

§ 25.2512-7

this paragraph the term “open-end investment company” includes only a company which on the date of the gift was engaged in offering its shares to the public in the capacity of an open-end investment company.

(2) The provisions of this paragraph shall apply with respect to gifts made after December 31, 1954.

[T.D. 6680, 28 FR 10872, Oct. 10, 1963, as amended by T.D. 7319, 39 FR 26723, July 23, 1974]

§ 25.2512-7 Effect of excise tax.

If jewelry, furs or other property, the purchase of which is subject to an excise tax, is purchased at retail by a taxpayer and made the subject of gifts within a reasonable time after purchase, the purchase price, including the excise tax, is considered to be the fair market value of the property on the date of the gift, in the absence of evidence that the market price of similar articles has increased or decreased in the meantime. Under other circumstances, the excise tax is taken into account in determining the fair market value of property to the extent, and only to the extent, that it affects the price at which the property would change hands between a willing buyer and a willing seller, as provided in § 25.2512-1.

§ 25.2512-8 Transfers for insufficient consideration.

Transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a value in money or money's worth, as love and affection, promise of marriage, etc., is to be wholly disregarded,

26 CFR Ch. I (4-1-13 Edition)

and the entire value of the property transferred constitutes the amount of the gift. Similarly, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the spouse's property or estate, shall not be considered to any extent a consideration “in money or money's worth.” See, however, section 2516 and the regulations thereunder with respect to certain transfers incident to a divorce. See also sections 2701, 2702, 2703 and 2704 and the regulations at §§ 25.2701-0 through 25.2704-3 for special rules for valuing transfers of business interests, transfers in trust, and transfers pursuant to options and purchase agreements.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960; as amended by T.D. 8395, 57 FR 4255, Feb. 4, 1992]

§ 25.2513-1 Gifts by husband or wife to third party considered as made one-half by each.

(a) A gift made by one spouse to a person other than his (or her) spouse may, for the purpose of the gift tax, be considered as made one-half by his spouse, but only if at the time of the gift each spouse was a citizen or resident of the United States. For purposes of this section, an individual is to be considered as the spouse of another individual only if he was married to such individual at the time of the gift and does not remarry during the remainder of the “calendar period” (as defined in § 25.2502-1(c)(1)).

(b) The provisions of this section will apply to gifts made during a particular “calendar period” (as defined in § 25.2502-1(c)(1)) only if both spouses signify their consent to treat all gifts made to third parties during that calendar period by both spouses while married to each other as having been made one-half by each spouse. As to the manner and time for signifying consent, see § 25.2513-2. Such consent, if signified with respect to any calendar period, is effective with respect to all gifts made to third parties during such calendar period except as follows:

(1) If the consenting spouses were not married to each other during a portion of the calendar period, the consent is not effective with respect to any gifts