall not be considered excepted under subparagraph (A) or (B) from the definition of power of appointment to the extent of the value of the property subject to such second power to appoint. For the purposes of the preceding sentence the value of the property subject to such second power to appoint shall be its value unreduced by any precedent or subsequent interest not subject to such power to appoint.

[(3) DATE OF EXISTENCE OF POWER.—For the purposes of this subsection 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.]

(f) POWERS OF APPOINTMENT.—

(1) PROPERTY WITH RESPECT TO WHICH DECEDENT EXERCISES A GENERAL POWER OF APPOINTMENT CREATED ON OR BEFORE OCTOBER 21, 1942.—To the extent of any property with respect to which a general power of appointment created on or before October 21, 1942, is exercised by the decedent (1) by will or (2) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under subsection (c) or (d); but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.

If before November 1, 1951, or within the time limited by paragraph (2) of section 403 (d) of the Revenue Act of 1942, as amended, in cases to which such paragraph is applicable, a general power of appointment created on or before October 21, 1942, shall have been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment.

(2) POWERS CREATED AFTER OCTOBER 21, 1942.—To the extent of any property with respect to which the decedent 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 property would be includible in the decedent's gross estate under subsection (c) or (d). A disclaimer or renunciation of such power of appointment shall not be deemed a release of such power.

For the 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) DEFINITION OF GENERAL POWER OF APPOINTMENT.—For the purposes of this subsection 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—

(i) 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.

(ii) 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.

(iii) if (after the application of clauses (i) and (ii)) 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.

For the purposes of clauses (ii) and (iii) 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) CREATION OF ANOTHER POWER IN CERTAIN CASES.—To the extent of any property with respect to which the decedent (1) by will or (2) by a disposition which is of such nature that if it were a transfer of property owned by the decedent, such property would be includible in the decedent's gross estate under subsection (c), exercises a power of appointment created after October 21, 1942, by creating another power of appointment which under the applicable local law 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.

(5) LAPSE OF POWER.—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 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 exceeded in value, at the time of such lapse, the greater of the following amounts:

(A) $5,000, or

(B) 5 per centum 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,

SEC. 1000. IMPOSITION OF TAX.

* * * * * * *

[(c) POWERS OF APPOINTMENT.—An exercise or release of a power of appointment shall be deemed a transfer of property by the individual possessing such power. For the purposes of this subsection the term "power of appointment" means any power to appoint exercisable by an individual either alone or in conjunction with any person, except—

[(1) a power to appoint within a class which does not include any others than the spouse of such individual, spouse of the creator of the power, descendants of such individual or his spouse, descendants (other than such individual) of the creator of the power or his spouse, spouses of such descendants, donees described in section 1004 (a) (2), and donees described in section 1004 (b). As used in this paragraph, the term "descendant" includes adopted and illegitimate descendants, and the term "spouse" includes former spouse; and

[(2) a power to appoint within a restricted class if such individual did not receive any beneficial interest, vested or contingent, in the property from the creator of the power or thereafter acquire any such interest, and if the power is not exercisable to any extent for the benefit of such individual, his estate, his creditors, or the creditors of his estate.

If a power to appoint is exercised by creating another power to appoint, such first power shall not be considered excepted under paragraph (1) or (2) from the definition of power of appointment to the extent of the value of the property subject to such second power to appoint. For the purposes of the pre-

ceding sentence the value of the property subject to such second power to appoint shall be its value unreduced by any precedent or subsequent interest not subject to such power to appoint.]

(c) *POWERS OF APPOINTMENT.*—

(1) *EXERCISE OF GENERAL POWER OF APPOINTMENT CREATED ON OR BEFORE OCTOBER 21, 1942.*—*An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof.*

If before November 1, 1951, or within the time limited by paragraph (2) of section 452 (b) of the Revenue Act of 1942, as amended, in cases to which such paragraph is applicable, a general power of appointment created on or before October 21, 1942, shall have been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment.

(2) *POWERS CREATED AFTER OCTOBER 21, 1942.*—*The exercise of a general power of appointment created after October 21, 1942, or the release after May 31, 1951, of such a power, shall be deemed a transfer of property by the individual possessing such power. A disclaimer or renunciation of such a power of appointment shall not be deemed a release of such power.*

(3) *DEFINITION OF GENERAL POWER OF APPOINTMENT.*—*For the purposes of this subsection the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereafter in this paragraph referred to as the "possessor"), 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 possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor 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 possessor 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 possessor only in conjunction with another person—

(i) if the power is not exercisable by the possessor except in conjunction with the creater of the power—such power shall not be deemed a general power of appointment;

(ii) if the power is not exercisable by the possessor 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 possessor—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 possessor, may be possessed of a power of apppointment (with respect to the property subject to the possessor'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 possessor's power;

(iii) if (after the application of clauses (i) and (ii)) 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 possessor) in favor of whom such power is exercisable.

For the purposes of clauses (ii) and (iii) 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) *CREATION OF ANOTHER POWER IN CERTAIN CASES.*—*If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which under the applicable local law 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.*

(5) *LAPSE OF POWER.*—*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 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:

(A) $5,000, or

(B) 5 per centum of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

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