

(1) AS A RESULT OF APPLICATION OF SUBSECTION (A) OF THIS SECTION, A MARITAL DEDUCTION FOR THE TRUST PROPERTY WOULD NOT BE ALLOWED TO A SPOUSE WHO IS A TRUSTEE AND TO WHOM A MARITAL DEDUCTION WOULD OTHERWISE BE ALLOWED UNDER THE INTERNAL REVENUE CODE; OR

(2) THE TRUST IS REVOCABLE OR AMENDABLE, DURING THE TIME THAT THE TRUST REMAINS REVOCABLE OR AMENDABLE.

(E) (1) IN THIS SUBSECTION, "PARTIES IN INTEREST" MEANS:

(I) EACH TRUSTEE THEN SERVING; AND

(II) EACH INCOME BENEFICIARY AND REMAINDER BENEFICIARY THEN IN EXISTENCE OR, IF SUCH BENEFICIARY HAS NOT ATTAINED MAJORITY OR IS OTHERWISE INCAPACITATED, THE BENEFICIARY'S LEGAL REPRESENTATIVE UNDER APPLICABLE LAW OR THE BENEFICIARY'S DONEE UNDER A DURABLE POWER OF ATTORNEY THAT IS SUFFICIENT TO GRANT SUCH AUTHORITY.

(2) SUBJECT TO THE PROVISIONS OF SUBSECTION (D) OF THIS SECTION, THIS SECTION APPLIES TO:

(I) ANY TRUST CREATED UNDER A GOVERNING INSTRUMENT EXECUTED AFTER SEPTEMBER 30, 1995, UNLESS THE TERMS OF THE GOVERNING INSTRUMENT PROVIDE EXPRESSLY THAT THIS SECTION DOES NOT APPLY; AND

(II) ANY TRUST CREATED UNDER A GOVERNING INSTRUMENT EXECUTED BEFORE OCTOBER 1, 1995, UNLESS ALL PARTIES IN INTEREST ELECT AFFIRMATIVELY NOT TO BE SUBJECT TO THE APPLICATION OF THIS SECTION ON OR BEFORE THE LATER OF OCTOBER 1, 1998, OR 3 YEARS AFTER THE DATE ON WHICH THE TRUST BECOMES IRREVOCABLE.

(F) THE AFFIRMATIVE ELECTION REQUIRED UNDER SUBSECTION (E) OF THIS SECTION MUST BE MADE THROUGH A WRITTEN DECLARATION SIGNED BY THE INTERESTED PERSON AND DELIVERED TO THE TRUSTEE..

SECTION 2. AND BE IT FURTHER ENACTED, That the provisions of this Act neither create a new cause of action nor impair any existing cause of action which, in either case, relates to any power proscribed by § 14-109(a) that was exercised before October 1, 1995.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to all trusts existing before, on, or after October 1, 1995 regardless of the effective date of the governing instrument under which the trust was created.

SECTION 4. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 1995.

May 24, 1995

The Honorable Casper R. Taylor, Jr.