

AN ACT

*Codification
District of
Columbia
Code
2001 Supp.*

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Title 21 of the District of Columbia Code to eliminate unintended estate taxes on the estates of trustees.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Estate Tax Technical Amendment Act of 2000".

Sec. 2. Title 21 of the District of Columbia Code is amended as follows:

(a) The table of contents for Chapter 17 is amended by adding the section designation "21-1722. Prohibition from exercising powers conferred upon trustee."

(b) A new section 21-1722 is added to read as follows:

"§ 21-1722. Prohibition from exercising powers conferred upon trustee.

"(a) For purposes of this section, the term:

"(1) "Adverse party" shall have the same meaning as construed under § 672 of the Internal Revenue Code and the regulations promulgated thereunder.

"(2) "Ascertainable standard relating to the trustee's health, education, support, and maintenance" shall have the same meaning as construed under §§ 2041 and 2514 of the Internal Revenue Code and the regulations promulgated thereunder.

"(3) "Internal Revenue Code" means the Internal Revenue Code of 1986, approved October 22, 1986 (100 Stat. 2085; 26 U.S.C. § 1 *et seq.*).

"(4) "Parties in interest" means:

"(A) Each trustee then serving; and

"(B) Each beneficiary then in existence or, if the beneficiary has not attained the age of majority or is otherwise incapacitated, the beneficiary's parent or legal representative under applicable law or the beneficiary's attorney-in-fact under a durable power of attorney.

"(5) "Party who is not related or subordinate" shall have the same meaning as construed under § 672 of the Internal Revenue Code and the regulations promulgated thereunder.

"(b)(1) None of the following powers conferred upon a trustee by the governing instrument may be exercised by the trustee:

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"(A) The power to make any discretionary distributions of either principal or income to or for the benefit of the trustee in the trustee's individual capacity, unless limited by an ascertainable standard relating to the trustee's health, education, support, and maintenance; or

"(B) The power to make any discretionary distributions of either principal or income to satisfy any of the trustee's legal obligations in the trustee's individual capacity for support.

"(2) If a trustee is prohibited by subsection (b)(1) of this section from exercising a power conferred upon the trustee, the trustee may nevertheless exercise the power, except that the trustee's exercise of that power shall be limited by an ascertainable standard relating to the trustee's health, education, support, and maintenance.

"(c) If (1) a power described in subsection (b) of this section is exercisable in favor of a beneficiary, and (2) a power is conferred on that beneficiary to remove or replace the trustee, the beneficiary may exercise the power only to replace the trustee with a person who is either an adverse party or a party who is not related or subordinate.

"(d) If the governing instrument contains a power described under subsection (b) of this section and there is no trustee who can exercise the power, the trustee then serving may appoint a special trustee who is either an adverse party or a party who is not related or subordinate to exercise the power. If the trustee fails to appoint a special trustee, upon application of any party in interest, a court may appoint a special trustee who is not disqualified under this subsection to exercise the power during the period of time that the court designates.

"(e) This section shall not apply to a trust if and to the extent that:

"(1) The trust qualifies for and claims the estate or gift tax marital deduction under § 2056 or § 2523 of the Internal Revenue Code;

"(2) The trust is revocable or amendable at the time of the exercise of the power;
or

"(3) Contributions to the trust qualify for the annual exclusion under § 2503(c) of the Internal Revenue Code.

"(f)(1) Subject to subsection (e) of this section, this section applies to:

"(A) Any trust created under a governing instrument executed after the effective date of this section, unless the governing instrument provides expressly that this section shall not apply; and

"(B) Any trust created under a governing instrument executed before the effective date of this section, unless all parties in interest elect affirmatively not to be subject to this section on or before the later of:

"(i) Three years after the effective date of this section; or

"(ii) Three years after the date on which the trust becomes irrevocable.

"(3) The election required under paragraph (1) of this subsection shall be made by a written declaration signed by the parties in interest and delivered to the trustee."

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Sec. 3. The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 4. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code §47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code §1-233(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia