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Federal Estate Tax Regulations Under the Powers of Appointment Act of 1951

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FEDERAL ESTATE TAX REGULATIONS UNDER THE POWERS OF APPOINTMENT ACT OF 1951

By

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FOREWORD

Introduced as H.R. 2084, this act was signed by the President on June 28, 1951[1] and became effective, by its terms, for estates of decedents dying after October 21, 1942. It completely revised Section 811(f) of the *Internal Revenue Code,* retroactively taking effect as if its provisions had originally been contained in the *Revenue Act of* 1942.

The act was intended to simplify the powers of appointment section and to provide "a test of taxability which is simple, clear-cut, and easy to apply".[2]

Pursuant to the *Administrative Procedure Act* of June 11, 1946, tentative regulations were published in the *Federal Register* on August 5, 1953, for consideration of data, views or arguments before the regulations became final.

The writer, under date of August 28, 1953, submitted to the Commissioner of Internal Revenue certain objections and views. The final regulations on the *Powers of Appointment Act of* 1951 were approved July 7, 1954, and were published in the *Federal Register* July 14, 1954.

The *Internal Revenue Code of* 1954, approved August 16, 1954, made no change in the federal estate tax law as to powers of appointment. Treasury Decision 6091, issued the same day, made all prior regulations under the *Internal Revenue Code of* 1939 applicable to the corresponding provisions of the *Internal Revenue Code of* 1954 in so far as the regulations would not be inconsistent. In the case of the federal estate tax regulations as to powers of appointment, there could be no inconsistency because the 1954 *Code* did not change the provisions of the law.

The purpose of this article is to furnish a synopsis of the final regulations, with particular attention to the changes from the tentative regulations of August, 1953.

REGULATIONS 105, SECTION 81.24

Paragraph (a)(1) is entitled "Introduction" and states that the value of property in respect to which the decedent possessed, exercised or released certain powers of appointment may be includible in the gross estate.

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1 P. L. 58, 82d Congress, 1st session.
2 Report of the Senate Committee on Finance.

Paragraph (a)(2) defines the term "power of appointment" to include all powers which are in substance or effect powers of appointment, regardless of the nomenclature used in creating the power and regardless of local property law connotations. Examples of such powers are given as follows:

(1) A beneficiary's right to appropriate or consume principal.
(2) A donee's power to alter, amend, revoke or terminate a trust.
(3) A wife's power of testamentary disposition, under community property laws, over property in which she does not have a vested interest.
(4) An unrestricted power in an individual to remove or discharge a trustee and appoint himself, if he then, as trustee, can appoint principal for the benefit of individuals, including himself.[3]

Examples of powers that are not considered as powers of appointment, if exercisable in a fiduciary capacity and/or the holder has no right to enlarge or shift beneficial interests, are:

(1) The mere power of management, investment and custody of assets.
(2) The power to allocate receipts and disbursements as between income and principal.[4-5]
(3) The right in a beneficiary of a trust to assent to a periodic accounting and thereby relieve the trustee from further accountability.[6]

The regulations state that the term "power of appointment" does not include powers reserved by the decedent to himself within the concept of Section 811(c), relating to transfers in contemplation of or taking effect at death, or Section 811(d), relating to revocable transfers. Furthermore, no provisions of this section limit the application of any other section of the *Code* or regulations. For example, if A, under a trust created by another, has the right to income for life and a power to appoint the remainder by will, and in default of such appointment the income is payable to W for life and the remainder is payable to A's estate, A's gross estate will include the value of his interest in remainder, whether or not he exercises his power and whether or not the power was created before or after October 21, 1942.[7]

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3 The tentative regulations of August, 1953, merely stated, "A power in the decedent to remove or discharge a trustee and appoint himself may be a power of appointment".

4 It appears to the writer that such a power in most instances would be a power to shift beneficial interests and, therefore, dangerous unless a non-general power.

5 The tentative regulations of August, 1953, did not refer to a power to allocate receipts and disbursements between income and principal.

6 The tentative regulations referred here to "a beneficiary of an inter vivos trust". The writer suggested in his letter to the Commissioner that "inter vivos" be eliminated, and this suggestion was accepted for the final regulations.

7 The writer believes the example, even in the final regulations, leaves much unsaid. It is not indicated whether or not the power is general or non-general. Furthermore, if A exercises a pre-1942 general power or merely holds a post-1942 general power, it appears to the writer that the value of the entire trust would be included in his gross estate under Section 811(f) of the 1939 Code or Section 2041 of the 1954 Code, as a power of appointment, and in that case the value of his remainder interest would not as such be included in his gross estate. The example in the tentative regulations referred to "a trust" without indicating whether or not the trust had been created by the holder of the power or another. The final regulations cleared this point by changing "a trust" to "a trust created by S". The writer's comment on the example in the tentative regu-

If the power of appointment applies only to part of an entire group of assets or only to a limited interest in property, this section applies only to such part or interest.

Paragraph (a)(3) defines the term "general power of appointment" to mean, except for the limitations in pargraph (b), "any power of appointment exercisable in favor of the decedent, his estate, his creditors, or the creditors of his estate". Thus general powers would include:

(1) Those exercisable to meet the estate tax.
(2) Those exercisable to meet any other taxes, debts and charges which are enforceable against the estate.

If the power is exercisable *"for the purpose of* discharging a legal obligation of the decedent or for his pecuniary benefit", it is considered a general power. The fact that the appointee may be a creditor of the decedent or his estate, however, will not, by itself, make the power a general one for the purposes of this section.[8] [Emphasis supplied.]

If a power to consume, invade or appropriate property for the benefit of the decedent is limited by an ascertainable standard relating to his health, education, support or maintenance, it is not to be considered a general power of appointment.[9]

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lations was as follows: "The "example" is not clear to the writer. The context indicates that the "trust" represents an inter vivos transfer by A, but if so it would appear that the value of the entire trust would be includible in A's gross estate and not merely "the value of his interest in the remainder" (A having reserved to himself a power of appointment; and a life estate in case the trust was created after March 3, 1931). If the "trust" was created by someone other than A, it would appear that the value of the entire trust would be includible in A's gross estate and not merely "the value of his interest in remainder" if the power is exercised or if "the power was created . . . . after October 21, 1942". The writer suggests that the example be reworded, to illustrate more clearly what the draftsmen of the proposed regulations wish to set forth." The final regulations make it clear that the trust in the example was created by another ("a trust created by S"), but fail to eliminate the reference to taxability of A's remainder interest as such, if the whole trust is taxable under the power of appointment.

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8 The fact that the appointee might be a creditor did not appear to be fully covered in the tentative regulations of 1953. The writer raised this question in his letter of August 28, 1953 to the Commissioner: "If A can exercise a power of appointment as to $100,000 only to his children, B and/or C, and it happens that A is indebted to B for $500, does A have a general power of appointment (1) for $500? (2) for $100,000? If the debt to B is reduced to $100 when A dies and he appoints $60,000 to B and $40,000 to C, in no way discharging the debt to B, what amount, if any, is includible in A's gross estate? In other words, how does the Commissioner interpret "his creditors, or the creditors of his estate"? Will the Commissioner adopt the interpretation that a power is "general" when exercisable in favor of a decedent's creditors or creditors of the estate in satisfaction of debts?" The final regulations added the following sentence: "However, for the purposes of this section, a power of appointment not otherwise considered to be a general power of appointment is not treated as a general power of appointment merely by reason of the fact that an appointee may, in fact, be a creditor of the decedent or his estate."

9 Is there any danger that the Commissioner will try to tax to the decedent an unlimited right in another, such as a trustee, to use the principal for the decedent? Section 2041(b)(1) of the Internal Revenue Code of 1954, repeating Section 811(b)(3) of the 1939 Code, refers to "a power which is exercisable in favor of the decedent . . . .". Neither the Code nor the Regulations, in the phraseology under discussion, limits such a power to one held by the decedent. However, the report of the Senate Committee on Finance states: "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."

The test, as to limitation by an ascertainable standard, is to be the same as that of deductibility for charitable, etc. purposes in the case of a bequest to a trust "for both private and charitable purposes".[10] A power exercisable for comfort, pleasure, desire or happiness is not limited by an ascertainable standard.

Paragraph (a)(4) specifies that there should be filed, with the federal estate tax return, duplicate copies of instruments granting a power and of instruments by which a power is disclaimed, renounced, exercised or released. One copy of each instrument should be certified or verified. If the decedent was a nonresident only one copy of each instrument, certified or verified, need be filed. The copies must be filed even though the position is taken that the power was not a general power of appointment and the property is not returned for tax.

Paragraph (b)(1) deals with estates of decedents dying after October 21, 1942, as to general powers of appointment created on or before October 21, 1942. The gross estate includes the value of property over which such a power is exercised by will or by a disposition that would be taxed as a transfer under Section 811(c)[11] or Section 811(d).[12] The applicable rules for Section 811(c) or (d) are those in effect at the time of the decedent's death as applicable to transfers made when the power was exercised. Thus, if a decedent dies after September 23, 1950, an exercise of a pre-1942 general power of appointment by deed may not be considered a transfer in contemplation of death if he survives for three years after the exercise. Or if this decedent, in exercising a pre-1942 general power of appointment before October 8, 1949, makes a disposition in trust taking effect at death and retains a reversionary interest worth less than five percent the exercise of the power is not taxed as an exercise of a general power of appointment. If, however, the disposition was made on or after October 8, 1949, and it constituted a transfer whereby possession or enjoyment could be obtained only by surviving the decedent, the property would be includible in the gross estate under Section 811(c)(3) of the *Internal Revenue Code* of 1939.[13]

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10 The tentative regulations did not include the word "both". The writer suggested, in his August 28, 1953 letter, that the word "both" be inserted before "private and charitable purposes". The final regulations now clearly would encompass a trust to pay income to A for life, with certain rights to use the principal for A, and with remainder to X charity.

11 I.R.C. of 1939—Transfers in contemplation of or taking effect at death, or in which possession or enjoyment is retained until death. Similarly, §§ 2035 - 2037, I.R.C. of 1954.

12 I.R.C. of 1939—Transfers with power reserved to alter, amend, revoke or terminate. Similarly, § 2038, I.R.C. of 1954.

13 Section 2037(a)(2) of the Internal Revenue Code of 1954 adds the five percent reversionary interest qualification to the counterpart of Section 811(c)(3) of the 1939 Code. Thus, under the 1954 Code, even though possession or enjoyment can be obtained only by surviving the transferor, the transfer is not taxable as one taking effect at death, unless the transferor has retained a reversionary interest of more than five percent in value. If the transfer was made before October 8, 1949, the reversionary interest is a taxable factor only if it arose by the express terms of the instrument of transfer. The estate tax provisions of the 1954 Code are applicable only to decedents dying after August 16, 1954, the date of its enactment. § 7851(a)(2)(A), I.R.C. of 1954.

The rules of Section 811(c) and (d) of the 1939 *Code,* in effect on the date of death and applicable to transfers made on the date when the exercise of the power occurred, are to be applied in determining the extent to which, as well as the conditions under which, a disposition is considered a transfer of property.[14]

A power created *on or before October* 21, 1942, which is exercisable only in conjunction with another person, is not considered to be a general power of appointment. Neither the *Code* nor the regulations imply that adversity of interest, as to the joint holder of the power, is a factor.

A power of appointment is exercised even though the appointee would have been the taker in default of the appointment, whether or not the interest taken under the appointment is identical with the default interest and whether or not the appointee renounces any right to take under the appointment.[15]

Failure to exercise or complete the release of a general power of appointment created on or before October 21, 1942, is not considered an exercise of the power. In other words, pre-1942 powers are non-taxable if completely released or not exercised.[16]

If a relinquishment of a general power changes the beneficial interest in property, the relinquishment will be considered to be an exercise of the power. The regulations give an example of a trust created by A in 1940, income to B for life and B has a general power of appointment and also the right to amend the trust. C is to take the remainder upon default of B's appointment. If B amended the trust in 1948, by providing that upon his death the remainder was payable to C, and further amended the trust in 1950, by deleting his power to amend the trust, the regulations state that the 1950 relinquishment will be considered an exercise of the power. If the 1948 amendment had only changed ministerial powers

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14 The reference to "extent" of taxability under Section 811(c) and (d) was missing in the original proposed regulations. The writer commented as follows: "References to Secs. 811(c) and (d) and examples: The chief question here would seem to be whether the "disposition" by inter vivos deed affects the entire value of the trust, or only the interest in property that is directly affected by the inter vivos exercise. For instance, if A created a trust by will or irrevocable inter vivos deed subsequent to March 3, 1931, but prior to October 22, 1942, giving B the income for life and a general power of appointment by deed (and in default of exercise the trust would terminate on B's death and be distributed to C or C's estate), would B's inter vivos exercise of the general power by appointment to D on B's death, require the inclusion in B's gross estate of the entire value of the trust? Would this same trust be entirely excludible from B's gross estate if it had been created by A prior to March 3, 1931?" The following sentence was subsequently added in the final regulations: "Such rules are to be applied in determining the extent to which and the conditions under which a disposition is considered a transfer of property."

15 For decedents dying prior to October 22, 1942, the law, as settled by various court decisions, was different. If the appointee renounced under the power and took in default, it was held that the property was not includible in the gross estate of the appointor. See Helvering v. Grinnell, 294 U.S. 153 (1934); Rogers v. Helvering, 320 U.S. 410 (1943); and similar decisions. The 1942 Revenue Act and the Powers of Appointment Act of 1951 closed this "loop-hole" for estates of decedents dying after October 21, 1942.

16 This is undoubtedly the most important distinction under current law between pre-1942 and post-1942 general powers.

of the trustee, the 1950 amendment would be considered a release and not an exercise of the power.[17]

If a general power was reduced to a non-general power through partial release accomplished prior to November 1, 1951, a subsequent exercise of the reduced power is not considered an exercise of a general power. If the decedent was under a legal disability to release the power on October 21, 1942, he had a grace period of six months after termination of the legal disability to reduce the power.

If the general power is partially released *after* the dates referred to above, and thereafter the reduced power is exercised, the exercise is deemed to be an exercise of a general power.

Legal disability is determined under local law and may include the disability of an insane person, a minor or an unborn child, but it does not include disability due to the fact that the type of general power is not generally releasable under local law.

General powers of appointment are considered to be releasable unless there is local law to the contrary. The method employed to release the power will be accepted unless it does not conform to local law on releases or similar transactions.[18]

If a testator died before July 1, 1949, leaving a will executed on or before October 21, 1942, which had not been republished by codicil or otherwise after October 21, 1942, a power to appoint created thereby will be considered a power created on or before October 21, 1942.[19]

Paragraph (b)(2) deals with general powers of appointment created after October 21, 1942. The value of property subject to such powers held by the decedent at the time of his death is includible in his gross estate, *whether or not the power is exercised.* The power is considered to exist at the time of death if the time for its exercise is determined by the date of death. It is also considered to exist at

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17 The first example, of two substantive amendments, illustrates a situation not frequently encountered, but it serves to point up the fact that an exercise of a pre-1942 general power is taxable by whatever means it is effected and even though the appointee is the same as the taker in default. The tentative regulations of August, 1953, had only a short sentence on the combination of exercise and relinquishment, as follows: "An exercise which concurrently carries with it a complete relinquishment of the power of appointment or an exercise followed by a complete relinquishment of the power of appointment is deemed an exercise and not a release of the power of appointment."

18 The Pennsylvania Estates Act of 1947 has a specific and helpful section on "Release or disclaimer of powers or interests", 20 P.S. 301.3.

19 In his comments on the proposed regulations of August 5, 1953, the writer suggested that it would be helpful to have an indication in the regulations as to the Commissioner's position in regard to the date of creation of a power of appointment created by a revocable deed of trust. "For instance, A creates a revocable deed in 1941, income to himself for life, then income to B for life, and B has a general power of appointment. A dies in 1943 and the trust thereupon becomes irrevocable by death. Is B's general power of appointment a power created on or before October 21, 1942?" The question is not answered specifically in the final regulations, but Revenue Ruling 278 issued in December, 1953 (1953-2 C.B. 267) does not leave much room for doubt. Its headnote is as follows: "Where an insured retains until his death the right to change the beneficiary and the right to surrender the policies or obtain loans thereon, a power of appointment given in the policies to the beneficiary with respect to the proceeds of such policies is "created" at the time of the death of the insured within the meaning of section 811(f) of the Internal Revenue Code."

death even though the exercise is subject to the precedent giving of notice or even though the exercise takes effect only on the expiration of a stated period after its exercise, whether or not notice has been given or the power has been exercised prior to death.

Except in the case of a bona fide sale for an adequate and full consideration in money or money's worth, the exercise or release of a general power created after October 21, 1942, will require the property subject thereto to be included in the gross estate, provided that the disposition would be taxed as a transfer under Section 811(c) or Section 811(d) if it had been a transfer of property owned by the decedent. The principles applicable to Sections 811(c) and (d) are noted in the comments on paragraph (b)(1), *supra.*

Joint powers created after October 21, 1942, exercisable only in conjunction with another person, are not taxed as general powers of appointment if the decedent could exercise the power only with the consent or joinder of the creator of the power or if the decedent could exercise the power only with the consent or joinder of a person having an interest substantially adverse. A taker in default of appointment would have an adverse interest. A coholder of a power would have an adverse interest if he would become a sole holder of a general power after the death of his coholder.

If a joint general power is not within the exceptions mentioned above, then each coholder is considered as having a taxable general power over an aliquot share of the property subject to the power. Thus, if X, Y and Z hold an unlimited power jointly, but on the death of X the power does not pass to Y and Z jointly, then X would be taxed as having a general power over one-third of the property.

Subparagraph (iii) of paragraph (b)(2) deals with releases and lapses of general powers of appointment. The regulations state that a release need not be formal or express in character. If a general power created after October 21, 1942, lapses through failure of the holder to exercise it within a specified time, the lapse constitutes a release, and the property subject to the general power is includible in the gross estate when the former holder of the power dies, provided that the release, if it were applicable to property owned by the decedent, could be taxed as a transfer under Section 811(c) or Section 811(d).[20] The foregoing rule as to a lapse is subject to an exception or exclusion as to the first $5,000 or five percent of the value, whichever is greater. If an individual has a noncumulative right to withdraw principal each calendar year from a trust fund and he allows the right to lapse for 1953 and 1954 and dies in 1955, nothing will be includible in his gross estate as a lapse or release for 1953 and 1954, except as to any excess of the amounts lapsed[21] each of those years over $5,000 or five percent of the trust fund, whichever is greater. The right to the amount he could have withdrawn in 1955, could apply if rights to withdraw are relatively large in proportion to the fund or

20 See notes 11 and 12, supra.
21 Valued as hereinafter set forth.

prior to death, did not "lapse" prior to his death, and such an amount is includible in his gross estate as property subject to a general power of appointment,[22] less any amount he did withdraw prior to death. Thus the *lapse* of any right to withdraw up to $5,000 is not taxed. If the lapse exceeds $5,000, whether the right to withdraw is measured in terms of dollars or in percentage of principal, taxability depends on the value of the fund at the time of the lapse. If the individual has a right to withdraw $15,000 and the fund is valued at $200,000 at the time of the lapse, five percent of the $200,000 or $10,000 is exempt.

If the lapse exceeds $5,000 or five percent of the fund, whichever is greater, the amount includible in the gross estate when the individual dies depends upon two factors, the value of the fund at the time of lapse and the value of the fund at date of death. The regulations state that the valuation is to be ascertained in accordance with the principles applicable to transfers under Section 811(c) and (d).[23] The Senate Finance Committee Report on the bill gives the following examples:

FIRST EXAMPLE

(a) Lapse of right to withdraw $50,000 of trust principal.
(b) When principal of the trust is worth $1,000,000.
(c) The value of the lapse does not exceed five percent of the then value and no part is treated as a taxable disposition.

SECOND EXAMPLE

(a) Lapse of right to withdraw $50,000 of trust principal.
(b) When principal of the trust is worth $800,000.
(c) Only five percent or $40,000 exempt, and $10,000 is a "disposition".
(d) If value of the trust is $600,000 when the holder of the former right dies, $7,500 is includible in his gross estate.

$$\frac{\$600,000}{\$800,000} \times \$10,000 = \$7,500$$

(e) If value of the trust is $1,200,000 when the holder of the former right dies, $15,000 is includible in his gross estate.

$$\frac{\$1,200,000}{\$800,000} \times \$10,000 = \$15,000$$

The taxable lapse for each year is to be computed separately. Although the value of the fund for the date of death is constant in the case of any individual holder of a right to withdraw, the value of the fund at the time of each lapse, the denominator of the fraction as above, would vary from year to year.

If optional valuations for the estate are elected by the personal representative, the valuation of the fund under Section 811(j) of the *Code*[24] is to be used instead of date of death values for the numerator of the fraction referred to above.

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22 A power to appoint to himself.
23 I.R.C. of 1939. The comparable provisions of the 1954 Code are Sections 2035-2037.
24 § 2032 of the 1954 Code.

The total amounts taxed as excess lapses cannot exceed the value of the fund at the date of death or under optional valuations as the case may be. This limitation if lapses occur for many years. Thus if the life tenant of a $100,000 trust that does not change in value has a noncumulative right to withdraw $20,000 annually, and permits the right to lapse for ten years and then dies in the eleventh year, the amount includible in the gross estate of the life tenant would first be computed as follows:

Excess over five percent each year × 10	$15,000.00
Unexercised right, eleventh year	20,000.00
	$170,000.00

The fund is still worth only $100,000 at the date of death of the life tenant, and the foregoing limitation would reduce the amount includible in the gross estate of the deceased life tenant from $170,000 to $100,000.

The question could arise as to whether the five percent or $5,000 limitation can be avoided by the use of multiple trusts. The regulations in subparagraph (iii) use the word "power" repeatedly in the singular, but in one instance refer to "lapsed powers". The use of the plural form, however, could here be construed as referring to a lapse of the same power in two or more years. The Senate Finance Committee Report on the bill is not helpful in this matter. However, the 1951 *Act* itself, and now the *Internal Revenue Code of* 1954, are consistent in using "powers" in the plural in all three references to the five percent or $5,000 exception to taxability. For instance, the exceptions apply "with respect to the lapse of powers during any calendar year". It is the writer's belief that the Commissioner will consider that the law limits the five percent or $5,000 exclusion to an annual exclusion for each taxpayer-decedent and will not apply the exclusion to each power of appointment the decedent may have under various trusts or instruments.

The last part of paragraph 81.24(b)(2) of the regulations deals with "disclaimers or renunciations". These are not considered to be "releases" of a power and are removed from the taxable class. To qualify as a non-taxable act as contrasted with a taxable release, however, the disclaimer or renunciation must satisfy certain conditions:

(1) It must be unequivocal, "a complete and unqualified refusal to accept the rights to which one is entitled".

(2) It must be effective under local law.

(3) It must precede any "acceptance" of the power. "In the absence of facts to the contrary, the failure to renounce or disclaim within a

reasonable time after learning of its existence will be presumed to constitute an acceptance of the power."[25]

Subparagraph 81.24(b)(2)(iv) deals with successive powers of appointment, whether or not the original power or successive power is "general". If B is the donee of a power, general or non-general, created after October 21, 1942, and exercises it[26] by creating another power, general or non-general, in C, and if C could exercise the power "so as to postpone the vesting of any estate or interest in such property, or so as to 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 trust power*", then B's exercise of his power of appointment, whether the power be general or non-general, is a disposition that results in the inclusion in B's estate of that much of the property subject to the power as he appoints subject to the successive power. [Emphasis supplied.]

This subsection would appear to have a very limited application, possibly only in Delaware and Wisconsin, where the use of successive powers might extend the period permitted by the rule against perpetuities or the rule against restraints on alienation.

The final paragraph of the regulations, Section 81.24(c), applies only to decedents who died on or before October 21, 1942. It repeats Section 81.24 of Regulation 105 issued for chapter 3 of the *Internal Revenue Code of* 1939 before the enactment of the *Revenue Act of* 1942, and it is now of only historical interest.

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25 In his comments on the proposed regulations of August 5, 1953, the writer suggested that it would be very helpful to have examples and more material on disclaimers and renunciations, especially as to "reasonable time" and what constitutes "learning of its existence". However, the final regulations made no change in the original proposed regulations. Failure to furnish better guides would seem to encourage unnecessary litigation and to delay settlement of tax liability. If A bequeaths his estate in trust to pay income to his brother, B, and provides B with a general power of appointment by will, with the principal to go to B's children in default of exercise of the power, does B have a few days or a few weeks or a few months after A's death or after the probate of the will or after receiving a copy of it within which to disclaim or renounce his power? Would the time be shorter if A had told B of the contents of his will or had lodged it or an analysis of it with him? In any event, it appears that time is of the essence in effectuating a tax-free disclaimer or renunciation.

26 By will, or by a disposition that would be taxed as a transfer in contemplation of death or as a transfer with possession or enjoyment retained if the property had been B's to begin with.