the gifts may be adjusted. See § 20.2001–1(a) of this chapter.

(d) *Effective dates.* Paragraph (a) of this section applies to transfers of property by gift made prior to August 6, 1997. Paragraphs (b) and (c) of this section apply to transfers of property by gift made after August 5, 1997, if the gift tax return for the calendar period in which the transfer is reported is filed after December 3, 1999.

[T.D. 8845, 64 FR 67770, Dec. 3, 1999]

TRANSFERS

§ 25.2511–1 Transfers in general.

(a) The gift tax applies to a transfer by way of gift whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. For example, a taxable transfer may be effected by the creation of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of an insurance policy, or the transfer of cash, certificates of deposit, or Federal, State or municipal bonds. Statutory provisions which exempt bonds, notes, bills and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are not applicable to the gift tax, since the gift tax is an excise tax on the transfer, and is not a tax on the subject of the gift.

(b) In the case of a gift by a nonresident not a citizen of the United States—

(1) If the gift was made on or after January 1, 1967, by a donor who was not an expatriate to whom section 2501(a)(2) was inapplicable on the date of the gift by reason of section 2501(a)(3) and paragraph (a)(3) of § 25.2501–1, or

(2) If the gift was made before January 1, 1967, by a donor who was not engaged in business in the United States during the calendar year in which the gift was made, the gift tax applies only if the gift consisted of real property or tangible personal property situated within the United States at the time of the transfer. See §§ 25.2501–1 and 25.2511–3.

(c)(1) The gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax. See further § 25.2512–8 relating to transfers for insufficient consideration. However, in the case of a transfer creating an interest in property (within the meaning of § 25.2518–2(c)(3) and (c)(4)) made after December 31, 1976, this paragraph (c)(1) shall not apply to the donee if, as a result of a qualified disclaimer by the donee, the interest passes to a different donee. Nor shall it apply to a donor if, as a result of a qualified disclaimer by the donee, a completed transfer of an interest in property is not effected. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

(2) In the case of taxable transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent (whether the transfer is effected by the decedent's will or by the law of descent and distribution), a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under the local law. There can be no refusal of ownership of property after its acceptance. In the absence of the facts to the contrary, if a person fails to refuse to accept a transfer to him of ownership of a decedent's property within a reasonable time after learning of the existence of the transfer, he will be presumed to have accepted the property. Where the local law does not permit such a refusal, any disposition by the beneficiary, heir, or next-of-kin whereby ownership is transferred gratuitously to another constitutes the making of a gift by the beneficiary, heir, or next-of-kin. In any case where a refusal is purported to relate to only a part of the property, the determination of whether or not there has been a complete and unqualified refusal to accept ownership will depend on all of the

facts and circumstances in each particular case, taking into account the recognition and effectiveness of such a purported refusal under the local law. In illustration, if Blackacre was devised to A under the decedent's will (which also provided that all lapsed legacies and devises shall go to B, the residuary beneficiary), and under the local law A could refuse to accept ownership in which case title would be considered as never having passed to A, A's refusal to accept Blackacre within a reasonable time of learning of the devise will not constitute the making of a gift by A to B. However, if a decedent who owned Greenacre died intestate with C and D as his only heirs, and under local law the heir of a decedent cannot, by refusal to accept, prevent himself from becoming an owner of intestate property, any gratuitous disposition by C (by whatever term it is known) whereby he gives up his ownership of a portion of Greenacre and D acquires the whole thereof constitutes the making of a gift by C to D.

(3) The fourth sentence of paragraph (c)(1) of this section is applicable for transfers creating an interest to be disclaimed made on or after December 31, 1997.

(d) If a joint income tax return is filed by a husband and wife for a taxable year, the payment by one spouse of all or part of the income tax liability for such year is not treated as resulting in a transfer that is subject to gift tax. The same rule is applicable to the payment of gift tax for a ''calendar period'' (as defined in §25.2502–1(c)(1)) in the case of a husband and wife who have consented to have the gifts made considered as made half by each of them in accordance with the provisions of section 2513.

(e) If a donor transfers by gift less than his entire interest in property, the gift tax is applicable to the interest transferred. The tax is applicable, for example, to the transfer of an undivided half interest in property, or to the transfer of a life estate when the grantor retains the remainder interest, or vice versa. However, if the donor's retained interest is not susceptible of measurement on the basis of generally accepted valuation principles, the gift tax is applicable to the entire value of the property subject to the gift. Thus if a donor, aged 65 years, transfers a life estate in property to A, aged 25 years, with remainder to A's issue, or in default of issue, with reversion to the donor, the gift tax will normally be applicable to the entire value of the property.

(f) If a donor is the owner of only a limited interest in property, and transfers his entire interest, the interest is in every case to be valued by the rules set forth in §§25.2512–1 through 25.2512–7. If the interest is a remainder or reversion or other future interest, it is to be valued on the basis of actuarial principles set forth in §25.2512–5, or if it is not susceptible of valuation in that manner, in accordance with the principles set forth in §25.2512–1.

(g)(1) Donative intent on the part of the transferor is not an essential element in the application of the gift tax to the transfer. The application of the tax is based on the objective facts of the transfer and the circumstances under which it is made, rather than on the subjective motives of the donor. However, there are certain types of transfers to which the tax is not applicable. It is applicable only to a transfer of a beneficial interest in property. It is not applicable to a transfer of bare legal title to a trustee. A transfer by a trustee of trust property in which he has no beneficial interest does not constitute a gift by the trustee (but such a transfer may constitute a gift by the creator of the trust, if until the transfer he had the power to change the beneficiaries by amending or revoking the trust). The gift tax is not applicable to a transfer for a full and adequate consideration in money or money's worth, or to ordinary business transactions, described in §25.2512–8.

(2) If a trustee has a beneficial interest in trust property, a transfer of the property by the trustee is not a taxable transfer if it is made pursuant to a fiduciary power the exercise or nonexercise of which is limited by a reasonably fixed or ascertainable standard which is set forth in the trust instrument. A clearly measurable standard under which the holder of a power is legally accountable is such a standard for this

purpose. For instance, a power to distribute corpus for the education, support, maintenance, or health of the beneficiary; for his reasonable support and comfort; to enable him to maintain his accustomed standard of living; or to meet an emergency, would be such a standard. However, a power to distribute corpus for the pleasure, desire, or happiness of a beneficiary is not such a standard. The entire context of a provision of a trust instrument granting a power must be considered in determining whether the power is limited by a reasonably definite standard. For example, if a trust instrument provides that the determination of the trustee shall be conclusive with respect to the exercise or nonexercise of a power, the power is not limited by a reasonably definite standard. However, the fact that the governing instrument is phrased in discretionary terms is not in itself an indication that no such standard exists.

(h) The following are examples of transactions resulting in taxable gifts and in each case it is assumed that the transfers were not made for an adequate and full consideration in money or money's worth:

(1) A transfer of property by a corporation to B is a gift to B from the stockholders of the corporation. If B himself is a stockholder, the transfer is a gift to him from the other stockholders but only to the extent it exceeds B's own interest in such amount as a shareholder. A transfer of property by B to a corporation generally represents gifts by B to the other individual shareholders of the corporation to the extent of their proportionate interests in the corporation. However, there may be an exception to this rule, such as a transfer made by an individual to a charitable, public, political or similar organization which may constitute a gift to the organization as a single entity, depending upon the facts and circumstances in the particular case.

(2) The transfer of property to B if there is imposed upon B the obligation of paying a commensurate annuity to C is a gift to C.

(3) The payment of money or the transfer of property to B in consideration of B's promise to render a service to C is a gift to C, or to both B and C, depending on whether the service to be rendered to C is or is not an adequate and full consideration in money or money's worth for that which is received by B. See section 2512(b) and the regulations thereunder.

(4) If A creates a joint bank account for himself and B (or a similar type of ownership by which A can regain the entire fund without B's consent), there is a gift to B when B draws upon the account for his own benefit, to the extent of the amount drawn without any obligation to account for a part of the proceeds to A. Similarly, if A purchases a United States savings bond registered as payable to ''A or B,'' there is a gift to B when B surrenders the bond for cash without any obligation to account for a part of the proceeds to A.

(5) If A with his own funds purchases property and has the title conveyed to himself and B as joint owners, with rights of survivorship (other than a joint ownership described in example (4) but which rights may be defeated by either party severing his interest, there is a gift to B in the amount of half the value of the property. However, see § 25.2515–1 relative to the creation of a joint tenancy (or tenancy by the entirety) between husband and wife in real property with rights of survivorship which, unless the donor elects otherwise is not considered as a transfer includible for Federal gift tax purposes at the time of the creation of the joint tenancy. See § 25.2515–2 with respect to determining the extent to which the creation of a tenancy by the entirety constitutes a taxable gift if the donor elects to have the creation of the tenancy so treated. See also § 25.2523(d)–1 with respect to the marital deduction allowed in the case of the creation of a joint tenancy or a tenancy by the entirety.

(6) If A is possessed of a vested remainder interest in property, subject to being divested only in the event he should fail to survive one or more individuals or the happening of some other event, an irrevocable assignment of all or any part of his interest would result in a transfer includible for Federal gift tax purposes. See especially § 25.2512–5

for the valuation of an interest of this type.

(7) If A, without retaining a power to revoke the trust or to change the beneficial interests therein, transfers property in trust whereby B is to receive the income for life and at his death the trust is to terminate and the corpus is to be returned to A, provided A survives, but if A predeceases B the corpus is to pass to C, A has made a gift equal to the total value of the property less the value of his retained interest. See § 25.2512–5 for the valuation of the donor's retained interest.

(8) If the insured purchases a life insurance policy, or pays a premium on a previously issued policy, the proceeds of which are payable to a beneficiary or beneficiaries other than his estate, and with respect to which the insured retains no reversionary interest in himself or his estate and no power to revest the economic benefits in himself or his estate or to change the beneficiaries or their proportionate benefits (or if the insured relinquishes by assignment, by designation of a new beneficiary or otherwise, every such power that was retained in a previously issued policy), the insured has made a gift of the value of the policy, or to the extent of the premium paid, even though the right of the assignee or beneficiary to receive the benefits is conditioned upon his surviving the insured. For the valuation of life insurance policies see § 25.2512–6.

(9) Where property held by a husband and wife as community property is used to purchase insurance upon the husband's life and a third person is revocably designated as beneficiary and under the State law the husband's death is considered to make absolute the transfer by the wife, there is a gift by the wife at the time of the husband's death of half the amount of the proceeds of such insurance.

(10) If under a pension plan (pursuant to which he has an unqualified right to an annuity) an employee has an option to take either a retirement annuity for himself alone or a smaller annuity for himself with a survivorship annuity payable to his wife, an irrevocable election by the employee to take the reduced annuity in order that an annuity may be paid, after the employee's death, to his wife results in the making of a gift. However, see section 2517 and the regulations thereunder for the exemption from gift tax of amounts attributable to employers' contributions under qualified plans and certain other contracts.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7150, 36 FR 22900, Dec. 2, 1971; T.D. 7238, 37 FR 28728, Dec. 29, 1972; T.D. 7296, 38 FR 34202, Dec. 12, 1973; T.D. 7910, 48 FR 40374, Sept. 7, 1983; T.D. 8095, 51 FR 28369, Aug. 7, 1986; T.D. 8540, 59 FR 30103, June 10, 1994; T.D. 8744, 62 FR 68185, Dec. 31, 1997]

§ 25.2511–2 Cessation of donor's dominion and control.

(a) The gift tax is not imposed upon the receipt of the property by the donee, nor is it necessarily determined by the measure of enrichment resulting to the donee from the transfer, nor is it conditioned upon ability to identify the donee at the time of the transfer. On the contrary, the tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

(b) As to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another, the gift is complete. But if upon a transfer of property (whether in trust or otherwise) the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined. For example, if a donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder among his descendants, no portion of the transfer is a completed gift. On

the other hand, if the donor had not retained the testamentary power of appointment, but instead provided that the remainder should go to X or his heirs, the entire transfer would be a completed gift. However, if the exercise of the trustee's power in favor of the grantor is limited by a fixed or ascertainable standard (see paragraph (g)(2) of § 25.2511–1), enforceable by or on behalf of the grantor, then the gift is incomplete to the extent of the ascertainable value of any rights thus retained by the grantor.

(c) A gift is incomplete in every instance in which a donor reserves the power to revest the beneficial title to the property in himself. A gift is also incomplete if and to the extent that a reserved power gives the donor the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves unless the power is a fiduciary power limited by a fixed or ascertainable standard. Thus, if an estate for life is transferred but, by an exercise of a power, the estate may be terminated or cut down by the donor to one of less value, and without restriction upon the extent to which the estate may be so cut down, the transfer constitutes an incomplete gift. If in this example the power was confined to the right to cut down the estate for life to one for a term of five years, the certainty of an estate for not less than that term results in a gift to that extent complete.

(d) A gift is not considered incomplete, however, merely because the donor reserves the power to change the manner or time of enjoyment. Thus, the creation of a trust the income of which is to be paid annually to the donee for a period of years, the corpus being distributable to him at the end of the period, and the power reserved by the donor being limited to a right to require that, instead of the income being so payable, it should be accumulated and distributed with the corpus to the donee at the termination of the period, constitutes a completed gift.

(e) A donor is considered as himself having a power if it is exercisable by him in conjunction with any person not having a substantial adverse interest in the disposition of the transferred property or the income therefrom. A trustee, as such, is not a person having an adverse interest in the disposition of the trust property or its income.

(f) The relinquishment or termination of a power to change the beneficiaries of transferred property, occurring otherwise than by the death of the donor (the statute being confined to transfers by living donors), is regarded as the event that completes the gift and causes the tax to apply. For example, if A transfers property in trust for the benefit of B and C but reserves the power as trustee to change the proportionate interests of B and C, and if A thereafter has another person appointed trustee in place of himself, such later relinquishment of the power by A to the new trustee completes the gift of the transferred property, whether or not the new trustee has a substantial adverse interest. The receipt of income or of other enjoyment of the transferred property by the transferee or by the beneficiary (other than by the donor himself) during the interim between the making of the initial transfer and the relinquishment or termination of the power operates to free such income or other enjoyment from the power, and constitutes a gift of such income or of such other enjoyment taxable as of the ''calendar period'' (as defined in § 25.2502–1(c)(1)) of its receipt. If property is transferred in trust to pay the income to A for life with remainder to B, powers to distribute corpus to A, and to withhold income from A for future distribution to B, are powers to change the beneficiaries of the transferred property.

(g) If a donor transfers property to himself as trustee (or to himself and some other person, not possessing a substantial adverse interest, as trustees), and retains no beneficial interest in the trust property and no power over it except fiduciary powers, the exercise or nonexercise of which is limited by a fixed or ascertainable standard, to change the beneficiaries of the transferred property, the donor has made a completed gift and the entire value of the transferred property is subject to the gift tax.

(h) If a donor delivers a properly indorsed stock certificate to the donee or the donee's agent, the gift is completed

for gift tax purposes on the date of delivery. If the donor delivers the certificate to his bank or broker as his agent, or to the issuing corporation or its transfer agent, for transfer into the name of the donee, the gift is completed on the date the stock is transferred on the books of the corporation.

(i) [Reserved]

(j) If the donor contends that a power is of such nature as to render the gift incomplete, and hence not subject to the tax as of the calendar period (as defined in § 25.2502–1(c)(1)) of the initial transfer, see § 301.6501(c)–1(f)(5) of this chapter.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28728, Dec. 29, 1972; T.D. 7910, 48 FR 40374, Sept. 7, 1983; T.D. 8845, 64 FR 67771, Dec. 3, 1999]

§ 25.2511–3 Transfers by nonresidents not citizens.

(a) *In general.* Sections 2501 and 2511 contain rules relating to the taxation of transfers of property by gift by a donor who is a nonresident not a citizen of the United States. (See paragraph (b) of § 25.2501–1 for the definition of the term ''resident'' for purposes of the gift tax.) As combined these rules are:

(1) The gift tax applies only to the transfer of real property and tangible personal property situated in the United States at the time of the transfer if either—

(i) The gift was made on or after January 1, 1967, by a nonresident not a citizen of the United States who was not an expatriate to whom section 2501(a)(2) was inapplicable on the date of the gift by reason of section 2501(a)(3) and paragraph (a)(3) of § 25.2501–1, or

(ii) The gift was made before January 1, 1967, by a nonresident not a citizen of the United States who was not engaged in business in the United States during the calendar year in which the gift was made.

(2) The gift tax applies to the transfer of all property (whether real or personal, tangible or intangible) situated in the United States at the time of the transfer if either—

(i) The gift was made on or after January 1, 1967, by a nonresident not a citizen of the United States who was an expatriate to whom section 2501(a)(2) was inapplicable on the date of the gift by reason of section 2501(a)(3) and paragraph (a)(3) of § 25.2501–1, or

(ii) The gift was made before January 1, 1967, by a nonresident not a citizen of the United States who was engaged in business in the United States during the calendar year in which the gift was made.

(b) *Situs of property.* For purposes of applying the gift tax to the transfer of property owned and held by a nonresident not a citizen of the United States at the time of the transfer—

(1) *Real property and tangible personal property.* Real property and tangible personal property constitute property within the United States only if they are physically situated therein.

(2) *Intangible personal property.* Except as provided otherwise in subparagraphs (3) and (4) of this paragraph, intangible personal property constitutes property within the United States if it consists of a property right issued by or enforceable against a resident of the United States or a domestic corporation (public or private), irrespective of where the written evidence of the property is physically located at the time of the transfer.

(3) *Shares of stock.* Irrespective of where the stock certificates are physically located at the time of the transfer—

(i) Shares of stock issued by a domestic corporation constitute property within the United States, and

(ii) Shares of stock issued by a corporation which is not a domestic corporation constitute property situated outside the United States.

(4) *Debt obligations.* (i) In the case of gifts made on or after January 1, 1967, a debt obligation, including a bank deposit, the primary obligor of which is a United States person (as defined in section 7701(a)(30)), the United States, a State, or any political subdivision thereof, the District of Columbia, or any agency or instumentality of any such government constitutes property situated within the United States. This subdivision applies—

(*a*) In the case of a debt obligation of a domestic corporation, whether or not any interest on the obligation would be

treated under section 862(a)(1) as income from sources without the United States by reason of section 861(a)(1)(B) (relating to interest received from a domestic corporation less than 20 percent of whose gross income for a 3–year period was derived from sources within the United States) and the regulations thereunder;

(*b*) In the case of an amount described in section 861(c) (relating to certain bank deposits, withdrawable accounts, and amounts held by an insurance company under an agreement to pay interest), whether or not any interest thereon would be treated under section 862(a)(1) as income from sources without the United States by reason of section 861(a)(1)(A) (relating to interest on amounts described in section 861(c) which is not effectively connected with the conduct of a trade or business within the United States) and the regulations thereunder;

(*c*) In the case of a deposit with a domestic corporation or domestic partnership, whether or not the deposit is with a foreign branch thereof engaged in the commercial banking business; and

(*d*) Irrespective of where the written evidence of the debt obligation is physically located at the time of the transfer.

For purposes of this subdivision, a debt obligation on which there are two or more primary obligors shall be apportioned among such obligors, taking into account to the extent appropriate under all the facts and circumstances any choate or inchoate rights of contribution existing among such obligors with respect to the indebtedness. The term ''agency or instrumentality'', as used in this subdivision, does not include a possession of the United States or an agency or instrumentality of a possession.

(ii) In the case of gifts made on or after January 1, 1967, a debt obligation, including a bank deposit, not deemed under subdivision (i) of this subparagraph to be situated within the United States, constitutes property situated outside the United States.

(iii) In the case of gifts made before January 1, 1967, a debt obligation the written evidence of which is treated as being the property itself constitutes property situated within the United States if the written evidence of the obligation is physically located in the United States at the time of the transfer, irrespective of who is the primary obligor on the debt. If the written evidence of the obligation is physically located outside the United States, the debt obligation constitutes property situated outside the United States.

(iv) Currency is not a debt obligation for purposes of this subparagraph.

[T.D. 7296, 38 FR 34202, Dec. 12, 1973]

§ 25.2512–0 Table of contents.

This section lists the section headings that appear in the regulations under section 2512.

[T.D. 9448, 74 FR 21512, May 7, 2009]

§ 25.2512–1 Valuation of property; in general.

Section 2512 provides that if a gift is made in property, its value at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts. The value of a particular item of property is not the price that a forced sale of the

property would produce. Nor is the fair market value of an item of property the sale price in a market other than that in which such item is most commonly sold to the public, taking into account the location of the item wherever appropriate. Thus, in the case of an item of property made the subject of a gift, which is generally obtained by the public in the retail market, the fair market value of such an item of property is the price at which the item or a comparable item would be sold at retail. For example, the value of an automobile (an article generally obtained by the public in the retail market) which is the subject of a gift, is the price for which an automobile of the same or approximately the same description, make, model, age, condition, etc., could be purchased by a member of the general public and not the price for which the particular automobile of the donor would be purchased by a dealer in used automobiles. Examples of items of property which are generally sold to the public at retail may be found in § 25.2512–6. The value is generally to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property. For example, in the case of shares of stocks or bonds, such unit of property is generally a share or a bond. Property shall not be returned at the value at which it is assessed for local tax purposes unless that value represents the fair market value thereof on the date of the gift. All relevant facts and elements of value as of the time of the gift shall be considered. Where the subject of a gift is an interest in a business, the value of items of property in the inventory of the business generally should be reflected in the value of the business. For valuation of interests in businesses, see § 25.2512–3. See § 25.2512–2 and §§ 25.2512–4 through 25.2512–6 for further information concerning the valuation of other particular kinds of property. See § 25.2702–6 for an adjustment to the total amount of an individual's taxable gifts where the individual's current taxable gifts include the transfer of certain interests in trust that were previously valued under the provisions of section 2702.

[T.D. 6826, 30 FR 7709, June 15, 1965; as amended by T.D. 8395, 57 FR 4254, Feb. 4, 1992]

§ 25.2512–2 Stocks and bonds.

(a) *In general.* The value of stocks and bonds is the fair market value per share or bond on the date of the gift.

(b) *Based on selling prices.* (1) In general, if there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market or otherwise, the mean between the highest and lowest quoted selling prices on the date of the gift is the fair market value per share or bond. If there were no sales on the date of the gift but there were sales on dates within a reasonable period both before and after the date of the gift, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the date of the gift. The average is to be weighted inversely by the respective numbers of trading days between the selling dates and the date of the gift. If the stocks or bonds are listed on more than one exchange, the records of the exchange where the stocks or bonds are principally dealt in should be employed if such records are available in a generally available listing or publication of general circulation. In the event that such records are not so available and such stocks or bonds are listed on a composite listing of combined exchanges available in a generally available listing or publication of general circulation, the records of such combined exchanges should be employed. In valuing listed securities, the donor should be careful to consult accurate records to obtain values as of the date of the gift. If quotations of unlisted securities are obtained from brokers, or evidence as to their sale is obtained from the officers of the issuing companies, copies of letters furnishing such quotations or evidence of sale should be attached to the return.

(2) If it is established with respect to bonds for which there is a market on a stock exchange, that the highest and lowest selling prices are not available for the date of the gift in a generally available listing or publication of general circulation but that closing prices

are so available, the fair market value per bond is the mean between the quoted closing selling price on the date of the gift and the quoted closing selling price on the trading day before the date of the gift. If there were no sales on the trading day before the date of the gift but there were sales on dates within a reasonable period before the date of the gift, the fair market value is determined by taking a weighted average of the quoted closing selling prices on the date of the gift and the nearest date before the date of the gift. The closing selling price for the date of the gift is to be weighted by the respective number of trading days between the previous selling date and the date of the gift. If there were no sales within a reasonable period before the date of the gift but there were sales on the date of the gift, the fair market value is the closing selling price on the date of the gift. If there were no sales on the date of the gift but there were sales within a reasonable period both before and after the date of the gift, the fair market value is determined by taking a weighted average of the quoted closing selling prices on the nearest date before and the nearest date after the date of the gift. The average is to be weighed inversely by the respective numbers of trading days between the selling dates and the date of the gift. If the bonds are listed on more than one exchange, the records of the exchange where the bonds are principally dealt in should be employed. In valuing listed securities, the donor should be careful to consult accurate records to obtain values as of the date of the gift.

(3) The application of this paragraph may be illustrated by the following examples:

Example (1). Assume that sales of stock nearest the date of the gift (Friday, June 15) occurred two trading days before (Wednesday, June 13) and three trading days after (Wednesday, June 20) and on these days the mean sale prices per share were $10 and $15, respectively. The price of $12 is taken as representing the fair market value of a share of stock as of the date of the gift

[(3×10)+(2×15)]/5

Example (2). Assume the same facts as in example 1 except that the mean sale prices per share on June 13 and June 20 were $15 and $10 respectively. The price of $13 is taken as representing the fair market value of a share of stock as of the date of the gift

[(3×15)+(2×10)]/5

Example (3). Assume that on the date of the gift (Tuesday, April 3, 1973) the closing selling price of certain listed bonds was $25 per bond and that the highest and lowest selling prices are not available in a generally available listing or publication of general circulation for that date. Assume further, that the closing selling price of such bonds was $21 per bond on the day before the date of the gift (Monday, April 2, 1973). Thus, under paragraph (b)(2) of this section, the price of $23 is taken as representing the fair market value per bond as of the date of the gift

[(25+21)]/2

Example (4). Assume the same facts as in example 3 except that there were no sales on the day before the date of the gift. Assume further, that there were sales on Thursday, March 29, 1973, and that the closing selling price on that day was $23. The price of $24.50 is taken as representing the fair market value per bond as of the date of the gift

[(1×23)+(3×25)]/4

Example (5). Assume that no bonds were traded on the date of the gift (Friday, April 20). Assume further, that sales of bonds nearest the date of the gift occurred two trading days before (Wednesday, April 18) and three trading days after (Wednesday, April 25) the date of the gift and that on these two days the closing selling prices per bond were $29 and $22, respectively. The highest and lowest selling prices are not available for these dates in a generally available listing or publication of general circulation. Thus, under paragraph (b)(2) of this section the price of $26.20 is taken as representing the fair market value of a bond as of the date of the gift

[(3×29)+(2×22)]/5

(c) *Based on bid and asked prices.* If the provisions of paragraph (b) of this section are inapplicable because actual sales are not available during reasonable period beginning before and ending after the date of the gift, the fair market value may be determined by taking the mean between the bona fide bid and asked prices on the date of the gift, or if none, by taking a weighted average of the means between the bona fide bid and asked prices on the nearest trading date before and the nearest trading date after the date of the gift, if both such nearest dates are within a reasonable period. The average is to be determined in the manner described in paragraph (b) of this section.

(d) *Where selling prices and bid and asked prices are not available for dates both before and after the date of gift.* If

the provisions of paragraphs (b) and (c) of this section are inapplicable because no actual sale prices or quoted bona fide bid and asked prices are available on a date within a reasonable period before the date of the gift, but such prices are available on a date within a reasonable period after the date of the gift, or vice versa, then the mean between the highest and lowest available sale prices or bid and asked prices may be taken as the value.

(e) *Where selling prices or bid and asked prices do not represent fair market value.* In cases in which it is established that the value per bond or share of any security determined on the basis of the selling or bid and asked prices as provided under paragraphs (b), (c), and (d) of this section does not represent the fair market value thereof, then some reasonable modification of the value determined on that basis or other relevant facts and elements of value shall be considered in determining fair market value. Where sales at or near the date of the gift are few or of a sporadic nature, such sales alone may not indicate fair market value. In certain exceptional cases, the size of the block of securities made the subject of each separate gift in relation to the number of shares changing hands in sales may be relevant in determining whether selling prices reflect the fair market value of the block of stock to be valued. If the donor can show that the block of stock to be valued, with reference to each separate gift, is so large in relation to the actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations. Complete data in support of any allowance claimed due to the size of the block of stock being valued should be submitted with the return. On the other hand, if the block of stock to be valued represents a controlling interest, either actual or effective, in a going business, the price at which other lots change hands may have little relation to its true value.

(f) *Where selling prices or bid and asked prices are unavailable.* If the provisions of paragraphs (b), (c), and (d) of this section are inapplicable because actual sale prices and bona fide bid and asked prices are lacking, then the fair market value is to be determined by taking the following factors into consideration:

(1) In the case of corporate or other bonds, the soundness of the security, the interest yield, the date of maturity, and other relevant factors; and

(2) In the case of shares of stock, the company's net worth, prospective earning power and dividend-paying capacity, and other relevant factors.

Some of the ''other relevant factors'' referred to in subparagraphs (1) and (2) of this paragraph are: The goodwill of the business; the economic outlook in the particular industry; the company's position in the industry and its management; the degree of control of the business represented by the block of stock to be valued; and the values of securities of corporations engaged in the same or similar lines of business which are listed on a stock exchange. However, the weight to be accorded such comparisons or any other evidentiary factors considered in the determination of a value depends upon the facts of each case. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of any examinations of the company made by accountants, engineers, or any technical experts as of or near the date of the gift.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 7327, 39 FR 35355, Oct. 1, 1974; T.D. 7432, 41 FR 38769, Sept. 13, 1976]

§ 25.2512–3 Valuation of interest in businesses.

(a) Care should be taken to arrive at an accurate valuation of any interest in a business which the donor transfers without an adequate and full consideration in money or money's worth. The fair market value of any interest in a business, whether a partnership or a proprietorship, is the net amount which a willing purchaser, whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to

buy or to sell and both having reasonable knowledge of the relevant facts. The net value is determined on the basis of all relevant factors including—

(1) A fair appraisal as of the date of the gift of all the assets of the business, tangible and intangible, including good will;

(2) The demonstrated earning capacity of the business; and

(3) The other factors set forth in paragraph (f) of § 25.2512–2 relating to the valuation of corporate stock, to the extent applicable.

Special attention should be given to determining an adequate value of the good will of the business. Complete financial and other data upon which the valuation is based should be submitted with the return, including copies of reports of examinations of the business made by accountants, engineers, or any technical experts as of or near the date of the gift.

(b) [Reserved]

§ 25.2512–4 Valuation of notes.

The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus accrued interest to the date of the gift, unless the donor establishes a lower value. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount (because of the interest rate, or date of maturity, or other cause), or that the note is uncollectible in part (by reason of the insolvency of the party or parties liable, or for other cause), and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

§ 25.2512–5 Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests.

(a) *In general.* Except as otherwise provided in paragraph (b) of this section and § 25.7520–3(b), the fair market value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift is the present value of the interests determined under paragraph (d) of this section. Section 20.2031–7 of this chapter (Estate Tax Regulations) and related sections provide tables with standard actuarial factors and examples that illustrate how to use the tables to compute the present value of ordinary annuity, life, and remainder interests in property. These sections also refer to standard and special actuarial factors that may be necessary to compute the present value of similar interests in more unusual fact situations. These factors and examples are also generally applicable for gift tax purposes in computing the values of taxable gifts.

(b) *Commercial annuities and insurance contracts.* The value of life insurance contracts and contracts for the payment of annuities issued by companies regularly engaged in their sale is determined under § 25.2512–6.

(c) and (d) [Reserved] For further guidance, see § 25.2512–5T(c) and (d).

(e) *Effective/applicability dates.* This section applies after April 30, 1999, and before May 1, 2009.

[T.D. 8540, 59 FR 30174, June 10, 1994, as amended by T.D. 8819, 64 FR 23224, Apr. 30, 1999; T.D. 8886, 65 FR 36940, June 12, 2000; 65 FR 39470, June 26, 2000; 65 FR 58222, Sept. 28, 2000; T.D. 9448, 74 FR 21512, May 7, 2009]

§ 25.2512–5T Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests (temporary).

(a) and (b) [Reserved] For further guidance, see § 25.2512–5(a) and (b).

(c) *Actuarial valuations.* The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift on or after May 1, 2009, is determined under paragraph (d) of this section. The present value of annuities, unitrust interests, life estates, terms of years, remainders, and reversions transferred by gift before May 1, 2009, is determined under the following sections:

Transfers		Applicable regulations
After	Before	
	01–01–52	25.2512–5A(a).
12–31–51	01–01–71	25.2512–5A(b).

Transfers		Applicable regulations
After	Before	
12–31–70	12–01–83	25.2512–5A(c).
11–30–83	05–01–89	25.2512–5A(d).
04–30–89	05–01–99	25.2512–5A(e).
04–30–99	05–01–09	25.2512–5A(f).

(d) *Actuarial valuations on or after May 1, 2009*—(1) *In general.* Except as otherwise provided in paragraph (b) of this section and §25.7520–3(b) (relating to exceptions to the use of prescribed tables under certain circumstances), if the valuation date for the gift is on or after May 1, 2009, the fair market value of annuities, life estates, terms of years, remainders, and reversions transferred on or after May 1, 2009, is the present value of such interests determined under paragraph (d)(2) of this section and by use of standard or special section 7520 actuarial factors. These factors are derived by using the appropriate section 7520 interest rate and, if applicable, the mortality component for the valuation date of the interest that is being valued. See §§25.7520–1 through 25.7520–4. The fair market value of a qualified annuity interest described in section 2702(b)(1) and a qualified unitrust interest described in section 2702(b)(2) is the present value of such interests determined under §25.7520–1(c).

(2) *Specific interests.* When the donor transfers property in trust or otherwise and retains an interest therein, generally, the value of the gift is the value of the property transferred less the value of the donor's retained interest. However, if the donor transfers property after October 8, 1990, to or for the benefit of a member of the donor's family, the value of the gift is the value of the property transferred less the value of the donor's retained interest as determined under section 2702. If the donor assigns or relinquishes an annuity, life estate, remainder, or reversion that the donor holds by virtue of a transfer previously made by the donor or another, the value of the gift is the value of the interest transferred. However, see section 2519 for a special rule in the case of the assignment of an income interest by a person who received the interest from a spouse.

(i) *Charitable remainder trusts.* The fair market value of a remainder interest in a pooled income fund, as defined in §1.642(c)–5, is its value determined under §1.642(c)–6T(e) (see §1.642(c)–6A for certain prior periods). The fair market value of a remainder interest in a charitable remainder annuity trust, as described in §1.664–2(a), is its present value determined under §1.664–2(c). The fair market value of a remainder interest in a charitable remainder unitrust, as defined in §1.664–3, is its present value determined under §1.664–4T(e). The fair market value of a life interest or term for years in a charitable remainder unitrust is the fair market value of the property as of the date of transfer less the fair market value of the remainder interest, determined under §1.664–4T(e)(4) and (5).

(ii) *Ordinary remainder and reversionary interests.* If the interest to be valued is to take effect after a definite number of years or after the death of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate remainder interest actuarial factor (that corresponds to the applicable section 7520 interest rate and remainder interest period) in Table B (for a term certain) or the appropriate Table S (for one measuring life), as the case may be. Table B is contained in §20.2031–7(d)(6) and Table S (for one measuring life when the valuation date is on or after May 1, 2009) is included in §20.2031–7T(d)(7) and Internal Revenue Service Publication 1457. See §20.2031–7A containing Table S for valuation of interests before May 1, 2009. For information about obtaining actuarial factors for other types of remainder interests, see paragraph (d)(4) of this section.

(iii) *Ordinary term-of-years and life interests.* If the interest to be valued is the right of a person to receive the income of certain property, or to use certain nonincome-producing property, for

a term of years or for the life of one individual, the present value of the interest is computed by multiplying the value of the property by the appropriate term-of-years or life interest actuarial factor (that corresponds to the applicable section 7520 interest rate and term-of-years or life interest period). Internal Revenue Service Publication 1457 includes actuarial factors for a remainder interest after a term of years in Table B and after the life of one individual in Table S (for one measuring life when the valuation date is on or after May 1, 2009). However, term-of-years and life interest actuarial factors are not included in Table B in §20.2031–7(d)(6) or Table S in §20.2031–7T(d)(7) (or in §20.2031–7A). If Internal Revenue Service Publication 1457 (or any other reliable source of term-of-years and life interest actuarial factors) is not conveniently available, an actuarial factor for the interest may be derived mathematically. This actuarial factor may be derived by subtracting the correlative remainder factor (that corresponds to the applicable section 7520 interest rate) in Table B (for a term of years) in §20.2031–7(d)(6) or in Table S (for the life of one individual) in §20.2031–7T(d)(7), as the case may be, from 1.000000. For information about obtaining actuarial factors for other types of term-of-years and life interests, see paragraph (d)(4) of this section.

(iv) *Annuities.* (A) If the interest to be valued is the right of a person to receive an annuity that is payable at the end of each year for a term of years or for the life of one individual, the present value of the interest is computed by multiplying the aggregate amount payable annually by the appropriate annuity actuarial factor (that corresponds to the applicable section 7520 interest rate and annuity period). Internal Revenue Service Publication 1457 includes actuarial factors in Table B (for a remainder interest after an annuity payable for a term of years) and in Table S (for a remainder interest after an annuity payable for the life of one individual when the valuation date is on or after May 1, 2009). However, annuity actuarial factors are not included in Table B in §20.2031–7(d)(6) or Table S in §20.2031–7T(d)(7) (or in §20.2031–7A). If Internal Revenue Service Publication 1457 (or any other reliable source of annuity actuarial factors) is not conveniently available, an annuity factor for a term of years or for one life may be derived mathematically. This annuity factor may be derived by subtracting the applicable remainder factor (that corresponds to the applicable section 7520 interest rate and annuity period) in Table B (in the case of a term-of-years annuity) in §20.2031–7(d)(6) or in Table S (in the case of a one-life annuity) in §20.2031–7T(d)(7), as the case may be, from 1.000000 and then dividing the result by the applicable section 7520 interest rate expressed as a decimal number. See §20.2031–7T(d)(2)(iv) for an example that illustrates the computation of the present value of an annuity.

(B) If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods, the product obtained by multiplying the annuity factor by the aggregate amount payable annually is then multiplied by the applicable adjustment factor set forth in Table K in §20.2031–7(d)(6) at the appropriate interest rate component for payments made at the end of the specified periods. The provisions of this paragraph (d)(2)(iv)(B) are illustrated by the following example:

Example. In July of a year after 2008, the donor agreed to pay the annuitant the sum of $10,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each December 31st and June 30th. The annuity is payable until the annuitant's death. On the date of the agreement, the annuitant is 68 years and 5 months old. The donee annuitant's age is treated as 68 for purposes of computing the present value of the annuity. The section 7520 rate on the date of the agreement is 6.6 percent. Under Table S in §20.2031–7T(d)(7), the factor at 6.6 percent for determining the present value of a remainder interest payable at the death of an individual aged 68 is .42001. Converting the remainder factor to an annuity factor, as described above, the annuity factor for determining the present value of an annuity transferred to an individual age 68 is 8.7877 (1.00000 minus .42001 divided by .066). The adjustment factor from Table K in §20.2031–7(d)(6) in the column for payments made at the end of each semiannual period at the rate of 6.6 percent is 1.0162. The aggregate annual amount of the annuity, $10,000, is

multiplied by the factor 8.7877 and the product is multiplied by 1.0162. The present value of the donee's annuity is, therefore, $89,300.61 ($10,000 × 8.7877 × 1.0162).

(C) If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for a term of years, the value of the annuity is computed by multiplying the aggregate amount payable annually by the annuity factor described in paragraph (d)(2)(iv)(A) of this section; and the product so obtained is then multiplied by the adjustment factor in Table J in § 20.2031–7(d)(6) at the appropriate interest rate component for payments made at the beginning of specified periods. If an annuity is payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods for one or more lives, the value of the annuity is the sum of the first payment and the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in paragraph (d)(2)(iv)(B) of this section.

(v) *Annuity and unitrust interests for a term of years or until the prior death of an individual*—(A) *Annuity interests.* The present value of an annuity interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables in §§ 20.2031–7(d)(6) and 20.2031–7T(d)(7) as described in the following example:

Example. The donor transfers $100,000 into a trust on or after May 1, 2009, and retains the right to receive an annuity from the trust in the amount of $6,000 per year, payable in equal semiannual installments at the end of each period. The semiannual installments are to be made on each June 30th and December 31st. The annuity is payable for 10 years or until the donor's prior death. At the time of the transfer, the donor is 59 years and 6 months old. The donor's age is deemed to be 60 for purposes of computing the present value of the retained annuity. The section 7520 rate for the month in which the transfer occurred is 5.8 percent. The present value of the donor's retained interest is $42,575.65, determined as follows

TABLE S value at 5.8 percent, age 60	.34656
TABLE S value at 5.8 percent, age 70	.49025
TABLE 2000CM value at age 70	74794
TABLE 2000CM value at age 60	87595
TABLE B value at 5.8 percent, 10 years	.569041
TABLE K value at 5.8 percent	1.0143

Factor for donor's retained interest at 5.8 percent:

$$\frac{(1.00000 - .34656) - (.569041 \times (.74794 / .87595) \times (1.00000 - .49025))}{.058} = 6.9959$$

Present value of donor's retained interest:

($6,000 × 6.9959 × 1.0143) $42,575.65:

(B) *Unitrust interests.* The present value of a unitrust interest that is payable until the earlier to occur of the lapse of a specific number of years or the death of an individual may be computed with values from the tables in §§ 1.664–4(e)(6) and 1.664–4T(e)(7) as described in the following example:

Example. The donor who, as of the nearest birthday, is 60 years old, transfers $100,000 to a unitrust on January 1st of a year after 2009. The trust instrument requires that each year the trust pay to the donor, in equal semiannual installments on June 30th and December 31st, 6 percent of the fair market value of the trust assets, valued as of January 1st each year, for 10 years or until the prior death of the donor. The section 7520 rate for the January in which the transfer occurred is 6.6 percent. Under Table F(6.6) in § 1.664–4(e)(6), the appropriate adjustment factor is .953317 for semiannual payments payable at the end of the semiannual period. The adjusted payout rate is 5.720 percent (6% × .953317). The present value of the donor's retained interest is $41,920.00 determined as follows:

TABLE U(1) value at 5.6 percent, age 60	.33970
TABLE U(1) value at 5.6 percent, age 70	.48352
TABLE 2000CM value at age 70	74794
TABLE 2000CM value at age 60	87595
TABLE D value at 5.6 percent, 10 years	.561979

Factor for donor's retained interest at 5.6 percent:
(1.000000 − .33970) − (.561979 × (74794/87595) × (1.000000 − .48352)) = .41247

TABLE U(1) value at 5.8 percent, age 60	.32846
TABLE U(1) value at 5.8 percent, age 70	.47241
TABLE 2000CM value at age 70	74794
TABLE 2000CM value at age 60	87595
TABLE D value at 5.8 percent, 10 years	550185

Factor for donor's retained interest at 5.8 percent:
(1.000000 − .32846) − (.550185 × (74974/87595) × (1.000000 − .47241)) = .42369
Difference – .01122

Interpolation adjustment:

$$\frac{5.720\% - 5.6\%}{0.2\%} = \frac{x}{.01122}$$

$$x = .00673$$

Factor at 5.6 percent, age 60	.41247
Plus: Interpolation adjustment	.00673
Interpolated Factor	.41920
Present value of donor's retained interest: ($100,000 × .41920)	41,920.00

(3) *Transitional rule.* If the valuation date of a transfer of property by gift is on or after May 1, 2009, and before July 1, 2009, the fair market value of the interest transferred is determined by use of the section 7520 interest rate for the month in which the valuation date occurs (see §§ 25.7520–1(b) and 25.7520–2(a)(2)) and the appropriate actuarial tables under either § 20.2031–7T(d)(7) or § 20.2031–7A(f)(4), at the option of the donor. However, with respect to each individual transaction and with respect to all transfers occurring on the valuation date, the donor must use the same actuarial tables (for example, gift and income tax charitable deductions with respect to the same transfer must be determined based on the same tables, and all transfers made on the same date must be valued based on the same tables).

(4) *Publications and actuarial computations by the Internal Revenue Service.* Many standard actuarial factors not included in § 20.2031–7(d)(6) or § 20.2031–7T(d)(7) are included in Internal Revenue Service Publication 1457, ''Actuarial Valuations Version 3A'' (2009). Internal Revenue Service Publication 1457 also includes examples that illustrate how to compute many special factors for more unusual situations. A copy of this publication is available beginning May 1, 2009, at no charge, electronically via the IRS Internet site at *http://www.irs.gov*. If a special factor is required in the case of a completed gift, the Internal Revenue Service may furnish the factor to the donor upon a request for a ruling. The request for a ruling must be accompanied by a recitation of the facts including a statement of the date of birth for each measuring life, the date of the gift, any other applicable dates, and a copy of the will, trust, or other relevant documents. A request for a ruling must comply with the instructions for requesting a ruling published periodically in the Internal Revenue Bulletin (see §§ 601.201 and 601.601(d)(2)(ii)(*b*)) and include payment of the required user fee.

(e) *Effective/applicability date.* This section applies on or after May 1, 2009.

(f) *Expiration date.* This section expires on or before May 1, 2012.

[T.D. 9448, 74 FR 21512, May 7, 2009]

§ 25.2512–6 Valuation of certain life insurance and annuity contracts; valuation of shares in an open-end investment company.

(a) *Valuation of certain life insurance and annuity contracts.* The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation of an insurance policy through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value

may be approximated by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date. If, however, because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used. The following examples, so far as relating to life insurance contracts, are of gifts of such contracts on which there are no accrued dividends or outstanding indebtedness.

Example (1). A donor purchases from a life insurance company for the benefit of another a life insurance contract or a contract for the payment of an annuity. The value of the gift is the cost of the contract.

Example (2). An annuitant purchased from a life insurance company a single payment annuity contract by the terms of which he was entitled to receive payments of $1,200 annually for the duration of his life. Five years subsequent to such purchase, and when of the age of 50 years, he gratuitously assigns the contract. The value of the gift is the amount which the company would charge for an annuity contract providing for the payment of $1,200 annually for the life of a person 50 years of age.

Example (3). A donor owning a life insurance policy on which no further payments are to be made to the company (e.g., a single premium policy or paid-up policy) makes a gift of the contract. The value of the gift is the amount which the company would charge for a single premium contract of the same specified amount on the life of a person of the age of the insured.

Example (4). A gift is made four months after the last premium due date of an ordinary life insurance policy issued nine years and four months prior to the gift thereof by the insured, who was 35 years of age at date of issue. The gross annual premium is $2,811. The computation follows:

Terminal reserve at end of tenth year	$14,601.00
Terminal reserve at end of ninth year	12,965.00
Increase	1,636.00
One-third of such increase (the gift having been made four months following the last preceding premium due date), is	545.33
Terminal reserve at end of ninth year	12,965.00
Interpolated terminal reserve at date of gift	13,510.33
Two-thirds of gross premium ($2,811)	1,874.00
Value of the gift	15,384.33

Example (5). A donor purchases from a life insurance company for $15,198, a joint and survivor annuity contract which provides for the payment of $60 a month to the donor during his lifetime, and then to his sister for such time as she may survive him. The premium which would have been charged by the company for an annuity of $60 monthly payable during the life of the donor alone is $10,690. The value of the gift is $4,508 ($15,198 less $10,690).

(b) *Valuation of shares in an open-end investment company.* (1) The fair market value of a share in an open-end investment company (commonly known as a ''mutual fund'') is the public redemption price of a share. In the absence of an affirmative showing of the public redemption price in effect at the time of the gift, the last public redemption price quoted by the company for the date of the gift shall be presumed to be the applicable public redemption price. If there is no public redemption price quoted by the company for the date of the gift (e.g., the date of the gift is a Saturday, Sunday, or holiday), the fair market value of the mutual fund share is the last public redemption price quoted by the company for the first day preceding the date of the gift for which there is a quotation. As used in 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, 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 made during such portion of the calendar period. Where the consent is signified by an executor or administrator of a deceased spouse, the consent is not effective with respect to gifts made by the surviving spouse during the portion of the calendar period that his spouse was deceased.

(2) If either spouse was a nonresident not a citizen of the United States during any portion of the calendar period, the consent is not effective with respect to any gift made during that portion of the calendar period.

(3) The consent is not effective with respect to a gift by one spouse of a property interest over which he created in his spouse a general power of appointment (as defined in section 2514(c)).

(4) If one spouse transferred property in part to his spouse and in part to third parties, the consent is effective with respect to the interest transferred to third parties only insofar as such interest is ascertainable at the time of the gift and hence severable from the interest transferred to his spouse. See § 25.2512–5 for the principles to be applied in the valuation of annuities, life

estates, terms for years, remainders and reversions.

(5) The consent applies alike to gifts made by one spouse alone and to gifts made partly by each spouse, provided such gifts were to third parties and do not fall within any of the exceptions set forth in subparagraphs (1) through (4) of this paragraph. The consent may not be applied only to a portion of the property interest constituting such gifts. For example, a wife may not treat gifts made by her spouse from his separate property to third parties as having been made one-half by her if her spouse does not consent to treat gifts made by her to third parties during the same calendar period as having been made one-half by him. If the consent is effectively signified on either the husband's return or the wife's return, all gifts made by the spouses to third parties (except as described in subparagraphs (1) through (4) of this paragraph), during the calendar period will be treated as having been made one-half by each spouse.

(c) If a husband and wife consent to have the gifts made to third party donees considered as made one-half by each spouse, and only one spouse makes gifts during the ''calendar period'' (as defined in § 25.2502–1(c)(1)), the other spouse is not required to file a gift tax return provided: (1) The total value of the gifts made to each third party donee since the beginning of the calendar year is not in excess of $20,000 ($6,000 for calendar years prior to 1982), and (2) no portion of the property transferred constitutes a gift of a future interest. If a transfer made by either spouse during the calendar period to a third-party represents a gift of a future interest in property and the spouses consent to have the gifts considered as made one-half by each, a gift tax return for such calendar period must be filed by each spouse regardless of the value of the transfer. (See § 25.2503–3 for the definition of a future interest.)

(d) The following examples illustrate the application of this section relating to the requirements for the filing of a return, assuming that a consent was effectively signified:

(1) A husband made gifts valued at $7,000 during the second quarter of 1971 to a third party and his wife made no gifts during this time. Each spouse is required to file a return for the second calendar quarter of 1971.

(2) A husband made gifts valued at $5,000 to each of two third parties during the year 1970 and his wife made no gifts. Only the husband is required to file a return. (See § 25.6019–2.)

(3) During the third quarter of 1971, a husband made gifts valued at $5,000 to a third party, and his wife made gifts valued at $2,000 to the same third party. Each spouse is required to file a return for the third calendar quarter of 1971.

(4) A husband made gifts valued at $5,000 to a third party and his wife made gifts valued at $3,000 to another third party during the year 1970. Only the husband is required to file a return for the calendar year 1970. (See § 25.6019–2.)

(5) A husband made gifts valued at $2,000 during the first quarter of 1971 to third parties which represented gifts of future interests in property (see § 25.2503–3), and his wife made no gifts during such calendar quarter. Each spouse is required to file a return for the first calendar quarter of 1971.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28729, Dec. 29, 1972; T.D. 7910, 48 FR 40374, Sept. 7, 1983]

§ 25.2513–2 Manner and time of signifying consent.

(a)(1) Consent to the application of the provisions of section 2513 with respect to a ''calendar period'' (as defined in § 25.2502–1(c)(1)) shall, in order to be effective, be signified by both spouses. If both spouses file gift tax returns within the time for signifying consent, it is sufficient if—

(i) The consent of the husband is signified on the wife's return, and the consent of the wife is signified on the husband's return;

(ii) The consent of each spouse is signified on his own return; or

(iii) The consent of both spouses is signified on one of the returns.

If only one spouse files a gift tax return within the time provided for signifying consent, the consent of both spouses shall be signified on that return. However, whereover possible, the notice of the consent is to be shown on

both returns and it is preferred that the notice be executed in the manner described in subdivision (i) of this subparagraph. The consent may be revoked only as provided in § 25.2513–3. If one spouse files more than one gift tax return for a calendar period on or before the due date of the return, the last return so filed shall, for the purpose of determining whether a consent has been signified, be considered as the return. (See §§ 25.6075–1 and 25.6075–2 for the due date of a gift tax return.)

(2) For gifts made after December 31, 1970, and before January 1, 1982 subject to the limitations of paragraph (b) of this section, the consent signified on a return filed for a calendar quarter will be effective for a previous calendar quarter of the same calendar year for which no return was filed because the gifts made during such previous calendar quarter did not exceed the annual exclusion provided by section 2503(b), if the gifts in such previous calendar quarter are listed on that return. Thus, for example, if A gave $2,000 to his son in the first quarter of 1972 (and filed no return because of section 2503(b)) and gave a further $4,000 to such son in the last quarter of the year, A and his spouse could signify consent to the application of section 2513 on the return filed for the fourth quarter and have it apply to the first quarter as well, provided that the $2,000 gift is listed on such return.

(b)(1) With respect to gifts made after December 31, 1981, or before January 1, 1971, the consent may be signified at any time following the close of the calendar year, subject to the following limitations:

(i) The consent may not be signified after the 15th day of April following the close of the calendar year, unless before such 15th day no return has been filed for the year by either spouse, in which case the consent may not be signified after a return for the year is filed by either spouse; and

(ii) The consent may not be signified for a calendar year after a notice of deficiency in gift tax for that year has been sent to either spouse in accordance with the provisions of section 6212(a).

(2) With respect to gifts made after December 31, 1970 and before January 1, 1982, the consent may be signified at any time following the close of the calendar quarter in which the gift was made, subject to the following limitations:

(i) The consent may not be signified after the 15th day of the second month following the close of such calendar quarter, unless before such 15th day, no return has been filed for such calendar quarter by either spouse, in which case the consent may not be signified after a return for such calendar quarter is filed by either spouse; and

(ii) The consent may not be signified after a notice of deficiency with respect to the tax for such calendar quarter has been sent to either spouse in accordance with section 6212(a).

(c) The executor or administrator of a deceased spouse, or the guardian or committee of a legally incompetent spouse, as the case may be, may signify the consent.

(d) If the donor and spouse consent to the application of section 2513, the return or returns for the ''calendar period'' (as defined in § 25.2502–1(c)(1)) must set forth, to the extent provided thereon, information relative to the transfers made by each spouse.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28730, Dec. 29, 1972; T.D. 7910, 48 FR 40375, Sept. 7, 1983]

§ 25.2513–3 Revocation of consent.

(a)(1) With respect to gifts made after December 31, 1981, or before January 1, 1971, if the consent to the application of the provisions of section 2513 for a calendar year was effectively signified on or before the 15th day of April following the close of the calendar year, either spouse may revoke the consent by filing in duplicate a signed statement of revocation, but only if the statement is filed on or before such 15th day of April. Therefore, a consent that was not effectively signified until after the 15th day of April following the close of the calendar year to which it applies may not be revoked.

(2) With respect to gifts made after December 31, 1970, and before January 1, 1982, if the consent to the application of the provisions of section 2513 for a calendar quarter was effectively signified on or before the 15th day of the second month following the close of

such calendar quarter, either spouse may revoke the consent by filing in duplicate a signed statement of revocation, but only if the statement is filed on or before such 15th day of the second month following the close of such calendar quarter. Therefore, a consent that was not effectively signified until after the 15th day of the second month following the close of the calendar quarter to which it applies may not be revoked.

(b) Except as provided in paragraph (b) of §301.6091–1 of this chapter (relating to hand-carried documents), the statement referred to in paragraph (a) of this section shall be filed with the internal revenue officer with whom the gift tax return is required to be filed, or with whom the gift tax return would be required to be filed if a return were required.

[T.D. 7238, 37 FR 28730, Dec. 29, 1972, as amended by T.D. 7910, 48 FR 40375, Sept. 7, 1983]

§25.2513–4 Joint and several liability for tax.

If consent to the application of the provisions of section 2513 is signified as provided in §25.2513–2, and not revoked as provided in §25.2513–3, the liability with respect to the entire gift tax of each spouse for such ''calendar period'' (as defined in §25.2502–1(c)(1)) is joint and several. See paragraph (d) of §25.2511–1.

[T.D. 7238, 37 FR 28730, Dec. 29, 1972, as amended by T.D. 7910, 48 FR 40375, Sept. 7, 1983]

§25.2514–1 Transfers under power of appointment.

(a) *Introductory.* (1) Section 2514 treats the exercise of a general power of appointment created on or before October 21, 1942, as a transfer of property for purposes of the gift tax. The section also treats as a transfer of property the exercise or complete release of a general power of appointment created after October 21, 1942, and under certain circumstances the exercise of a power of appointment (not a general power of appointment) created after October 21, 1942, by the creation of another power of appointment. See paragraph (d) of §25.2514–3. Under certain circumstances, also, the failure to exercise a power of appointment created after October 21, 1942, within a specified time, so that the power lapses, constitutes a transfer of property. Paragraphs (b) through (e) of this section contain definitions of certain terms used in §§25.2514–2 and 25.2514–3. See §25.2514–2 for specific rules applicable to certain powers created on or before October 21, 1942. See §25.2514–3 for specific rules applicable to powers created after October 21, 1942.

(2) [Reserved]

(b) *Definition of ''power of appointment''*—(1) *In general.* The term ''power of appointment'' includes all powers which are in substance and effect powers of appointment received by the donee of the power from another person, regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a donee to affect the beneficial enjoyment of a trust property or its income by altering, amending or revoking the trust instrument or terminating the trust is a power of appointment. A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and A, another person, has the unrestricted power to remove or discharge the trustee at any time and appoint any other person, including himself, A is considered as having a power of appointment. However, he would not be considered to have a power of appointment if he only had the power to appoint a successor, including himself, under limited conditions which did not exist at the time of exercise, release or lapse of the trustee's power, without an accompanying unrestricted power of removal. Similarly, a power to amend only the administrative provisions of a trust instrument, which cannot substantially affect the beneficial enjoyment of the trust property or income, is not a power of appointment. The

mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment. Further, the right in a beneficiary of a trust to assent to a periodic accounting, thereby relieving the trustee from further accountability, is not a power of appointment if the right of assent does not consist of any power or right to enlarge or shift the beneficial interest of any beneficiary therein.

(2) *Relation to other sections.* For purposes of §§ 25.2514–1 through 25.2514–3, the term ''power of appointment'' does not include powers reserved by a donor to himself. No provision of section 2514 or of §§ 25.2514–1 through 25.2514–3 is to be construed as in any way limiting the application of any other section of the Internal Revenue Code or of these regulations. The power of the owner of a property interest already possessed by him to dispose of his interest, and nothing more, is not a power of appointment, and the interest is includible in the amount of his gifts to the extent it would be includible under section 2511 or other provisions of the Internal Revenue Code. For example, if a trust created by S provides for payment of the income to A for life with power in A to appoint the entire trust property by deed during her lifetime to a class consisting of her children, and a further power to dispose of the entire corpus by will to anyone, including her estate, and A exercises the inter vivos power in favor of her children, she has necessarily made a transfer of her income interest which constitutes a taxable gift under section 2511(a), without regard to section 2514. This transfer also results in a relinquishment of her general power to appoint by will which constitutes a transfer under section 2514 if the power was created after October 21, 1942.

(3) *Powers over a portion of property.* If a power of appointment exists as to part of an entire group of assets or only over a limited interest in property, section 2514 applies only to such part or interest.

(c) *Definition of ''general power of appointment''*—(1) *In general.* The term ''general power of appointment'' as defined in section 2514(c) means any power of appointment exercisable in favor of the person possessing the power (referred to as the ''possessor''), his estate, his creditors, or the creditors of his estate, except (i) joint powers, to the extent provided in §§ 25.2514–2 and 25.2514–3 and (ii) certain powers limited by an ascertainable standard, to the extent provided in subparagraph (2) of this paragraph. A power of appointment exercisable to meet the estate tax, or any other taxes, debts, or charges which are enforceable against the possessor or his estate, is included within the meaning of a power of appointment exercisable in favor of the possessor, his estate, his creditors, or the creditors of his estate. A power of appointment exercisable for the purpose of discharging a legal obligation of the possessor or for his pecuniary benefit is considered a power of appointment exercisable in favor of the possessor or his creditors. However, for purposes of §§ 25.2514–1 through 25.2514–3, 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 possessor or his estate. A power of appointment is not a general power if by its terms it is either—

(*a*) Exercisable only in favor of one or more designated persons or classes other than the possessor or his creditors, or the possessor's estate, or the creditors of his estate, or

(*b*) Expressly not exercisable in favor of the possessor or his creditors, the possessor's estate, or the creditors of his estate.

A beneficiary may have two powers under the same instrument, one of which is a general power of appointment and the other of which is not. For example, a beneficiary may have a general power to withdraw a limited portion of trust corpus during his life, and a further power exercisable during his lifetime to appoint the corpus among his children. The later power is not a

general power of appointment (but its exercise may result in the exercise of the former power; see paragraph (d) of this section).

(2) *Powers limited by an ascertainable standard.* A power to consume, invade, or appropriate income or corpus, or both, for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor is, by reason of section 2514(c)(1), not a general power of appointment. A power is limited by such a standard if the extent of the possessor's duty to exercise and not to exercise the power is reasonably measurable in terms of his needs for health, education, or support (or any combination of them). As used in this subparagraph, the words ''support'' and ''maintenance'' are synonymous and their meaning is not limited to the bare necessities of life. A power to use property for the comfort, welfare, or happiness of the holder of the power is not limited by the requisite standard. Examples of powers which are limited by the requisite standard are powers exercisable for the holder's ''support,'' ''support in reasonable comfort,'' ''maintenance in health and reasonable comfort,'' ''support in his accustomed manner of living,'' ''education, including college and professional education,'' ''health,'' and ''medical, dental, hospital and nursing expenses and expenses of invalidism.'' In determining whether a power is limited by an ascertainable standard, it is immaterial whether the beneficiary is required to exhaust his other income before the power can be exercised.

(3) *Certain powers under wills of decedents dying between January 1 and April 2, 1948.* Section 210 of the Technical Changes Act of 1953 provides that if a decedent died after December 31, 1947, but before April 3, 1948, certain property interests described therein may, if the decedent's surviving spouse so elects, be accorded special treatment in the determination of the marital deduction to be allowed the decedent's estate under the provisions of section 812(e) of the Internal Revenue Code of 1939. See paragraph (h) of §81.47a of Regulations 105 (26 CFR (1939) 81.47a(h)). The section further provides that property affected by the election shall be considered property with respect to which the surviving spouse has a general power of appointment. Therefore, notwithstanding any other provision of law or of §§25.2514–1 through 25.2514–3, if the surviving spouse has made an election under section 210 of the Technical Changes Act of 1953, the property which was the subject of the election shall be considered as property with respect to which she has a general power of appointment created after October 21, 1942, exercisable by deed or will, to the extent it was treated as an interest passing to the surviving spouse and not passing to any other person for the purpose of the marital deduction in the prior decedent's estate.

(d) *Definition of ''exercise.''* Whether a power of appointment is in fact exercised may depend upon local law. However, regardless of local law, a power of appointment is considered as exercised for purposes of section 2514 even though the exercise is in favor of the taker in default of appointment, and irrespective of whether the appointed interest and the interest in default of appointment are identical or whether the appointee renounces any right to take under the appointment. A power of appointment is also considered as exercised even though the disposition cannot take effect until the occurrence of an event after the exercise takes place, if the exercise is irrevocable and, as of the time of the exercise, the condition was not impossible of occurrence. For example, if property is left in trust to A for life, with a power in A to appoint the remainder by an instrument filed with the trustee during his life, and A exercises his power by appointing the remainder to B in the event that B survives A, A is considered to have exercised his power if the exercise was irrevocable. Furthermore, if a person holds both a presently exercisable general power of appointment and a presently exercisable nongeneral power of appointment over the same property, the exercise of the nongeneral power is considered the exercise of the general power only to the extent that immediately after the exercise of the nongeneral power the amount of money or property subject to being transferred

by the exercise of the general power is decreased. For example, assume A has a noncumulative annual power to withdraw the greater of $5,000 or 5 percent of the value of a trust having a value of $300,000 and a lifetime nongeneral power to appoint all or a portion of the trust corpus to A's child or grandchildren. If A exercises the nongeneral power by appointing $150,000 to A's child, the exercise of the nongeneral power is treated as the exercise of the general power to the extent of $7,500 (maximum exercise of general power before the exercise of the nongeneral power, 5% of $300,000 or $15,000, less maximum exercise of the general power after the exercise of the nongeneral power, 5% of $150,000 or $7,500).

(e) *Time of creation of power.* A power of appointment created by will is, in general, considered as created on the date of the testator's death. However, section 2514(f) provides that a power of appointment created by a will executed on or before October 21, 1942, is considered a power created on or before that date if the testator dies before July 1, 1949, without having republished the will, by codicil or otherwise, after October 21, 1942. A power of appointment created by an inter vivos instrument is considered as created on the date the instrument takes effect. Such a power is not considered as created at some future date merely because it is not exercisable on the date the instrument takes effect, or because it is revocable, or because the identity of its holders is not ascertainable until after the date the instrument takes effect. However, if the holder of a power exercises it by creating a second power, the second power is considered as created at the time of the exercise of the first. The application of this paragraph may be illustrated by the following examples:

Example (1). A created a revocable trust before October 22, 1942, providing for payment of income to B for life with remainder as B shall appoint by deed or will. Even though A dies after October 21, 1942, without having exercised his power of revocation, B's power of appointment is considered a power created before October 22, 1942.

Example (2). C created an irrevocable inter vivos trust before October 22, 1942, naming T as trustee and providing for payment of income to D for life with remainder to E. T was given the power to pay corpus to D and the power to appoint a successor trustee. If T resigns after October 21, 1942, and appoints D as successor trustee, D is considered to have a power of appointment created before October 22, 1942.

Example (3). F created an irrevocable inter vivos trust before October 22, 1942, providing for payment of income to G for life with remainder as G shall appoint by deed or will, but in default of appointment income to H for life with remainder as H shall appoint by deed or will. If G died after October 21, 1942, without having exercised his power of appointment, H's power of appointments is considered a power created before October 22, 1942, even though it was only a contingent interest until G's death.

Example (4). If in example (3) above G had exercised by will his power of appointment, by creating a similar power in J, J's power of appointment would be considered a power created after October 21, 1942.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 6582, 26 FR 11861, Dec. 12, 1961, T.D. 9757, 46 FR 6929, Jan. 22, 1981]

§ 25.2514–2 Powers of appointment created on or before October 21, 1942.

(a) *In general.* The exercise of a general power of appointment created on or before October 21, 1942, is deemed to be a transfer of property by the individual possessing the power.

(b) *Joint powers created on or before October 21, 1942.* Section 2514(c)(2) provides that a power created on or before October 21, 1942, which at the time of the exercise is not exercisable by the possessor except in conjunction with another person, is not deemed a general power of appointment.

(c) *Release or lapse.* A failure to exercise a general power of appointment created on or before October 21, 1942, or a complete release of such a power is not considered to be an exercise of a general power of appointment. The phrase ''a complete release'' means a release of all powers over all or a portion of the property subject to a power of appointment, as distinguished from the reduction of a power of appointment to a lesser power. Thus, if the possessor completely relinquished all powers over one-half of the property subject to a power of appointment, the power is completely released as to that one-half. If at or before the time a power of appointment is relinquished, the holder of the power exercises the power in such a manner or to such an extent that the relinquishment results

in the reduction, enlargement, or shift in a beneficial interest in property, the relinquishment will be considered to be an exercise and not a release of the power. For example, assume that A created a trust in 1940 providing for payment of the income to B for life with the power in B to amend the trust, and for payment of the remainder to such persons as B shall appoint or, upon default of appointment, to C. If B amended the trust in 1948 by providing that upon his death the remainder was to be paid to D, and if he further amended the trust in 1955 by deleting his power to amend the trust, such relinquishment will be considered an exercise and not a release of a general power of appointment. On the other hand, if the 1948 amendment became ineffective before or at the time of the 1955 amendment, or if B in 1948 merely amended the trust by changing the purely ministerial powers of the trustee, his relinquishment of the power in 1955 will be considered as release of a power of appointment.

(d) *Partial release.* If a general power of appointment created on or before October 21, 1942, is partially released so that it is not thereafter a general power of appointment, a subsequent exercise of the partially released power is not an exercise of a general power of appointment if the partial release occurs before whichever is the later of the following dates:

(1) November 1, 1951; or

(2) If the possessor was under a legal disability to release the power on October 21, 1942, the day after the expiration of 6 months following the termination of such legal disability.

However, if a general power created on or before October 21, 1942, is partially released on or after the later of those dates, a subsequent exercise of the power will constitute an exercise of a general power of appointment. The legal disability referred to in this paragraph is determined under local law and may include the disability of an insane person, a minor, or an unborn child. The fact that the type of general power of appointment possessed by the holder actually was not generally releasable under the local law does not place the holder under a legal disability within the meaning of this paragraph. In general, however, it is assumed that all general powers of appointment are releasable, unless the local law on the subject is to the contrary, and it is presumed that the method employed to release the power is effective, unless it is not in accordance with the local law relating specifically to releases or, in the absence of such local law, is not in accordance with the local law relating to similar transactions.

(e) *Partial exercise.* If a general power of appointment created on or before October 21, 1942, is exercised only as to a portion of the property subject to the power, the exercise is considered to be a transfer only as to the value of that portion.

§ 25.2514–3 Powers of appointment created after October 21, 1942.

(a) *In general.* The exercise, release, or lapse (except as provided in paragraph (c) of this section) of a general power of appointment created after October 21, 1942, is deemed to be a transfer of property by the individual possessing the power. The exercise of a power of appointment that is not a general power is considered to be a transfer if it is exercised to create a further power under certain circumstances (see paragraph (d) of this section). See paragraph (c) of § 25.2514–1 for the definition of various terms used in this section. See paragraph (b) of this section for the rules applicable to determine the extent to which joint powers created after October 21, 1942, are to be treated as general powers of appointment.

(b) *Joint powers created after October 21, 1942.* The treatment of a power of appointment created after October 21, 1942, which is exercisable only in conjuction with another person is governed by section 2514(c)(3), which provides as follows:

(1) Such a power is not considered as a general power of appointment if it is not exercisable by the possessor except with the consent or joinder of the creator of the power.

(2) Such power is not considered as a general power of appointment if it is not exercisable by the possessor 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 possessor, his estate, his creditors, or the creditors of his estate. An interest adverse to the exercise of a power is considered as substantial if its value in relation to the total value of the property subject to the power is not insignificant. For this purpose, the interest is to be valued in accordance with the actuarial principles set forth in § 25.2512–5 or, if it is not susceptible to valuation under those provisions, in accordance with the general principles set forth in § 25.2512–1. A taker in default of appointment under a power has an interest which is adverse to an exercise of the power. 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. However, a coholder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y. The application of this subparagraph may be further illustrated by the following examples in each of which it is assumed that the value of the interest in question is substantial:

Example (1). The taxpayer and R are trustees of a trust under which the income is to be paid to the taxpayer for life and then to M for life, and R is remainderman. The trustees have power to distribute corpus to the taxpayer. Since R's interest is substantially adverse to an exercise of the power in favor of the taxpayer, the latter does not have a general power of appointment. If M and the taxpayer were trustees, M's interest would likewise be adverse.

Example (2). The taxpayer and L are trustees of a trust under which the income is to be paid to L for life and then to M for life, and the taxpayer is remainderman. The trustees have power to distribute corpus to the taxpayer during L's life. Since L's interest is adverse to an exercise of the power in favor of the taxpayer, the taxpayer does not have a general power of appointment. If the taxpayer and M were trustees, M's interest would likewise be adverse.

Example (3). The taxpayer and L are trustees of a trust under which the income is to be paid to L for life. The trustees can designate whether corpus is to be distributed to the taxpayer or to A after L's death. L's interest is not adverse to an exercise of the power in favor of the taxpayer, and the taxpayer therefore has a general power of appointment.

(3) A power which is exercisable only in conjunction with another person, and which after application of the rules set forth in subparagraphs (1) and (2) of this paragraph, constitutes a general power of appointment, will be treated as though the holders of the power who are permissible appointees of the property were joint owners of property subject to the power. The possessor, under this rule, will be treated as possessed of a general power of appointment over an aliquot share of the property to be determined with reference to the number of joint holders, including the possessor, who (or whose estates or creditors) are permissible appointees. Thus, for example, if X, Y, and Z hold an unlimited power jointly to appoint among a group of persons, including themselves, but on the death of X the power does not pass to Y and Z jointly, then Y and Z are not considered to have interests adverse to the exercise of the power in favor of X. In this case, X is considered to possess a general power of appointment as to one-third of the property subject to the power.

(c) *Partial releases, lapses, and disclaimers of general powers of appointment created after October 21, 1942*—(1) *Partial release of power.* The general principles set forth in § 25.2511–2 for determining whether a donor of property (or of a property right or interest) has divested himself of all or any portion of his interest therein to the extent necessary to effect a completed gift are applicable in determining whether a partial release of a power of appointment constitutes a taxable gift. Thus, if a general power of appointment is partially released so that thereafter the donor may still appoint among a limited class of persons not including himself the partial release does not effect a

complete gift, since the possessor of the power has retained the right to designate the ultimate beneficiaries of the property over which he holds the power and since it is only the termination of such control which completes a gift.

(2) *Power partially released before June 1, 1951.* If a general power of appointment created after October 21, 1942, was partially released prior to June 1, 1951, so that it no longer represented a general power of appointment, as defined in paragraph (c) of §25.2514–1, the subsequent exercise, release, or lapse of the partially released power at any time thereafter will not constitute the exercise or release of a general power of appointment. For example, assume that A created a trust in 1943 under which B possessed a general power of appointment. By an instrument executed in 1948 such general power of appointment was reduced in scope by B to an excepted power. The inter vivos exercise in 1955, or in any ''calendar period'' (as defined in §25.2502–1(c)(1)) thereafter, of such excepted power is not considered an exercise or release of a general power of appointment for purposes of the gift tax.

(3) *Power partially released after May 31, 1951.* If a general power of appointment created after October 21, 1942, was partially released after May 31, 1951, the subsequent exercise, release or a lapse of the power at any time thereafter, will constitute the exercise or release of a general power of appointment for gift tax purposes.

(4) *Release or lapse of power.* A release of a power of appointment need not be formal or express in character. For example, the failure to exercise a general power of appointment created after October 21, 1942, within a specified time so that the power lapses, constitutes a release of the power. In any case where the possessor of a general power of appointment is incapable of validly exercising or releasing a power, by reason of minority, or otherwise, and the power may not be validly exercised or released on his behalf, the failure to exercise or release the power is not a lapse of the power. If a trustee has in his capacity as trustee a power which is considered as a general power of appointment, his resignation or removal as trustee will cause a lapse of his power. However, section 2514(e) provides that a lapse during any calendar year is considered as a release so as to be subject to the gift tax only to the extent that the property which could have been appointed by exercise of the lapsed power of appointment exceeds the greater of (i) $5,000, or (ii) 5 percent of the aggregate value, at the time of the lapse, of the assets out of which, or the proceeds of which, the exercise of the lapsed power could be satisfied. For example, if an individual has a noncumulative right to withdraw $10,000 a year from the principal of a trust fund, the failure to exercise this right of withdrawal in a particular year will not constitute a gift if the fund at the end of the year equals or exceeds $200,000. If, however, at the end of the particular year the fund should be worth only $100,000, the failure to exercise the power will be considered a gift to the extent of $5,000, the excess of $10,000 over 5 percent of a fund of $100,000. Where the failure to exercise a power, such as a right of withdrawal, occurs in more than a single year, the value of the taxable transfer will be determined separately for each year.

(5) *Disclaimer of power created after December 31, 1976.* A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered a release of the power for gift tax purposes if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when a transfer creating the power occurs, see §25.2518–2(c)(3). If the disclaimer or renunciation is not a qualified disclaimer, it is considered a release of the power.

(6) *Disclaimer of power created before January 1, 1977.* A disclaimer or renunciation of a general power of appointment created in a taxable transfer before January 1, 1977, in the person disclaiming is not considered a release of the power. The disclaimer or renunciation must be unequivocal and effective under local law. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. There can be no disclaimer or renunciation of a power after its acceptance. In the absence of facts to the contrary,

the failure to renounce or disclaim within a reasonable time after learning of the existence of a power shall be presumed to constitute an acceptance of the power. In any case where a power is purported to be disclaimed or renounced as to only a portion of the property subject to the power, the determination as to whether there has been a complete and unqualified refusal to accept the rights to which one is entitled will depend on all the facts and circumstances of the particular case, taking into account the recognition and effectiveness of such a disclaimer under local law. Such rights refer to the incidents of the power and not to other interests of the possessor of the power in the property. If effective under local law, the power may be disclaimed or renounced without disclaiming or renouncing such other interests.

(7) The first and second sentences of paragraph (c)(5) of this section are applicable for transfers creating the power to be disclaimed made on or after December 31, 1997.

(d) *Creation of another power in certain cases.* Paragraph (d) of section 2514 provides that there is a transfer for purposes of the gift tax of the value of property (or of property rights or interests) with respect to which a power of appointment, which is not a general power of appointment, created after October 21, 1942, is exercised by creating another power of appointment which, under the terms of the instruments creating and exercising the first power and under applicable local law, can be validly exercised so as to (1) postpone the vesting of any estate or interest in the property for a period ascertainable without regard to the date of the creation of the first power, or (2) (if the applicable rule against perpetuities is stated in terms of suspensions of ownership or of the power of alienation, rather than of vesting) suspend the absolute ownership or the power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power. For the purpose of section 2514(d), the value of the property subject to the second power of appointment is considered to be its value unreduced by any precedent or subsequent interest which is not subject to the second power. Thus, if a donor has a power to appoint $100,000 among a group consisting of his children or grandchildren and during his lifetime exercises the power by making an outright appointment of $75,000 and by giving one appointee a power to appoint $25,000, no more than $25,000 will be considered a gift under section 2514(d). If, however, the donor appoints the income from the entire fund to a beneficiary for life with power in the beneficiary to appoint the remainder, the entire $100,000 will be considered a gift under section 2514(d), if the exercise of the second power can validly postpone the vesting of any estate or interest in the property or can suspend the absolute ownership or power of alienation of the property for a period ascertainable without regard to the date of the creation of the first power.

(e) *Examples.* The application of this section may be further illustrated by the following examples in each of which it is assumed, unless otherwise stated, that S has transferred property in trust after October 21, 1942, with the remainder payable to R at L's death, and that neither L nor R has any interest in or power over the enjoyment of the trust property except as is indicated separately in each example:

Example (1). The income is payable to L for life. L has the power to cause the income to be paid to R. The exercise of the right constitutes the making of a transfer of property under section 2511. L's power does not constitute a power of appointment since it is only a power to dispose of his income interest, a right otherwise possessed by him.

Example (2). The income is to be accumulated during L's life. L has the power to have the income distributed to himself. If L's power is limited by an ascertainable standard (relating to health, etc.) as defined in paragraph (c)(2) of § 25.2514–1, the lapse of such power will not constitute a transfer of property for gift tax purposes. If L's power is not so limited, its lapse or release during L's lifetime may constitute a transfer of property for gift tax purposes. See especially paragraph (c)(4) of § 25.2514–3.

Example (3). The income is to be paid to L for life. L has a power, exercisable at any time, to cause the corpus to be distributed to himself. L has a general power of appointment over the remainder interest, the release of which constitutes a transfer for gift tax purposes of the remainder interest. If in

this example L had a power to cause the corpus to be distributed only to X, L would have a power of appointment which is not a general power of appointment, the exercise or release of which would not constitute a transfer of property for purposes of the gift tax. Although the exercise or release of the nongeneral power is not taxable under this section, see §25.2514–1(b)(2) for the gift tax consequences of the transfer of the life income interest.

Example (4). The income is payable to L for life. R has the right to cause the corpus to be distributed to L at any time. R's power is not a power of appointment, but merely a right to dispose of his remainder interest, a right already possessed by him. In such a case, the exercise of the right constitutes the making of a transfer of property under section 2511 of the value, if any, of his remainder interest. See paragraph (e) of §25.2511–1.

Example (5). The income is to be paid to L. R has the right to appoint the corpus to himself at any time. R's general power of appointment over the corpus includes a general power to dispose of L's income interest therein. The lapse or release of R's general power over the income interest during his life may constitute the making of a transfer of property. See especially paragraph (c)(4) of §25.2514–3.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28730, Dec. 29, 1972; T.D. 7776, 46 FR 27642, May 21, 1981; T.D. 7910, 48 FR 40375, Sept. 7, 1983; T.D. 8095, 51 FR 28370, Aug. 7, 1986; T.D. 8744, 62 FR 68185, Dec. 31, 1997]

§25.2515–1 Tenancies by the entirety; in general.

(a) *Scope*—(1) *In general.* This section and §§25.2515–2 through 25.2515–4 do not apply to the creation of a tenancy by the entirety after December 31, 1981, and do not reflect changes made to the Internal Revenue Code by sections 702(k)(1)(A) of the Revenue Act of 1978, or section 2002(c)(2) of the Tax Reform Act of 1976.

(2) *Special rule in the case of tenancies created after July 13, 1988, if the donee spouse is not a United States citizen.* Under section 2523(i)(3), applicable (subject to the special treaty rule contained in Public Law 101–239, section 7815(d)(14)) in the case of tenancies by the entirety and joint tenancies created between spouses after July 13, 1988, if the donee spouse is not a citizen of the United States, the principles contained in section 2515 and §§25.2515–1 through 25.2515–4 apply in determining the gift tax consequences with respect to the creation and termination of the tenancy, except that the election provided in section 2515(a) (prior to repeal by the Economic Recovery Tax Act of 1981) and §25.2515–2 (relating to the donor's election to treat the creation of the tenancy as a transfer for gift tax purposes) does not apply.

(3) *Nature of.* An estate by the entirety in real property is essentially a joint tenancy between husband and wife with the right of survivorship. As used in this section and §§25.2515–2 through 25.2515–4, the term ''tenancy by the entirety'' includes a joint tenancy between husband and wife in real property with right of survivorship, or a tenancy which accords to the spouses rights equivalent thereto regardless of the term by which such a tenancy is described in local property law.

(b) *Gift upon creation of tenancy by the entirety; in general.* During calendar years prior to 1955 the contribution made by a husband or wife in the creation of a tenancy by the entirety constituted a gift to the extent that the consideration furnished by either spouse exceeded the value of the rights retained by that spouse. The contribution made by either or both spouses in the creation of such a tenancy during the calendar year 1955, any calendar year beginning before January 1, 1971, or any calendar quarter beginning after December 31, 1970, is not deemed a gift by either spouse, regardless of the proportion of the total consideration furnished by either spouse, unless the donor spouse elects (see §25.2515–2) under section 2515(c) to treat such transaction as a gift in the calendar quarter or calendar year in which the transaction is effected. See §25.2502–1(c)(1) for the definition of calendar quarter. However, there is a gift upon the termination of such a tenancy, other than by the death of a spouse, if the proceeds received by one spouse on termination of the tenancy are larger than the proceeds allocable to the consideration furnished by that spouse to the tenancy. The creation of a tenancy by the entirety takes place if (1) a husband or his wife purchases property and causes the title thereto to be conveyed to themselves as tenants by the

entirety, (2) both join in such a purchase, or (3) either or both cause to be created such a tenancy in property already owned by either or both of them. The rule prescribed herein with respect to the creation of a tenancy by the entirety applies also to contributions made in the making of additions to the value of such a tenancy (in the form of improvements, reductions in the indebtedness, or otherwise), regardless of the proportion of the consideration furnished by each spouse. See § 25.2516–1 for transfers made pursuant to a property settlement agreement incident to divorce.

(c) *Consideration*—(1) *In general.* (i) The consideration furnished by a person in the creation of a tenancy by the entirety or the making of additions to the value thereof is the amount contributed by him in connection therewith. The contribution may be made by either spouse or by a third party. It may be furnished in the form of money, other property, or an interest in property. If it is furnished in the form of other property or an interest in property, the amount of the contribution is the fair market value of the property or interest at the time it was transferred to the tenancy or was exchanged for the property which became the subject of the tenancy. For example, if a decedent devised real property to the spouses as tenants by the entirety and the fair market value of the property was $30,000 at the time of the decedent's death, the amount of the decedent's contribution to the creation of the tenancy was $30,000. As another example, assume that in 1950 the husband purchased real property for $25,000, taking it in his own name as sole owner, and that in 1956 when the property had a fair market value of $40,000 he caused it to be transferred to himself and his wife as tenants by the entirety. Here, the amount of the husband's contribution to the creation of the tenancy was $40,000 (the fair market value of the property at the time it was transferred to the tenancy). Similarly, assume that in 1950 the husband purchased, as sole owner, corporate shares for $25,000 and in 1956, when the shares had a fair market value of $35,000, he exchanged them for real property which was transferred to the husband and his wife as tenants by the entirety. The amount of the husband's contribution to the creation of the tenancy was $35,000 (the fair market value of the shares at the time he exchanged them for the real property which became the subject of the tenancy).

(ii) Whether consideration derived from third-party sources is deemed to have been furnished by a third party or to have been furnished by the spouses will depend upon the terms under which the transfer is made. If a decedent devises real property to the spouses as tenants by the entirety, the decedent, and not the spouses, is the person who furnished the consideration for the creation of the tenancy. Likewise, if a decedent in his will directs his executor to discharge an indebtedness of the tenancy, the decedent, and not the spouses, is the person who furnished the consideration for the addition to the value of the tenancy. However, if the decedent bequeathed a general legacy to the husband and the wife and they used the legacy to discharge an indebtedness of the tenancy, the spouses, and not the decedent, are the persons who furnished the consideration for the addition to the value of the tenancy. The principles set forth in this subdivision with respect to transfers by decedents apply equally well to inter vivos transfers by third parties.

(iii) Where a tenancy is terminated in part (e.g., where a portion of the property subject to the tenancy is sold to a third party, or where the original property is disposed of and in its place there is substituted other property of lesser value acquired through reinvestment under circumstances which satisfy the requirements of paragraph (d)(2)(ii) of this section), the proportionate contribution of each person to the remaining tenancy is in general the same as his proportionate contribution to the original tenancy, and the character of his contribution remains the same. These proportions are applied to the cost of the remaining or substituted property. Thus, if the total contribution to the cost of the property was $20,000 and a fourth of the property was sold, the contribution to the remaining portion of the tenancy is normally $15,000. However, if it is

shown that at the time of the contribution more or less than one-fourth thereof was attributable to the portion sold, the contribution is divided between the portion sold and the portion retained in the proper proportion. If the portion sold was acquired as a separate tract, it is treated as a separate tenancy. As another example of the application of this subdivision, assume that in 1950 X (a third party) gave to H and W (H's wife), as tenants by the entirety, real property then having a value of $15,000. In 1955, H spent $5,000 thereon in improvements and under section 2515(c) elected to treat his contribution as a gift. In 1956, W spent $10,000 in improving the property but did not elect to treat her contribution as a gift. Between 1957 and 1960 the property appreciated in value by $30,000. In 1960, the property was sold for $60,000, and $45,000 of the proceeds of the sale were, under circumstances that satisfy the requirements of paragraph (d)(2)(ii) of this section, reinvested in other real property. Since X contributed one-half of the total consideration for the original property and the additions to its value, he is considered as having furnished $22,500 (one-half of $45,000) toward the creation of the remaining portion of the tenancy and the making of additions to the value thereof. Similarly, H is considered as having furnished $7,500 (one-sixth of $45,000) which was treated as a gift in the year furnished, and W is considered as having furnished $15,000 (one-third of $45,000) which was not treated as a gift in the year furnished.

(2) *Proportion of consideration attributable to appreciation.* Any general appreciation (appreciation due to fluctuations in market value) in the value of the property occurring between two successive contribution dates which can readily be measured and which can be determined with reasonable certainty to be allocable to any particular contribution or contributions previously furnished is to be treated, for the purpose of the computations in §§ 25.2515–3 and 25.2515–4, as though it were additional consideration furnished by the person who furnished the prior consideration. Any general depreciation in value is treated in a comparable manner. For the purpose of the first sentence of this subparagraph, successive contribution dates are the two consecutive dates on which any contributions to the tenancy are made, not necessarily by the same party. Further, appreciation allocable to the prior consideration falls in the same class as the prior consideration to which it relates. The application of this subparagraph may be illustrated by the following examples:

Example (1). In 1940, H purchased real property for $15,000 which he caused to be transferred to himself and W (his wife) as tenants by the entirety. In 1956 when the fair market value of the property was $30,000, W made $5,000 improvements to the property. In 1957 the property was sold for $35,000. The general appreciation of $15,000 which occurred between the date of purchase and the date of W's improvements to the property constitutes an additional contribution by H, having the same characteristics as his original contribution of $15,000.

Example (2). In 1955 real property was purchased by H and W and conveyed to them as tenants by the entirety. The purchase price of the property was $15,000 of which H contributed $10,000 and W, $5,000. In 1960 when the fair market value of the property is $21,000, W makes improvements thereto of $5,000. The property then is sold for $26,000. The appreciation in value of $6,000 results in an additional contribution of $4,000 (10,000/15,000×$6,000) by H, and an additional contribution by W of $2,000 (5,000/15,000×$6,000). H's total contribution to the tenancy is $14,000 ($10,000+$4,000) and W's total contribution is $12,000 ($5,000+ $2,000+$5,000).

Example (3). In 1956 real property was purchased by H and W and conveyed to them as tenants by the entirety. The purchase price of the property was $15,000, on which a down payment of $3,000 was made. The remaining $12,000 was to be paid in monthly installments over a period of 15 years. H furnished $2,000 of the down payment and W, $1,000. H paid all the monthly installments. During the period 1956 to 1971 the property gradually appreciates in value to $24,000. Here, the appreciation is so gradual and the contributions so numerous that the amount allocable to any particular contribution cannot be ascertained with any reasonable certainty. Accordingly, in such a case the appreciation in value may be disregarded in determining the amount of consideration furnished in making the computations provided for in §§ 25.2515–3 and 25.2515–4.

(d) *Gift upon termination of tenancy by the entirety*—(1) *In general.* Upon the termination of the tenancy, whether created before, during, or subsequent

to the calendar year 1955, a gift may result, depending upon the disposition made of the proceeds of the termination (whether the proceeds be in the form of cash, property, or interests in property). A gift may result notwithstanding the fact that the contribution of either spouse to the tenancy was treated as a gift. See § 25.2515–3 for the method of determining the amount of any gift that may result from the termination of the tenancy in those cases in which no portion of the consideration contributed was treated as a gift by the spouses in the calendar quarter or calendar year in which it was furnished. See § 25.2515–4 for the method of determining the amount of any gift that may result from the termination of the tenancy in those cases in which all or a portion of the consideration contributed was treated as constituting a gift by the spouses in the calendar quarter or calendar year in which it was furnished. See § 25.2515–2 for the procedure to be followed by a donor who elects under section 2515(c) to treat the creation of a tenancy by the entirety (or the making of additions to its value) as a transfer subject to the gift tax in the calendar quarter (calendar year with respect to such transfers made before January 1, 1971) in which the transfer is made, and for the method of determining the amount of the gift. See § 25.2502–1(c)(1) for the definition of calendar quarter.

(2) *Termination*—(i) *In general.* Except as indicated in subdivision (ii) of this subparagraph, a termination of a tenancy is effected when all or a portion of the property so held by the spouses is sold, exchanged, or otherwise disposed of, by gift or in any other manner, or when the spouses through any form of conveyance or agreement become tenants in common of the property or otherwise alter the nature of their respective interests in the property formerly held by them as tenants by the entirety. In general, any increase in the indebtedness on a tenancy constitutes a termination of the tenancy to the extent of the increase in the indebtedness. However, such an increase will not constitute a termination of the tenancy to the extent that the increase is offset by additions to the tenancy within a reasonable time after such increase. Such additions (to the extent of the increase in the indebtedness) shall not be treated by the spouses as contributions within the meaning of paragraph (c) of this section.

(ii) *Exchange or reinvestment.* A termination is not considered as effected to the extent that the property subject to the tenancy is exchanged for other real property, the title of which is held by the spouses in an identical tenancy. For this purpose, a tenancy is considered identical if the proportionate values of the spouses' respective rights (other than any change in the proportionate values resulting solely from the passing of time) are identical to those held in the property which was sold. In addition the sale, exchange (other than an exchange described above), or other disposition of property held as tenants by the entirety is not considered as a termination if all three of the following conditions are satisfied:

(*a*) There is no division of the proceeds of the sale, exchange or other disposition of the property held as tenants by the entirety;

(*b*) On or before the due date for the filing of a gift tax return for the calendar quarter or calendar year (see § 25.6075–1 for the time for filing gift tax returns) in which the property held as tenants by the entirety was sold, exchanged, or otherwise disposed of, the spouses enter into a binding contract for the purchase of other real property; and

(*c*) After the sale, exchange or other disposition of the former property and within a reasonable time after the date of the contract referred to in $(b) of this subdivision, such other real property actually is acquired by the spouses and held by them in an identical tenancy.

To the extent that all three of the conditions set forth in this subdivision are not met (whether by reason of the death of one of the spouses or for any other reason), the provisions of the preceding sentence shall not apply, and the sale, exchange or other disposition of the property will constitute a termination of the tenancy. As used in subdivision (*c*) the expression ''a reasonable time'' means the time which, under the particular facts in each case,

is needed for those matters which are incident to the acquisition of the other property (i.e., perfecting of title, arranging for financing, construction, etc.). The fact that proceeds of a sale are deposited in the name of one tenant or of both tenants separately or jointly as a convenience does not constitute a division within the meaning of subdivision (*a*) if the other requirements of this subdivision are met. The proceeds of a sale, exchange, or other disposition of property held as tenants by the entirety will be deemed to have been used for the purchase of other real property if applied to the purchase or construction of improvements which themselves constitute real property and which are additions to other real property held by the spouses in a tenancy identical to that in which they held the property which was sold, exchanged, or otherwise disposed of.

(3) *Proceeds of termination.* (i) The proceeds of termination may be received by a spouse in the form of money, property, or an interest in property. Where the proceeds are received in the form of property (other than money) or an interest in property, the value of the proceeds received by that spouse is the fair market value, on the date of termination of the tenancy by the entirety, of the property or interest received. Thus, if a tenancy by the entirety is terminated so that thereafter each spouse owns an undivided half interest in the property as tenant in common, the value of the proceeds of termination received by each spouse is one-half the value of the property at the time of the termination of the tenancy by the entirety. If under local law one spouse, without the consent of the other, can bring about a severance of his or her interest in a tenancy by the entirety and does so by making a gift of his or her interest to a third party, that spouse is considered as having received proceeds of termination in the amount of the fair market value, at the time of the termination, of his severable interest determined in accordance with the rules prescribed in § 25.2512–5. He has, in addition, made a gift to the third party of the fair market value of the interest conveyed to the third party. In such a case, the other spouse also is considered as having received as proceeds of termination the fair market value, at the time of termination, of the interest which she thereafter holds in the property as tenant in common with the third party. However, since section 2515(b) contemplates that the spouses may divide the proceeds of termination in some proportion other than that represented by the values of their respective legal interests in the property, if both spouses join together in making a gift to a third party of property held by them as tenants by the entirety, the value of the proceeds of termination which will be treated as received by each is the amount which each reports (on his or her gift tax return filed for the calendar quarter or calendar year in which the termination occurs) as the value of his or her gift to the third party. This amount is the amount which each reports without regard to whether the spouses elect under section 2513 to treat the gifts as made one-half by each. For example, assume that H and W (his wife) hold real property as tenants by the entirety; that in the first calendar quarter of 1972, when the property has a fair market value of $60,000, they give it to their son; and that on their gift tax returns for such calendar quarter, H reports himself as having made a gift to the son of $36,000 and W reports herself as having made a gift to the son of $24,000. Under these circumstances, H is considered as having received proceeds of termination valued at $36,000, and W is considered as having received proceeds of termination valued at $24,000.

(ii) Except as provided otherwise in subparagraph (2)(ii) of this paragraph (under which certain tenancies by the entirety are considered not to be terminated), where the proceeds of a sale, exchange, or other disposition of the property are not actually divided between the spouses but are held (whether in a bank account or otherwise) in their joint names or in the name of one spouse as custodian or trustee for their joint interests, each spouse is presumed, in the absence of a showing to the contrary, to have received, as of the date of termination, proceeds of termination equal in value to the value

of his or her enforceable property rights in respect of the proceeds.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28731, Dec. 29, 1972, as amended by T.D. 8522, 59 FR 9656, Mar. 1, 1994]

§ 25.2515–2 Tenancies by the entirety; transfers treated as gifts; manner of election and valuation.

(a) The election to treat the creation of a tenancy by the entirety in real property, or additions made to its value, as constituting a gift in the calendar quarter or calendar year in which effected, shall be exercised by including the value of such gifts in the gift tax return of the donor for such calendar quarter or calendar year in which the tenancy was created, or the additions in value were made to the property. See section 6019 and the regulations thereunder. The election may be exercised only in a return filed within the time prescribed by law, or before the expiration of any extension of time granted pursuant to law for the filing of the return. See section 6075 for the time for filing the gift tax return and section 6081 for extensions of time for filing the return, together with the regulations thereunder. In order to make the election, a gift tax return must be filed for the calendar quarter or calendar year in which the tenancy was created, or additions in value thereto made, even though the value of the gift involved does not exceed the amount of the exclusion provided by section 2503(b). See § 25.2502–1(c)(1) for the definition of calendar quarter.

(b) If the donor spouse exercises the election as provided in paragraph (a) of this section, the amount of the gift at the creation of the tenancy is the amount of his contribution to the tenancy less the value of his retained interest in it, determined as follows:

(1) If under the law of the jurisdiction governing the rights of the spouses, either spouse, acting alone, can bring about a severance of his or her interest in the property, the value of the donor's retained interest is one-half the value of the property.

(2) If, under the law of the jurisdiction governing the rights of the spouses each is entitled to share in the income or other enjoyment of the property but neither, acting alone, may defeat the right of the survivor of them to the whole of the property, the amount of retained interest of the donor is determined by use of the appropriate actuarial factors for the spouses at their respective attained ages at the time the transaction is effected.

(c) Factors representing the respective interests of the spouses, under a tenancy by the entirety, at their attained ages at the time of the transaction may be readily computed based on the method described in § 25.2512–5. State law may provide that the husband only is entitled to all of the income or other enjoyment of the real property held as tenants by the entirety, and the wife's interest consists only of the right of survivorship with no right of severance. In such a case, a special factor may be needed to determine the value of the interests of the respective spouses. See § 25.2512–5(d)(4) for the procedure for obtaining special factors from the Internal Revenue Service in appropriate cases.

(d) The application of this paragraph may be illustrated by the following example:

Example. A husband with his own funds acquires real property valued at $10,000 and has it conveyed to himself and his wife as tenants by the entirety. Under the law of the jurisdiction governing the rights of the parties, each spouse is entitled to share in the income from the property but neither spouse acting alone could bring about a severance of his or her interest. The husband elects to treat the transfer as a gift in the year in which effected. At the time of transfer, the ages of the husband and wife are 45 and 40, respectively, on their birthdays nearest to the date of transfer. The value of the gift to the wife is $5,502.90, computed as follows:

Value of property transferred	$10,000.00
Less $10,000×0.44971 (factor for value of donor's retained rights)	4,497.10
Value of gift	5,502.90

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7150, 36 FR 22900, Dec. 2, 1971; T.D. 7238, 37 FR 28731, Dec. 29, 1972; T.D. 8540, 59 FR 30177, June 10, 1994]

§ 25.2515–3 Termination of tenancy by the entirety; cases in which entire value of gift is determined under section 2515(b).

(a) In any case in which—(1) The creation of a tenancy by the entirety (including additions in value thereto) was not treated as a gift, and

(2) The entire consideration for the creation of the tenancy, and any additions in value thereto, was furnished solely by the spouses (see paragraph (c)(1)(ii) of § 25.2515–1),

the termination of the tenancy (other than by the death of a spouse) always results in the making of a gift by a spouse who receives a smaller share of the proceeds of the termination (whether received in cash, property or interests in property) than the share of the proceeds attributable to the total consideration furnished by him. See paragraph (c) of § 25.2515–1 for a discussion of what constitutes consideration and the value thereof. Thus, a gift is effected at the time of termination of the tenancy by the spouse receiving less than one-half of the proceeds of termination if such spouse (regardless of age) furnished one-half or more of the total consideration for the purchase and improvements, if any, of the property held in the tenancy. Also, if one spouse furnished the entire consideration, a gift is made by such spouse to the extent that the other spouse receives any portion of the proceeds of termination. See § 25.2515–4 for determination of the amount of the gift, if any, in cases in which the creation of the tenancy was treated as a gift or a portion of the consideration was furnished by a third person. See paragraph (d)(2) of § 25.2515–1 as to the acts which effect a termination of the tenancy.

(b) In computing the value of the gift under the circumstances described in paragraph (a) of this section, it is first necessary to determine the spouse's share of the proceeds attributable to the consideration furnished by him. This share is computed by multiplying the total value of the proceeds of the termination by a fraction, the numerator of which is the total consideration furnished by the donor spouse and the denominator of which is the total consideration furnished by both spouses. From this amount there is subtracted the value of the proceeds of termination received by the donor spouse. The amount remaining is the value of the gift. In arriving at the ''total consideration furnished by the donor spouse'' and the ''total consideration furnished by both spouses'', for purposes of the computation provided for in this paragraph, the consideration furnished (see paragraph (c) of § 25.2515–1) is not reduced by any amounts which otherwise would have been excludable under section 2503(b) in determining the amounts of taxable gifts for calendar quarters or calendar years in which the consideration was furnished. (See § 25.2502–1 (c)(1) for the definition of calendar quarter.) As an example assume that in 1955, real property was purchased for $30,000, the husband and wife each contributing $12,000 and the remaining $6,000 being obtained through a mortgage on the property. In each of the years 1956 and 1957, the husband paid $3,000 on the principal of the indebtedness, but did not disclose the value of these transfers on his gift tax returns for those years. The total consideration furnished by the husband is $18,000, the total consideration furnished by the wife is $12,000, and the total consideration furnished by both spouses is $30,000.

(c) The application of this section may be illustrated by the following examples:

Example (1). In 1956 the husband furnished $30,000 and his wife furnished $10,000 of the consideration for the purchase and subsequent improvement of real property held by them as tenants by the entirety. The husband did not elect to treat the consideration furnished as a gift. The property later is sold for $60,000, the husband receiving $35,000 and his wife receiving $25,000 of the proceeds of the termination. The termination of the tenancy results in a gift of $10,000 by the husband to his wife, computed as follows:

[$30,000 (consideration furnished by husband)÷$40,000 (total consideration furnished by both spouses)]×$60,000 (proceeds of termination)=$45,000

$45,000−$35,000 (proceeds received by husband)=$10,000 gift by husband to wife

Example (2). In 1950 the husband purchased shares of X Company for $10,000. In 1955 when those shares had a fair market value of $30,000, he and his wife purchased real property from A and had it conveyed to them as tenants by the entirety. In payment for the real property, the husband transferred his

shares of X Company to A and the wife paid A the sum of $10,000. They later sold the real property for $60,000, divided $24,000 (each taking $12,000) and reinvested the remaining $36,000 in other real property under circumstances that satisfied the conditions set forth in paragraph (d)(2)(ii) of § 25.2515–1. The tenancy was terminated only with respect to the $24,000 divided between them. This termination of the tenancy resulted in a gift of $6,000 by the husband to the wife, computed as follows:

[$30,000 (consideration furnished by husband)÷$40,000 (total consideration furnished by both spouses)]×$24,000 (proceeds of termination)=$18,000

$18,000 − $12,000 (proceeds received by husband)=$6,000 gift by husband to wife.

Since the tenancy was terminated only in part, with respect to the remaining portion of the tenancy each spouse is considered as having furnished that proportion of the total consideration for the remaining portion of the tenancy as the consideration furnished by him before the sale bears to the total consideration furnished by both spouses before the sale. See paragraph (c) of § 25.2515–1. The consideration furnished by the husband for the reduced tenancy is $27,000, computed as follows:

[$30,000 (consideration furnished by husband before sale)÷$40,000 (total consideration furnished by both spouses before sale)]×$36,000 (consideration for reduced tenancy)=$27,000

The consideration furnished by the wife is $9,000, computed in a similar manner.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28732, Dec. 29, 1972]

§ 25.2515–4 Termination of tenancy by entirety; cases in which none, or a portion only, of value of gift is determined under section 2515(b).

(a) *In general.* The rules provided in section 2515(b) (see § 25.2515–3) are not applied in determining whether a gift has been made at the termination of a tenancy to the extent that the consideration furnished for the creation of the tenancy was treated as a gift or if the consideration for the creation of the tenancy was furnished by a third party. Consideration furnished for the creation of the tenancy was treated as a gift if it was furnished either (1) during calendar years prior to 1955, or (2) during the calendar year 1955 and subsequent calendar years and calendar quarters and the donor spouse exercised the election to treat the furnishing of consideration as a gift. (For the definition of calendar quarter see § 25.2502–1(c)(1).) See paragraph (b) of this section for the manner of computing the value of gifts resulting from the termination of the tenancy under these circumstances. See paragraph (c) of this section for the rules to be applied where part of the total consideration for the creation of the tenancy and additions to the value thereof was not treated as a gift and part either was treated as a gift or was furnished by a third party.

(b) *Value of gift when entire consideration is of the type described in paragraph (a) of this section.* If the entire consideration for the creation of a tenancy by the entirety was treated as a gift or contributed by a third party, the determination of the amount, if any, of a gift made at the termination of the tenancy will be made by the application of the general principles set forth in § 25.2511–1. Under those principles, when a spouse surrenders a property interest in a tenancy, the creation of which was treated as a gift, and in return receives an amount (whether in the form of cash, property, or an interest in property) less than the value of the property interest surrendered, that spouse is deemed to have made a gift in an amount equal to the difference between the value at the time of termination, of the property interest surrendered by such spouse and the amount received in exchange. Thus, if the husband's interest in such a tenancy at the time of termination is worth $44,971 and the wife's interest therein at the time is worth $55,029, the property is sold for $100,000, and each spouse received $50,000 out of the proceeds of the sale, the wife has made a gift to the husband of $5,029. The principles applied in paragraph (c) of § 25.2515–2 for the method of determining the value of the respective interests of the spouses at the time of the creation of a tenancy by the entirety are equally applicable in determining the value of each spouse's interest in the tenancy at termination, except that the actuarial factors to be applied are those for the respective spouses at the ages attained at the date of termination.

(c) *Valuation of gift where both types of consideration are involved.* If the consideration furnished consists in part of the type described in paragraph (a) of § 25.2515–3 (consideration furnished by the spouses after 1954, and not treated as a gift in the calendar quarter or calendar year in which it was furnished) and in part of the type described in paragraph (a) of this section (consideration furnished by the spouses and treated as a gift or furnished by a third party), the amount of the gift is determined as follows:

(1) By applying the principles set forth in paragraph (b) of § 25.2515–3 to that portion of the total proceeds of termination which the consideration described in paragraph (a) of § 25.2515–3 bears to the total consideration furnished;

(2) By applying the principles set forth in paragraph (b) of this section to the remaining portion of the total proceeds of termination; and

(3) By subtracting the proceeds of termination received by the donor from the total of the amounts which under the principles referred to in subparagraphs (1) and (2) of this paragraph are to be compared with the proceeds of termination received by a spouse in determining whether a gift was made by that spouse. For example, assume that consideration of $30,000 was furnished by the husband in 1954. Assume also that on February 1, 1955, the husband contributed $12,000 and the wife $8,000, the husband's contribution not being treated as a gift (see paragraph (b) of § 25.2515–1). Assume further that between 1957 and 1965 the property appreciated in value by $40,000 and was sold in 1965 for $90,000 (of which the husband received $40,000 and the wife $50,000). The principles set forth in paragraph (b) of § 25.2515–3 are applied to $36,000 (20,000/50,000×$90,000) in arriving at the amount which is compared with the proceeds of termination received by a spouse. Applying the principles set forth in paragraph (b) of § 25.2515–3, this amount in the case of the husband is $21,600 (12,000/20,000×$36,000). Similarly, the principles set forth in paragraph (b) of this section are applied to $54,000 ($90,000 − 36,000), the remaining portion of the proceeds of termination, in arriving at the amount which is compared with the proceeds of termination received by a spouse. If in this case either spouse, without the consent of the other spouse, can bring about a severance of his interest in the tenancy, the amount determined under paragraph (b) of this section in the case of the husband would be $27,000 (½ of $54,000). The total of the two amounts which are to be compared with the proceeds of termination received by the husband is $48,600 ($21,600+27,000). This sum of $48,600 is then compared with the $40,000 proceeds received by the husband, and the termination of the tenancy has resulted, for gift tax purposes, in a transfer of $8,600 by the husband to his wife in 1965. See paragraph (d) of this section for an additional example illustrating the application of this paragraph.

(d) The application of paragraph (c) of this section may further be illustrated by the following example:

Example. X died in 1948 and devised real property to Y and Z (Y's wife) as tenant by the entirety. Under the law of the jurisdiction, both spouses are entitled to share equally in the income from, or the enjoyment of, the property, but neither spouse, acting alone, may defeat the right of the survivor of them to the whole of the property. The fair market value of the property at the time of X's death was $100,000 and this amount is the consideration which X furnished toward the creation of the tenancy. In 1955, at which time the fair market value of the property was the same as at the time of X's death, improvements of $50,000 were made to the property, of which Y furnished $40,000 out of his own funds and Z furnished $10,000 out of her own funds. Y did not elect to treat his transfer to the tenancy as resulting in the making of a gift in 1955. In 1956 the property was sold for $300,000 and Y and Z each received $150,000 of the proceeds. At the time the property was sold Y and Z were 45 and 40 years of age, respectively, on their birthdays nearest the date of sale. The value of the gift made by Y to Z is $19,942, computed as follows:

Amount determined under principles set forth in § 25.2515–3:

$50,000 (consideration not treated as gift in year furnished)÷$150,000 (total consideration furnished)×$300,000 (proceeds of termination)=$100,000 (proceeds of termination to which principles set forth in § 25.2515–3 apply)

$40,000 (consideration furnished by H and not treated as gift)÷$50,000 (total consideration not treated as gift)×$100,000=$80,000

Amount determined under principles set forth in paragraph (b) of this section:
$300,000 (total proceeds of termination)—$100,000 (proceeds to which principles set forth in § 25.2515–3 apply)=$200,000 (proceeds to which principles set forth in paragraph (b) apply) 0.44971 (factor for Y's latest)×$200,000=$89,942

Amount of gift:	
Amount determined under § 25.2515–3	$80,000
Amount determined under paragraph (b)	89,942
Total	169,942
Less: Proceeds received by Y	150,000
Amount of gift made by Y to Z	19,942

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28732, Dec. 29, 1972]

§ 25.2516–1 Certain property settlements.

(a) Section 2516 provides that transfers of property or interests in property made under the terms of a written agreement between spouses in settlement of their marital or property rights are deemed to be for an adequate and full consideration in money or money's worth and, therefore, exempt from the gift tax (whether or not such agreement is approved by a divorce decree), if the spouses obtain a final decree of divorce from each other within two years after entering into the agreement.

(b) See paragraph (b) of § 25.6019–3 for the circumstances under which information relating to property settlements must be disclosed on the transferor's gift tax return for the ''calendar period'' (as defined in § 25.2502–1(c)(1)) in which the agreement becomes effective.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28732, Dec. 29, 1972; T.D. 7910, 48 FR 40375, Sept. 7, 1983]

§ 25.2516–2 Transfers in settlement of support obligations.

Transfers to provide a reasonable allowance for the support of children (including legally adopted children) of a marriage during minority are not subject to the gift tax if made pursuant to an agreement which satisfies the requirements of section 2516.

§ 25.2518–1 Qualified disclaimers of property; in general.

(a) *Applicability*—(1) *In general.* The rules described in this section, § 25.2518–2, and § 25.2518–3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a transfer made after December 31, 1976. In general, a qualified disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property. For rules relating to the determination of when a transfer creating an interest occurs, see § 25.2518–2(c) (3) and (4).

(2) *Example.* The provisions of paragraph (a)(1) of this section may be illustrated by the following example:

Example. W creates an irrevocable trust on December 10, 1968, and retains the right to receive the income for life. Upon the death of W, which occurs after December 31, 1976, the trust property is distributable to W's surviving issue, *per stirpes.* The transfer creating the remainder interest in the trust occurred in 1968. See § 25.2511–1(c)(2). Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the transfer creating the interest was made prior to January 1, 1977. If, however, W had caused the gift to be incomplete by also retaining the power to designate the person or persons to receive the trust principal at death, and, as a result, no transfer (within the meaning of § 25.2511–1(c)(2)) of the remainder interest was made at the time of the creation of the trust, section 2518 would apply to any disclaimer made after W's death with respect to an interest in the trust property.

(3) Paragraph (a)(1) of this section is applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

(b) *Effect of a qualified disclaimer.* If a person makes a qualified disclaimer as described in section 2518(b) and § 25.2518–2, for purposes of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift. Similarly, the value of a decedent's gross estate for purposes of the Federal estate tax does not include the value of property with respect to which the decedent, or the decedent's executor or administrator on behalf of

the decedent, has made a qualified disclaimer. If the disclaimer is not a qualified disclaimer, for the purposes of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimer is disregarded and the disclaimant is treated as having received the interest.

(c) *Effect of local law*—(1) *In general*—(i) *Interests created before 1982.* A disclaimer of an interest created in a taxable transfer before 1982 which otherwise meets the requirements of a qualified disclaimer under section 2518 and the corresponding regulations but which, by itself, is not effective under applicable local law to divest ownership of the disclaimed property from the disclaimant and vest it in another, is nevertheless treated as a qualified disclaimer under section 2518 if, under applicable local law, the disclaimed interest in property is transferred, as a result of attempting the disclaimer, to another person without any direction on the part of the disclaimant. An interest in property will not be considered to be transferred without any direction on the part of the disclaimant if, under applicable local law, the disclaimant has any discretion (whether or not such discretion is exercised) to determine who will receive such interest. Actions by the disclaimant which are required under local law merely to divest ownership of the property from the disclaimant and vest ownership in another person will not disqualify the disclaimer for purposes of section 2518(a). See §25.2518–2(d)(1) for rules relating to the immediate vesting of title in the disclaimant.

(ii) *Interests created after 1981.* [Reserved]

(2) *Creditor's claims.* The fact that a disclaimer is voidable by the disclaimant's creditors has no effect on the determination of whether such disclaimer constitutes a qualified disclaimer. However, a disclaimer that is wholly void or that is voided by the disclaimant's creditors cannot be a qualified disclaimer.

(3) *Examples.* The provisions of paragraphs (c) (1) and (2) of this section may be illustrated by the following examples:

Example (1). F dies testate in State Y on June 17, 1978. G and H are beneficiaries under the will. The will provides that any disclaimed property is to pass to the residuary estate. H has no interest in the residuary estate. Under the applicable laws of State Y, a disclaimer must be made within 6 months of the death of the testator. Seven months after F's death, H disclaimed the real property H received under the will. The disclaimer statute of State Y has a provision stating that an untimely disclaimer will be treated as an assignment of the interest disclaimed to those persons who would have taken had the disclaimer been valid. Pursuant to this provision, the disclaimed property became part of the residuary estate. Assuming the remaining requirements of section 2518 are met, H has made a qualified disclaimer for purposes of section 2518 (a).

Example (2). Assume the same facts as in example (1) except that the law of State Y does not treat an ineffective disclaimer as a transfer to alternative takers. H assigns the disclaimed interest by deed to those who would have taken had the disclaimer been valid. Under these circumstances, H has not made a qualified disclaimer for purposes of section 2518 (a) because the disclaimant directed who would receive the property.

Example (3). Assume the same facts as in example (1) except that the law of State Y requires H to pay a transfer tax in order to effectuate the transfer under the ineffective disclaimer provision. H pays the transfer tax. H has make a qualified disclaimer for purposes of section 2518 (a).

(d) *Cross-reference.* For rules relating to the effect of qualified disclaimers on the estate tax charitable and marital deductions, see §§20.2055–2(c) and 20.2056(d)–1 respectively. For rules relating to the effect of a qualified disclaimer of a general power of appointment, see §20.2041–3(d).

[T.D. 8095, 51 FR 28370, Aug. 7, 1986, as amended by T.D. 8744, 62 FR 68185, Dec. 31, 1997]

§25.2518–2 Requirements for a qualified disclaimer.

(a) *In general.* For the purposes of section 2518(a), a disclaimer shall be a qualified disclaimer only if it satisfies the requirements of this section. In general, to be a qualified disclaimer—

(1) The disclaimer must be irrevocable and unqualified:

(2) The disclaimer must be in writing;

(3) The writing must be delivered to the person specified in paragraph (b) (2) of this section within the time limitations specified in paragraph (c)(1) of this section;

(4) The disclaimant must not have accepted the interest disclaimed or any of its benefits; and

(5) The interest disclaimed must pass either to the spouse of the decedent or to a person other than the disclaimant without any direction on the part of the person making the disclaimer.

(b) *Writing*—(1) *Requirements.* A disclaimer is a qualified disclaimer only if it is in writing. The writing must identify the interest in property disclaimed and be signed either by the disclaimant or by the disclaimant's legal representative.

(2) *Delivery.* The writing described in paragraph (b)(1) of this section must be delivered to the transferor of the interest, the transferor's legal representative, the holder of the legal title to the property to which the interest relates, or the person in possession of such property.

(c) *Time limit*—(1) *In general.* A disclaimer is a qualified disclaimer only if the writing described in paragraph (b)(1) of this section is delivered to the persons described in paragraph (b)(2) of this section no later than the date which is 9 months after the later of—

(i) The date on which the transfer creating the interest in the disclaimant is made, or

(ii) The day on which the disclaimant attains age 21.

(2) *A timely mailing of a disclaimer treated as a timely delivery.* Although section 7502 and the regulations under that section apply only to documents to be filed with the Service, a timely mailing of a disclaimer to the person described in paragraph (b)(2) of this section is treated as a timely delivery if the mailing requirements under paragraphs (c)(1), (c)(2) and (d) of § 301.7502–1 are met. Further, if the last day of the period specified in paragraph (c)(1) of this section falls on Saturday, Sunday or a legal holiday (as defined in paragraph (b) of § 301.7503–1), then the delivery of the writing described in paragraph (b)(1) of this section shall be considered timely if delivery is made on the first succeeding day which is not Saturday, Sunday or a legal holiday. See paragraph (d)(3) of this section for rules applicable to the exception for individuals under 21 years of age.

(3) *Transfer.* (i) For purposes of the time limitation described in paragraph (c)(1)(i) of this section, the 9-month period for making a disclaimer generally is to be determined with reference to the transfer creating the interest in the disclaimant. With respect to inter vivos transfers, a transfer creating an interest occurs when there is a completed gift for Federal gift tax purposes regardless of whether a gift tax is imposed on the completed gift. Thus, gifts qualifying for the gift tax annual exclusion under section 2503(b) are regarded as transfers creating an interest for this purpose. With respect to transfers made by a decedent at death or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent's death, even if an estate tax is not imposed on the transfer. For example, a bequest of foreign-situs property by a nonresident alien decedent is regarded as a transfer creating an interest in property even if the transfer would not be subject to estate tax. If there is a transfer creating an interest in property during the transferor's lifetime and such interest is later included in the transferor's gross estate for estate tax purposes (or would have been included if such interest were subject to estate tax), the 9-month period for making the qualified disclaimer is determined with reference to the earlier transfer creating the interest. In the case of a general power of appointment, the holder of the power has a 9-month period after the transfer creating the power in which to disclaim. If a person to whom any interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a 9-month period after the exercise, release, or lapse regardless of whether the exercise, release, or lapse is subject to estate or gift tax. In the case of a nongeneral power of appointment, the holder of the power, permissible appointees, or takers in default of appointment must disclaim within a 9-month period after the original transfer that created or authorized the creation of the power. If the transfer is for the life of an income beneficiary with succeeding interests to other persons,

both the life tenant and the other remaindermen, whether their interests are vested or contingent, must disclaim no later than 9 months after the original transfer creating an interest. In the case of a remainder interest in property which an executor elects to treat as qualified terminable interest property under section 2056(b)(7), the remainderman must disclaim within 9 months of the transfer creating the interest, rather than 9 months from the date such interest is subject to tax under section 2044 or 2519. A person who receives an interest in property as the result of a qualified disclaimer of the interest must disclaim the previously disclaimed interest no later than 9 months after the date of the transfer creating the interest in the preceding disclaimant. Thus, if A were to make a qualified disclaimer of a specific bequest and as a result of the qualified disclaimer the property passed as part of the residue, the beneficiary of the residue could make a qualified disclaimer no later than 9 months after the date of the testator's death. See paragraph (d)(3) of this section for the time limitation rule with reference to recipients who are under 21 years of age.

(ii) Sentences 1 through 10 and 12 of paragraph (c)(3)(i) of this section are applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

(4) *Joint property*—(i) *Interests in joint tenancy with right of survivorship or tenancies by the entirety.* Except as provided in paragraph (c)(4)(iii) of this section (with respect to joint bank, brokerage, and other investment accounts), in the case of an interest in a joint tenancy with right of survivorship or a tenancy by the entirety, a qualified disclaimer of the interest to which the disclaimant succeeds upon creation of the tenancy must be made no later than 9 months after the creation of the tenancy regardless of whether such interest can be unilaterally severed under local law. A qualified disclaimer of the survivorship interest to which the survivor succeeds by operation of law upon the death of the first joint tenant to die must be made no later than 9 months after the death of the first joint tenant to die regardless of whether such interest can be unilaterally severed under local law and, except as provided in paragraph (c)(4)(ii) of this section (with respect to certain tenancies created on or after July 14, 1988), such interest is deemed to be a one-half interest in the property. (See, however, section 2518(b)(2)(B) for a special rule in the case of disclaimers by persons under age 21.) This is the case regardless of the portion of the property attributable to consideration furnished by the disclaimant and regardless of the portion of the property that is included in the decedent's gross estate under section 2040 and regardless of whether the interest can be unilaterally severed under local law. See paragraph (c)(5), Examples (*7*) and (*8*), of this section.

(ii) *Certain tenancies in real property between spouses created on or after July 14, 1988.* In the case of a joint tenancy between spouses or a tenancy by the entirety in real property created on or after July 14, 1988, to which section 2523(i)(3) applies (relating to the creation of a tenancy where the spouse of the donor is not a United States citizen), the surviving spouse may disclaim any portion of the joint interest that is includible in the decedent's gross estate under section 2040. See paragraph (c)(5), *Example (9)*, of this section.

(iii) *Special rule for joint bank, brokerage, and other investment accounts (e.g., accounts held at mutual funds) established between spouses or between persons other than husband and wife.* In the case of a transfer to a joint bank, brokerage, or other investment account (e.g., an account held at a mutual fund), if a transferor may unilaterally regain the transferor's own contributions to the account without the consent of the other cotenant, such that the transfer is not a completed gift under § 25.2511–1(h)(4), the transfer creating the survivor's interest in the decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the

joint account attributable to consideration furnished by that surviving joint tenant. See paragraph (c)(5), *Examples (12), (13),* and (*14*), of this section, regarding the treatment of disclaimed interests under sections 2518, 2033 and 2040.

(iv) *Effective date.* This paragraph (c)(4) is applicable for disclaimers made on or after December 31, 1997.

(5) *Examples.* The provisions of paragraphs (c)(1) through (c)(4) of this section may be illustrated by the following examples. For purposes of the following examples, assume that all beneficiaries are over 21 years of age.

Example (1). On May 13, 1978, in a transfer which constitutes a completed gift for Federal gift tax purposes, A creates a trust in which B is given a lifetime interest in the income from the trust. B is also given a nongeneral testamentary power of appointment over the corpus of the trust. The power of appointment may be exercised in favor of any of the issue of A and B. If there are no surviving issue at B's death or if the power is not exercised, the corpus is to pass to E. On May 13, 1978, A and B have two surviving children, C and D. If A, B, C or D wishes to make a qualified disclaimer, the disclaimer must be made no later than 9 months after May 13, 1978.

Example (2). Assume the same facts as in example (1) except that B is given a general power of appointment over the corpus of the trust. B exercises the general power of appointment in favor of C upon B's death on June 17, 1989. C may make a qualified disclaimer no later than 9 months after June 17, 1989. If B had died without exercising the general power of appointment, E could have made a qualified disclaimer no later than 9 months after June 17, 1989.

Example (3). F creates a trust on April 1, 1978, in which F's child G is to receive the income from the trust for life. Upon G's death, the corpus of the trust is to pass to G's child H. If either G or H wishes to make a qualified disclaimer, it must be made no later than 9 months after April 1, 1978.

Example (4). A creates a trust on February 15, 1978, in which B is named the income beneficiary for life. The trust further provides that upon B's death the proceeds of the trust are to pass to C, if then living. If C predeceases D, the proceeds shall pass to D or D's estate. To have timely disclaimers for purposes of section 2518, B, C, and D must disclaim their respective interests no later than 9 months after February 15, 1978.

Example (5). A, a resident of State Q, dies on January 10, 1979, devising certain real property to B. The disclaimer laws of State Q require that a disclaimer be made within a reasonable time after a transfer. B disclaims the entire interest in real property on November 10, 1979. Although B's disclaimer may be effective under State Q law, it is not a qualified disclaimer under section 2518 because the disclaimer was made later than 9 months after the taxable transfer to B.

Example (6). A creates a revocable trust on June 1, 1980, in which B and C are given the income interest for life. Upon the death of the last income beneficiary, the remainder interest is to pass to D. The creation of the trust is not a completed gift for Federal gift tax purposes, but each distribution of trust income to B and C is a completed gift at the date of distribution. B and C must disclaim each income distribution no later than 9 months after the date of the particular distribution. In order to disclaim an income distribution in the form of a check, the recipient must return the check to the trustee uncashed along with a written disclaimer. A dies on September 1, 1982, causing the trust to become irrevocable, and the trust corpus is includible in A's gross estate for Federal estate tax purposes under section 2038. If B or C wishes to make a qualified disclaimer of his income interest, he must do so no later than 9 months after September 1, 1982. If D wishes to make a qualified disclaimer of his remainder interest, he must do so no later than 9 months after September 1, 1982.

Example (7). On February 1, 1990, A purchased real property with A's funds. Title to the property was conveyed to ''A and B, as joint tenants with right of survivorship.'' Under applicable state law, the joint interest is unilaterally severable by either tenant. B dies on May 1, 1998, and is survived by A. On January 1, 1999, A disclaims the one-half survivorship interest in the property to which A succeeds as a result of B's death. Assuming that the other requirements of section 2518(b) are satisfied, A has made a qualified disclaimer of the one-half survivorship interest (but not the interest retained by A upon the creation of the tenancy, which may not be disclaimed by A). The result is the same whether or not A and B are married and regardless of the proportion of consideration furnished by A and B in purchasing the property.

Example (8). Assume the same facts as in *Example (7)* except that A and B are married and title to the property was conveyed to ''A and B, as tenants by the entirety.'' Under applicable state law, the tenancy cannot be unilaterally severed by either tenant. Assuming that the other requirements of section 2518(b) are satisfied, A has made a qualified disclaimer of the one-half survivorship interest (but not the interest retained by A upon the creation of the tenancy, which may not be disclaimed by A). The result is the same regardless of the proportion of consideration furnished by A and B in purchasing the property.

Example (9). On March 1, 1989, H and W purchase a tract of vacant land which is conveyed to them as tenants by the entirety. The entire consideration is paid by H. W is not a United States citizen. H dies on June 1, 1998. W can disclaim the entire joint interest because this is the interest includible in H's gross estate under section 2040(a). Assuming that W's disclaimer is received by the executor of H's estate no later than 9 months after June 1, 1998, and the other requirements of section 2518(b) are satisfied, W's disclaimer of the property would be a qualified disclaimer. The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (10). In 1986, spouses A and B purchased a personal residence taking title as tenants by the entirety. B dies on July 10, 1998. A wishes to disclaim the one-half undivided interest to which A would succeed by right of survivorship. If A makes the disclaimer, the property interest would pass under B's will to their child C. C, an adult, and A resided in the residence at B's death and will continue to reside there in the future. A continues to own a one-half undivided interest in the property. Assuming that the other requirements of section 2518(b) are satisfied, A may make a qualified disclaimer with respect to the one-half undivided survivorship interest in the residence if A delivers the written disclaimer to the personal representative of B's estate by April 10, 1999, since A is not deemed to have accepted the interest or any of its benefits prior to that time and A's occupancy of the residence after B's death is consistent with A's retained undivided ownership interest. The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

Example (11). H and W, husband and wife, reside in state X, a community property state. On April 1, 1978, H and W purchase real property with community funds. The property is not held by H and W as jointly owned property with rights of survivorship. H and W hold the property until January 3, 1985, when H dies. H devises his portion of the property to W. On March 15, 1985, W disclaims the portion of the property devised to her by H. Assuming all the other requirements of section 2518 (b) have been met, W has made a qualified disclaimer of the interest devised to her by H. However, W could not disclaim the interest in the property that she acquired on April 1, 1978.

Example (12). On July 1, 1990, A opens a bank account that is held jointly with B, A's spouse, and transfers $50,000 of A's money to the account. A and B are United States citizens. A can regain the entire account without B's consent, such that the transfer is not a completed gift under § 25.2511–1(h)(4). A dies on August 15, 1998, and B disclaims the entire amount in the bank account on October 15, 1998. Assuming that the remaining requirements of section 2518(b) are satisfied, B made a qualified disclaimer under section 2518(a) because the disclaimer was made within 9 months after A's death at which time B had succeeded to full dominion and control over the account. Under state law, B is treated as predeceasing A with respect to the disclaimed interest. The disclaimed account balance passes through A's probate estate and is no longer joint property includible in A's gross estate under section 2040. The entire account is, instead, includible in A's gross estate under section 2033. The result would be the same if A and B were not married.

Example (13). The facts are the same as Example (12), except that B, rather than A, dies on August 15, 1998. A may not make a qualified disclaimer with respect to any of the funds in the bank account, because A furnished the funds for the entire account and A did not relinquish dominion and control over the funds.

Example (14). The facts are the same as Example (12), except that B disclaims 40 percent of the funds in the account. Since, under state law, B is treated as predeceasing A with respect to the disclaimed interest, the 40 percent portion of the account balance that was disclaimed passes as part of A's probate estate, and is no longer characterized as joint property. This 40 percent portion of the account balance is, therefore, includible in A's gross estate under section 2033. The remaining 60 percent of the account balance that was not disclaimed retains its character as joint property and, therefore, is includible in A's gross estate as provided in section 2040(b). Therefore, 30 percent (½×60 percent) of the account balance is includible in A's gross estate under section 2040(b), and a total of 70 percent of the aggregate account balance is includible in A's gross estate. If A and B were not married, then the 40 percent portion of the account subject to the disclaimer would be includible in A's gross estate as provided in section 2033 and the 60 percent portion of the account not subject to the disclaimer would be includible in A's gross estate as provided in section 2040(a), because A furnished all of the funds with respect to the account.

(d) *No acceptance of benefits*—(1) *Acceptance.* A qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act which is

consistent with ownership of the interest in property. Acts indicative of acceptance include using the property or the interest in property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in property. However, merely taking delivery of an instrument of title, without more, does not constitute acceptance. Moreover, a disclaimant is not considered to have accepted property merely because under applicable local law title to the property vests immediately in the disclaimant upon the death of a decedent. The acceptance of one interest in property will not, by itself, constitute an acceptance of any other separate interests created by the transferor and held by the disclaimant in the same property. In the case of residential property, held in joint tenancy by some or all of the residents, a joint tenant will not be considered to have accepted the joint interest merely because the tenant resided on the property prior to disclaiming his interest in the property. The exercise of a power of appointment to any extent by the donee of the power is an acceptance of its benefits. In addition, the acceptance of any consideration in return for making the disclaimer is an acceptance of the benefits of the entire interest disclaimed.

(2) *Fiduciaries.* If a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of fiduciary powers to preserve or maintain the disclaimed property shall not be treated as an acceptance of such property or any of its benefits. Under this rule, for example, an executor who is also a beneficiary may direct the harvesting of a crop or the general maintenance of a home. A fiduciary, however, cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class. See paragraph (e) of this section for rules relating to the effect of directing the redistribution of disclaimed property.

(3) *Under 21 years of age.* A beneficiary who is under 21 years of age has until 9 months after his twenty-first birthday in which to make a qualified disclaimer of his interest in property. Any actions taken with regard to an interest in property by a beneficiary or a custodian prior to the beneficiary's twenty-first birthday will not be an acceptance by the beneficiary of the interest.

(4) *Examples.* The provisions of paragraphs (d) (1), (2) and (3) of this section may be illustrated by the following examples:

Example (1). On April 9, 1977, A established a trust for the benefit of B, then age 22. Under the terms of the trust, the current income of the trust is to be paid quarterly to B. Additionally, one half the principal is to be distributed to B when B attains the age of 30 years. The balance of the principal is to be distributed to B when B attains the age of 40 years. Pursuant to the terms of the trust, B received a distribution of income on June 30, 1977. On August 1, 1977, B disclaimed B's right to receive both the income from the trust and the principal of the trust, B's disclaimer of the income interest is not a qualified disclaimer for purposes of section 2518(a) because B accepted income prior to making the disclaimer. B's disclaimer of the principal, however, does satisfy section 2518(b)(3). See also § 25.2518–3 for rules relating to the disclaimer of less than an entire interest in property.

Example (2). B is the recipient of certain property devised to B under the will of A. The will stated that any disclaimed property was to pass to C. B and C entered into negotiations in which it was decided that B would disclaim all interest in the real property that was devised to B. In exchange, C promised to let B live in the family home for life. B's disclaimer is not a qualified disclaimer for purposes of section 2518(a) because B accepted consideration for making the disclaimer.

Example (3). A received a gift of Blackacre on December 25, 1978. A never resided on Blackacre but when property taxes on Blackacre became due on July 1, 1979, A paid them out personal funds. On August 15, 1979, A disclaimed the gift of Blackacre. Assuming all the requirements of section 2518 (b) have been met, A has made a qualified disclaimer of Blackacre. Merely paying the property taxes does not constitute an acceptance of Blackacre even though A's personal funds were used to pay the taxes.

Example (4). A died on February 15, 1978. Pursuant to A's will, B received a farm in

State Z. B requested the executor to sell the farm and to give the proceeds to B. The executor then sold the farm pursuant to B's request. B then disclaimed $50,000 of the proceeds from the sale of the farm. B's disclaimer is not a qualified disclaimer. By requesting the executor to sell the farm B accepted the farm even though the executor may not have been legally obligated to comply with B's request. See also §25.2518–3 for rules relating to the disclaimer of less than an entire interest in property.

Example (5). Assume the same facts as in example (4) except that instead of requesting the executor to sell the farm, B pledged the farm as security for a short-term loan which was paid off prior to distribution of the estate. B then disclaimed his interest in the farm. B's disclaimer is not a qualified disclaimer. By pledging the farm as security for the loan, B accepted the farm.

Example (6). A delivered 1,000 shares of stock in Corporation X to B as a gift on February 1, 1980. A had the shares registered in B's name on that date. On April 1, 1980, B disclaimed the interest in the 1,000 shares. Prior to making the disclaimer, B did not pledge the shares, accept any dividends or otherwise commit any acts indicative of acceptance. Assuming the remaining requirements of section 2518 are satisfied, B's disclaimer is a qualified disclaimer.

Example (7). On January 1, 1980, A created an irrevocable trust in which B was given a testamentary general power of appointment over the trust's corpus. B executed a will on June 1, 1980, in which B provided for the exercise of the power of appointment. On September 1, 1980, B disclaimed the testamentary power of appointment. Assuming the remaining requirements of section 2518 (b) are satisfied, B's disclaimer of the testamentary power of appointment is a qualified disclaimer.

Example (8). H and W reside in X, a community property state. On January 1, 1981, H and W purchase a residence with community funds. They continue to reside in the house until H dies testate on February 1, 1990. Although H could devise his portion of the residence to any person, H devised his portion of the residence to W. On September 1, 1990, W disclaims the portion of the residence devised to her pursuant to H's will but continues to live in the residence. Assuming the remaining requirements of section 2518(b) are satisfied, W's disclaimer is a qualified disclaimer under section 2518 (a). W's continued occupancy of the house prior to making the disclaimer will not by itself be treated as an acceptance of the benefits of the portion of the residence devised to her by H.

Example (9). In 1979, D established a trust for the benefit of D's minor children E and F. Under the terms of the trust, the trustee is given the power to make discretionary distributions of current income and corpus to both children. The corpus of the trust is to be distributed equally between E and F when E becomes 35 years of age. Prior to attaining the age of 21 years on April 8, 1982, E receives several distributions of income from the trust. E receives no distributions of income between April 8, 1982 and August 15, 1982, which is the date on which E disclaims all interest in the income from the trust. As a result of the disclaimer the income will be distributed to F. If the remaining requirements of section 2518 are met, E's disclaimer is a qualified disclaimer under section 2518(a). To have a qualified disclaimer of the interest in corpus, E must disclaim the interest no later than 9 months after April 8, 1982, E's 21st birthday.

Example (10). Assume the same facts as in example (9) except that E accepted a distribution of income on May 13, 1982. E's disclaimer is not a qualified disclaimer under section 2518 because by accepting an income distribution after attaining the age of 21, E accepted benefits from the income interest.

Example (11). F made a gift of 10 shares of stock to G as custodian for H under the State X Uniform Gifts to Minors Act. At the time of the gift, H was 15 years old. At age 18, the local age of majority, the 10 shares were delivered to and registered in the name of H. Between the receipt of the shares and H's 21st birthday, H received dividends from the shares. Within 9 months of attaining age 21, H disclaimed the 10 shares. Assuming H did not accept any dividends from the shares after attaining age 21, the disclaimer by H is a qualified disclaimer under section 2518.

(e) *Passage without direction by the disclaimant of beneficial enjoyment of disclaimed interest*—(1) *In general.* A disclaimer is not a qualified disclaimer unless the disclaimed interest passes without any direction on the part of the disclaimant to a person other than the disclaimant (except as provided in paragraph (e)(2) of this section). If there is an express or implied agreement that the disclaimed interest in property is to be given or bequeathed to a person specified by the disclaimant, the disclaimant shall be treated as directing the transfer of the property interest. The requirements of a qualified disclaimer under section 2518 are not satisfied if—

(i) The disclaimant, either alone or in conjunction with another, directs the redistribution or transfer of the property or interest in property to another person (or has the power to direct the redistribution or transfer of the property or interest in property to another person unless such power is

limited by an ascertainable standard); or

(ii) The disclaimed property or interest in property passes to or for the benefit of the disclaimant as a result of the disclaimer (except as provided in paragraph (e)(2) of this section).

If a power of appointment is disclaimed, the requirements of this paragraph (e)(1) are satisfied so long as there is no direction on the part of the disclaimant with respect to the transfer of the interest subject to the power or with respect to the transfer of the power to another person. A person may make a qualified disclaimer of a beneficial interest in property even if after such disclaimer the disclaimant has a fiduciary power to distribute to designated beneficiaries, but only if the power is subject to an ascertainable standard. See examples (11) and (12) of paragraph (e)(5) of this section.

(2) *Disclaimer by surviving spouse.* In the case of a disclaimer made by a decedent's surviving spouse with respect to property transferred by the decedent, the disclaimer satisfies the requirements of this paragraph (e) if the interest passes as a result of the disclaimer without direction on the part of the surviving spouse either to the surviving spouse or to another person. If the surviving spouse, however, retains the right to direct the beneficial enjoyment of the disclaimed property in a transfer that is not subject to Federal estate and gift tax (whether as trustee or otherwise), such spouse will be treated as directing the beneficial enjoyment of the disclaimed property, unless such power is limited by an ascertainable standard. See examples (4), (5), and (6) in paragraph (e)(5) of this section.

(3) *Partial failure of disclaimer.* If a disclaimer made by a person other than the surviving spouse is not effective to pass completely an interest in property to a person other than the disclaimant because—

(i) The disclaimant also has a right to receive such property as an heir at law, residuary beneficiary, or by any other means; and

(ii) The disclaimant does not effectively disclaim these rights, the disclaimer is not a qualified disclaimer with respect to the portion of the disclaimed property which the disclaimant has a right to receive. If the portion of the disclaimed interest in property which the disclaimant has a right to receive is not severable property or an undivided portion of the property, then the disclaimer is not a qualified disclaimer with respect to any portion of the property. Thus, for example, if a disclaimant who is not a surviving spouse receives a specific bequest of a fee simple interest in property and as a result of the disclaimer of the entire interest, the property passes to a trust in which the disclaimant has a remainder interest, then the disclaimer will not be a qualified disclaimer unless the remainder interest in the property is also disclaimed. See § 25.2518–3 (a)(1)(ii) for the definition of severable property.

(4) *Effect of precatory language.* Precatory language in a disclaimer naming takers of disclaimed property will not be considered as directing the redistribution or transfer of the property or interest in property to such persons if the applicable State law gives the language no legal effect.

(5) *Examples.* The provisions of this paragraph (e) may be illustrated by the following examples:

Example (1). A, a resident of State X, died on July 30, 1978. Pursuant to A's will, B, A's son and heir at law, received the family home. In addition, B and C each received 50 percent of A's residuary estate. B disclaimed the home. A's will made no provision for the distribution of property in the case of a beneficiary's disclaimer. Therefore, pursuant to the disclaimer laws of State X, the disclaimed property became part of the residuary estate. Because B's 50 percent share of the residuary estate will be increased by 50 percent of the value of the family home, the disclaimed property will not pass solely to another person. Consequently, B's disclaimer of the family home is a qualified disclaimer only with respect to the 50 percent portion that passes solely to C. Had B also disclaimed B's 50 percent interest in the residuary estate, the disclaimer would have been a qualified disclaimer under section 2518 of the entire interest in the home (assuming the remaining requirements of a qualified disclaimer were satisfied). Similarly, if under the laws of State X, the disclaimer has the effect of divesting B of all interest in the home, both as devisee and as a beneficiary of the residuary estate, including any property resulting from its sale, the disclaimer would

be a qualified disclaimer of B's entire interest in the home.

Example (2). D, a resident of State Y, died testate on June 30, 1978. E, an heir at law of D, received specific bequests of certain severable personal property from D. E disclaimed the property transferred by D under the will. The will made no provision for the distribution of property in the case of a beneficiary's disclaimer. The disclaimer laws of State Y provide that such property shall pass to the decedent's heirs at law in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. Because State Y's law treats E as predeceasing D, the property disclaimed by E does not pass to E as an heir at law or otherwise. Consequently, if the remaining requirements of section 2518(b) are satisfied, E's disclaimer is a qualified disclaimer under section 2518(a).

Example (3). Assume the same facts as in example (2) except that State Y has no provision treating the disclaimant as predeceasing the testator. E's disclaimer satisfies section 2518 (b)(4) only to the extent that E does not have a right to receive the property as an heir at law. Had E disclaimed both the share E received under D's will and E's intestate share, the requirement of section 2518 (b)(4) would have been satisfied.

Example (4). B died testate on February 13, 1980. B's will established both a marital trust and a nonmarital trust. The decedent's surviving spouse, A, is an income beneficiary of the marital trust and has a testamentary general power of appointment over its assets. A is also an income beneficiary of the nonmarital trust, but has no power to appoint or invade the corpus. The provisions of the will specify that any portion of the marital trust disclaimed is to be added to the nonmarital trust. A disclaimed 30 percent of the marital trust. (See § 25.2518–3 (b) for rules relating to the disclaimer of an undivided portion of an interest in property.) Pursuant to the will, this portion of the marital trust property was transferred to the nonmarital trust without any direction on the part of A. This disclaimer by A satisfies section 2518 (b)(4).

Example (5). Assume the same facts as in example (4) except that A, the surviving spouse, has both an income interest in the nonmarital trust and a testamentary nongeneral power to appoint among designated beneficiaries. This power is not limited by an ascertainable standard. The requirements of section 2518 (b)(4) are not satisfied unless A also disclaims the nongeneral power to appoint the portion of the trust corpus that is attributable to the property that passed to the nonmarital trust as a result of A's disclaimer. Assuming that the fair market value of the disclaimed property on the date of the disclaimer is $250,000 and that the fair market value of the nonmarital trust (including the disclaimed property) immediately after the disclaimer is $750,000, A must disclaim the power to appoint one-third of the nonmarital trust's corpus. The result is the same regardless of whether the nongeneral power is testamentary or inter vivos.

Example (6). Assume the same facts as in example (4) except that A has both an income interest in the nonmarital trust and a power to invade corpus if needed for A's health or maintenance. In addition, an independent trustee has power to distribute to A any portion of the corpus which the trustee determines to be desirable for A's happiness. Assuming the other requirements of section 2518 are satisfied. A may make a qualified disclaimer of interests in the marital trust without disclaiming any of A's interests in the nonmarital trust.

Example (7). B died testate on June 1, 1980. B's will created both a marital trust and a nonmarital trust. The decedent's surviving spouse, C, is an income beneficiary of the marital trust and has a testamentary general power of appointment over its assets. C is an income beneficiary of the nonmarital trust, and additionally has the noncumulative right to withdraw yearly the greater of $5,000 or 5 percent of the aggregate value of the principal. The provisions of the will specify that any portion of the marital trust disclaimed is to be added to the nonmarital trust. C disclaims 50 percent of the marital trust corpus. Pursuant to the will, this amount is transferred to the nonmarital trust. Assuming the remaining requirements of section 2518(b) are satisfied, C's disclaimer is a qualified disclaimer.

Example (8). A, a resident of State X, died on July 19, 1979. A was survived by a spouse B, and three children, C, D, and E. Pursuant to A's will, B received one-half of A's estate and the children received equal shares of the remaining one-half of the estate. B disclaimed the entire interest B had received. The will made no provisions for the distribution of property in the case of a beneficiary's disclaimer. The disclaimer laws of State X provide that under these circumstances disclaimed property passes to the decedent's heirs at law in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. As a result, C, D, and E are A's only remaining heirs at law, and will divide the disclaimed property equally among themselves. B's disclaimer includes language stating that ''it is my intention that C, D, and E will share equally in the division of this property as a result of my disclaimer.'' State X considers these to be precatory words and gives them no legal effect. B's disclaimer meets all other requirements imposed by State X on disclaimers, and is considered an effective disclaimer under which the property will vest solely in C, D, and E in equal shares without any further action required by B. Therefore,

B is not treated as directing the redistribution or transfer of the property. If the remaining requirements of secton 2518 are met, B's disclaimer is a qualified disclaimer.

Example (9). C died testate on January 1, 1979. According to C's will, D was to receive ⅓ of the residuary estate with any disclaimed property going to E. D was also to receive a second ⅓ of the residuary estate with any disclaimed property going to F. Finally, D was to receive a final ⅓ of the residuary estate with any disclaimed property going to G. D specifically states that he is disclaiming the interest in which the disclaimed property is designated to pass to E. D has effectively directed that the disclaimed property will pass to E and therefore D's disclaimer is not a qualified disclaimer under section 2518(a).

Example (10). Assume the same facts as in example (9) except that C's will also states that D was to receive Blackacre and Whiteacre. C's will further provides that if D disclaimed Blackacre then such property was to pass to E and that if D disclaimed Whiteacre then Whiteacre was to pass to F. D specifically disclaims Blackacre with the intention that it pass to E. Assuming the other requirements of section 2518 are met, D has made a qualified disclaimer of Blackacre. Alternatively, D could disclaim an undivided portion of both Blackacre and Whiteacre. Assuming the other requirements of section 2518 are met, this would also be a qualified disclaimer.

Example (11). G creates an irrevocable trust on February 16, 1983, naming H, I and J as the income beneficiaries for life and F as the remainderman. F is also named the trustee and as trustee has the discretionary power to invade the corpus and make discretionary distributions to H, I or J during their lives. F disclaims the remainder interest on August 8, 1983, but retains his discretionary power to invade the corpus. F has not made a qualified disclaimer because F retains the power to direct enjoyment of the corpus and the retained fiduciary power is not limited by an ascertainable standard.

Example (12). Assume the same facts as in example (11) except that F may only invade the corpus to make distributions for the health, maintenance or support of H, I or J during their lives. If the other requirements of section 2518(b) are met, F has made a qualified disclaimer of the remainder interest because the retained fiduciary power is limited by an ascertainable standard.

[T.D. 8095, 51 FR 28371, Aug. 7, 1986; 51 FR 31939, Sept. 8, 1986, as amended by T.D. 8744, 62 FR 68185, Dec. 31, 1997]

§ 25.2518–3 Disclaimer of less than an entire interest.

(a) *Disclaimer of a partial interest*—(1) *In general*—(i) *Interest.* If the requirements of this section are met, the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaimant has another interest in the same property. In general, each interest in property that is separately created by the transferor is treated as a separate interest. For example, if an income interest in securities is bequeathed to A for life, then to B for life, with the remainder interest in such securities bequeathed to A's estate, and if the remaining requirements of section 2518(b) are met, A could make a qualified disclaimer of either the income interest or the remainder, or an undivided portion of either interest. A could not, however, make a qualified disclaimer of the income interest for a certain number of years. Further, where local law merges interests separately created by the transferor, a qualified disclaimer will be allowed only if there is a disclaimer of the entire merged interest or an undivided portion of such merged interest. See example (12) in paragraph (d) of this section. See § 25.2518–3(b) for rules relating to the disclaimer of an undivided portion. Where the merger of separate interests would occur but for the creation by the transferor of a nominal interest (as defined in paragraph (a)(1)(iv) of this section), a qualified disclaimer will be allowed only if there is a disclaimer of all the separate interests, or an undivided portion of all such interests, which would have merged but for the nominal interest.

(ii) *Severable property.* A disclaimant shall be treated as making a qualified disclaimer of a separate interest in property if the disclaimer relates to severable property and the disclaimant makes a disclaimer which would be a qualified disclaimer if such property were the only property in which the disclaimant had an interest. If applicable local law does not recognize a purported disclaimer of severable property, the disclaimant must comply with the requirements of paragraph (c)(1) of § 25.2518–1 in order to make a qualified disclaimer of the severable property. Severable property is property which can be divided into separate parts each of which, after severance, maintains a complete and independent

existence. For example, a legatee of shares of corporate stock may accept some shares of the stock and make a qualified disclaimer of the remaining shares.

(iii) *Powers of appointment.* A power of appointment with respect to property is treated as a separate interest in such property and such power of appointment with respect to all or an undivided portion of such property may be disclaimed independently from any other interests separately created by the transferor in the property if the requirements of section 2518(b) are met. See example (21) of paragraph (d) of this section. Further, a disclaimer of a power of appointment with respect to property is a qualified disclaimer only if any right to direct the beneficial enjoyment of the property which is retained by the disclaimant is limited by an ascertainable standard. See example (9) of paragraph (d) of this section.

(iv) *Nominal interest.* A nominal interest is an interest in property created by the transferor that—

(A) Has an actuarial value (as determined under §20.2031–7) of less than 5 percent of the total value of the property at the time of the taxable transfer creating the interest,

(B) Prevents the merger under local law or two or more other interests created by the transferor, and

(C) Can be clearly shown from all the facts and circumstances to have been created primarily for the purpose of preventing the merger of such other interests.

Factors to be considered in determining whether an interest is created primarily for the purpose of preventing merger include (but are not limited to) the following: the relationship between the transferor and the interest holder; the age difference between the interest holder and the beneficiary whose interests would have merged; the interest holder's state of health at the time of the taxable transfer; and, in the case of a contingent remainder, any other factors which indicate that the possibility of the interest vesting as a fee simple is so remote as to be negligible.

(2) *In trust.* A disclaimer is not a qualified disclaimer under section 2518 if the beneficiary disclaims income derived from specific property transferred in trust while continuing to accept income derived from the remaining properties in the same trust unless the disclaimer results in such property being removed from the trust and passing, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent. Moreover, a disclaimer of both an income interest and a remainder interest in specific trust assets is not a qualified disclaimer if the beneficiary retains interests in other trust property unless, as a result of the disclaimer, such assets are removed from the trust and pass, without any direction on the part of the disclaimant, to persons other than the disclaimant or to the spouse of the decedent. The disclaimer of an undivided portion of an interest in a trust may be a qualified disclaimer. See also paragraph (b) of this section for rules relating to the disclaimer of an undivided portion of an interest in property.

(b) *Disclaimer of undivided portion.* A disclaimer of an undivided portion of a separate interest in property which meets the other requirements of a qualified disclaimer under section 2518(b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted. A disclaimer of some specific rights while retaining other rights with respect to an interest in the property is not a qualified disclaimer of an undivided portion of the disclaimant's interest in property. Thus, for example, a disclaimer made by the devisee of a fee simple interest in Blackacre is not a qualified disclaimer if the disclaimant disclaims a remainder interest in Blackacre but retains a life estate.

(c) *Disclaimer of a pecuniary amount.* A disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift which satisfies the other requirements of a qualified disclaimer under section 2518 (b) and the corresponding regulations is a

qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Thus, following the disclaimer of a specific pecuniary amount from a bequest or gift, the amount disclaimed and any income attributable to such amount must be segregated from the portion of the gift or bequest that was not disclaimed. Such a segregation of assets making up the disclaimer of a pecuniary amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of value changes that may have occurred between the date of transfer and the date of the disclaimer. A pecuniary amount distributed to the disclaimant from the bequest or gift prior to the disclaimer shall be treated as a distribution of corpus from the bequest or gift. However, the acceptance of a distribution from the gift or bequest shall also be considered to be an acceptance of a proportionate amount of income earned by the bequest or gift. The proportionate share of income considered to be accepted by the disclaimant shall be determined at the time of the disclaimer according to the following formula:

$$\frac{\text{Total amount of distributions received by the disclaimant out of the gift or bequest}}{\text{Total value of the gift or bequest on the date of transfer}} \times \text{Total amount of income earned by the gift or bequest between date of transfer and date of disclaimer}$$

See examples (17), (18), and (19) in § 25.2518–3(d) for illustrations of the rules set forth in this paragraph (c).

(d) *Examples.* The provisions of this section may be illustrated by the following examples:

Example (1). A, a resident of State Q, died on August 1, 1978. A's will included specific bequests of 100 shares of stock in X corporation; 200 shares of stock in Y corporation; 500 shares of stock in Z corporation; personal effects consisting of paintings, home furnishings, jewelry, and silver, and a 500 acre farm consisting of a residence, various outbuildings, and 500 head of cattle. The laws of State Q provide that a disclaimed interest passes in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. Pursuant to A's will, B was to receive both the personal effects and the farm. C was to receive all the shares of stock in Corporation X and Y and D was to receive all the shares of stock in Corporation Z. B disclaimed 2 of the paintings and all the jewelry, C disclaimed 50 shares of Y corporation stock, and D disclaimed 100 shares of Z corporation stock. If the remaining requirements of section 2518(b) and the corresponding regulations are met, each of these disclaimers is a qualified disclaimer for purposes of section 2518(a).

Example (2). Assume the same facts as in example (1) except that D disclaimed the income interest in the shares of Z corporation stock while retaining the remainder interest in such shares. D's disclaimer is not a qualified disclaimer.

Example (3). Assume the same facts as in example (1) except that B disclaimed 300 identified acres of the 500 acres. Assuming that B's disclaimer meets the remaining requirements of section 2518(b), it is a qualified disclaimer.

Example (4). Assume the same facts as in example (1) except that A devised the income from the farm to B for life and the remainder interest to C. B disclaimed 40 percent of the income from the farm. Assuming that it meets the remaining requirements of section 2518(b), B's disclaimer of an undivided portion of the income is a qualified disclaimer.

Example (5). E died on September 13, 1978. Under the provisions of E's will, E's shares of stock in X, Y, and Z corporations were to be transferred to a trust. The trust provides that all income is to be distributed currently to F and G in equal parts until F attains the age of 45 years. At that time the corpus of the trust is to be divided equally between F and G. F disclaimed the income arising from the shares of X stock. G disclaimed 20 percent of G's interest in the trust. F's disclaimer is not a qualified disclaimer because the X stock remains in the trust. If the remaining requirements of section 2518(b) are met, G's disclaimer is a qualified disclaimer.

Example (6). Assume the same facts as in example (5) except that F disclaimed both the income interest and the remainder interest in the shares of X stock. F's disclaimer results in the X stock being transferred out

of the trust to G without any direction on F's part. F's disclaimer is a qualified disclaimer under section 2518(b).

Example (7). Assume the same facts as in example (5) except that F is only an income beneficiary of the trust. The X stock remains in the trust after F's disclaimer of the income arising from the shares of X stock. F's disclaimer is not a qualified disclaimer under section 2518.

Example (8). Assume the same facts as in example (5) except that F disclaimed the entire income interest in the trust while retaining the interest F has in corpus. Alternatively, assume that G disclaimed G's entire corpus interest while retaining G's interest in the income from the trust. If the remaining requirements of section 2518(b) are met, either disclaimer will be a qualified disclaimer.

Example (9). G creates an irrevocable trust on May 13, 1980, with H, I, and J as the income beneficiaries. In addition, H, who is the trustee, holds the power to invade corpus for H's health, maintenance, support and happiness and a testamentary power of appointment over the corpus. In the absence of the exercise of the power of appointment, the property passes to I and J in equal shares. H disclaimed the power to invade corpus for H's health, maintenance, support and happiness. Because H retained the testamentary power to appoint the property in the corpus, H's disclaimer is not a qualified disclaimer. If H also disclaimed the testamentary power of appointment, H's disclaimer would have been a qualified disclaimer.

Example (10). E creates an irrevocable trust on May 1, 1980, in which D is the income beneficiary for life. Subject to the trustee's discretion, E's children, A, B, and C, have the right to receive corpus during D's lifetime. The remainder passes to D if D survives A, B, C, and all their issue. D also holds an inter vivos power to appoint the trust corpus to A, B, and C. On September 1, 1980, D disclaimed the remainder interest. D's disclaimer is not a qualified disclaimer because D retained the power to direct the use and enjoyment of corpus during D's life.

Example (11). Under H's will, a trust is created from which W is to receive all of the income for life. The trustee has the power to invade the trust corpus for the support or maintenance of D during the life of W. The trust is to terminate at W's death, at which time the trust property is to be distributed to D. D makes a timely disclaimer of the right to corpus during W's lifetime, but does not disclaim the remainder interest. D's disclaimer is a qualified disclaimer assuming the remaining requirements of section 2518 are met.

Example (12). Under the provisions of G's will A received a life estate in a farm, and was the sole beneficiary of property in the residuary estate. The will also provided that the remainder interest in the farm pass to the residuary estate. Under local law A's interests merged to give A a fee simple in the farm. A made a timely disclaimer of the life estate. A's disclaimer of a partial interest is not a qualified disclaimer under section 2518(a). If A makes a disclaimer of the entire merged interest in the farm or an undivided portion of such merged interest then A would be making a qualified disclaimer assuming all the other requirements of section 2518(b) are met.

Example (13). A, a resident of State Z, dies on September 3, 1980. Under A's will, Blackacre is devised to C for life, then to D for 1 month, remainder to C. Had A not created D's interest, State Z law would have merged C's life estate and the remainder to C to create a fee simple interest in C. Assume that the actuarial value of D's interest is less than 5 percent of the total value of Blackacre on the date of A's death. Further assume that facts and circumstances (particularly the duration of D's interest) clearly indicate that D's interest was created primarily for the purpose of preventing the merger of C's two interests in Blackacre. D's interest in Blackacre is a nominal interest and C's two interests will, for purposes of making a qualified disclaimer, be considered to have merged. Thus, C cannot make a qualified disclaimer of his remainder while retaining the life estate. C can, however, make a qualified disclaimer of both of these interests entirely or an undivided portion of both.

Example (14). A, a resident of State X, dies on October 12, 1978. Under A's will, Blackacre was devised to B for life, then to C for life if C survives B, remainder to B's estate. On the date of A's death, B and C are both 8 year old grandchildren of A. In addition, C is in good health. The actual value of C's interest is less than 5 percent of the total value of Blackacre on the date of A's death. No facts are present which would indicate that the possibility of C's contingent interest vesting is so remote as to be negligible. Had C's contingent life estate not been created, B's life estate and remainder interests would have merged under local law to give B a fee simple interest in Blackacre. Although C's interest prevents the merger of B's two interests and has an actual value of less than 5 percent, C's interest is not a nominal interest within the meaning of §25.2518–3(a)(1)(iv) because the facts and circumstances do not clearly indicate that the interest was created primarily for the purpose of preventing the merger of other interests in the property. Assuming all the other requirements of section 2518(b) are met, B can make a qualified disclaimer of the remainder while retaining his life estate.

Example (15). In 1981, A transfers $60,000 to a trust created for the benefit of B who was given the income interest for life and who

also has a testamentary nongeneral power of appointment over the corpus. A transfers an additional $25,000 to the trust on June 1, 1984. At that time the trust corpus (exclusive of the $25,000 transfer) has a fair market value of $75,000. On January 1, 1985, B disclaims the right to receive income attributable to 25 percent of the corpus

$$\left(\frac{\$25{,}000\,(1984\ \text{transfer})}{\$100{,}000\,(\text{Fair market value of corpus immediately after the 1984 transfer})} = 25\%. \right)$$

Assuming that no distributions were made to B attributable to the $25,000, B's disclaimer is a qualified disclaimer for purposes of section 2518(a) if all the remaining requirements of section 2518(b) are met.

Example (16). Under the provisions of B's will, A is left an outright cash legacy of $50,000 and has no other interest in B's estate. A timely disclaimer by A of any stated dollar amount is a qualified disclaimer under section 2518(a).

Example (17). D bequeaths his brokerage account to E. The account consists of stocks and bonds and a cash amount earning interest. The total value of the cash and assets in the account on the date of D's death is $100,000. Four months after D's death, E makes a withdrawal of cash from the account for personal use amounting to $40,000. Eight months after D's death, E disclaims $60,000 of the account without specifying any particular assets or cash. The cumulative fair market value of the stocks and bonds in the account on the date of the disclaimer is equal to the value of such stocks and bonds on the date of D's death. The income earned by the account between the date of D's death and the date of E's disclaimer was $20,000. The amount of income earned by the account that E accepted by withdrawing $40,000 from the account prior to the disclaimer is determined by applying the formula set forth in § 25.2518–3(c) as follows:

$$\frac{\$40{,}000}{\$100{,}000} \times \$20{,}000 = \$8{,}000$$

E is considered to have accepted $8,000 of the income earned by the account. If (i) the $60,000 disclaimed by E and the $12,000 of income earned prior to the disclaimer which is attributable to that amount are segregated from the $8,000 of income E is considered to have accepted, (ii) E does not accept any benefits of the $72,000 so segregated, and (iii) the other requirements of section 2518 (b) are met, then E's disclaimer of $60,000 from the account is a qualified disclaimer.

Example (18). A bequeathed his residuary estate to B. The residuary estate had a value of $1 million on the date of A's death. Six months later, B disclaimed $200,000 out of this bequest. B received distributions of all the income from the entire estate during the period of administration. When the estate was distributed, B received the entire residuary estate except for $200,000 in cash. B did not make a qualified disclaimer since he accepted the benefits of the $200,000 during the period of estate administration.

Example (19). Assume the same facts as in example (18) except that no income was paid to B and the value of the residuary estate on the date of the disclaimer (including interest earned from date of death) was $1.5 million. In addition, as soon as B's disclaimer was made, the executor of A's estate set aside assets worth $300,000

$$\left(\frac{\$200{,}000}{\$1{,}000{,}000} \times \$1{,}500{,}000 \right)$$

and the interest earned after the disclaimer on that amount in a separate fund so that none of the income was paid to B. B's disclaimer is a qualified disclaimer under section 2518(a).

Example (20). A bequeathed his residuary estate to B. B disclaims a fractional share of the residuary estate. Any disclaimed property will pass to A's surviving spouse, W. The numerator of the fraction disclaimed is the smallest amount which will allow A's estate to pass free of Federal estate tax and the denominator is the value of the residuary estate. B's disclaimer is a qualified disclaimer.

Example (21). A created a trust on July 1, 1979. The trust provides that all current income is to be distributed equally between B and C for the life of B. B also is given a testamentary general power of appointment over the corpus. If the power is not exercised, the corpus passes to C or C's heirs. B disclaimed the testamentary power to appoint an undivided one-half of the trust corpus. Assuming the remaining requirements of section 2518(b) are satisfied, B's disclaimer

is a qualified disclaimer under section 2518(a).

[T.D. 8095, 51 FR 28375, Aug. 7, 1986; 51 FR 31939, Sept. 8, 1986, as amended by T.D. 8540, 59 FR 30103, June 10, 1994]

ACTUARIAL TABLES APPLICABLE BEFORE MAY 1, 2009

§ 25.2512–5A Valuation of annuities, unitrust interests, interests for life or term of years, and remainder or reversionary interests transferred before May 1, 2009.

(a) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred before January 1, 1952.* Except as otherwise provided in § 25.2512–5(b), if the transfer was made before January 1, 1952, the present value of annuities, life estates, terms of years, remainders, and reversions is their present value determined under this section. If the valuation of the interest involved is dependent upon the continuation or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 4 percent a year, compounded annually, and life contingencies for each life involved from values that are based upon the ''Actuaries' or Combined Experience Table of Mortality, as extended.'' This table and many additional factors are described in former § 86.19 (as contained in the 26 CFR part 81 edition revised as of April 1, 1958). The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 4 percent a year.

(b) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred after December 31, 1951, and before January 1, 1971.* Except as otherwise provided in § 25.2512–5(b), the present value of annuities, life estates, terms of years, remainders, and reversions transferred after December 31, 1951, and before January 1, 1971, is the present value of such interests determined under this section. If the value of the interest involved is dependent upon the continuation or termination of one or more lives, the factor for the present value is computed on the basis of interest at the rate of 3½ percent a year, compounded annually, and life contingencies for each life involved from U.S. Life Table 38. This table and many accompanying factors are set forth in former § 25.2512–5 (as contained in the 26 CFR part 25 edition revised as of April 1, 1984). Special factors involving one and two lives may be found in or computed with the use of tables contained in Internal Revenue Service Publication Number 11, ''Actuarial Values for Estate and Gift Tax,'' (Rev. 5–59). This publication is no longer available for purchase from the Superintendent of Documents. However, it may be obtained by requesting a copy from: CC:DOM:CORP:T:R (IRS Publication 11), room 5228, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. The present value of an interest measured by a term of years is computed on the basis of interest at the rate of 3½ percent a year.

(c) *Valuation of annuities, interests for life or term of years, and remainder or reversionary interests transferred after December 31, 1970, and before December 1, 1983.* Except as otherwise provided in § 25.2512–5(b), the present value of annuities, life estates, terms of years, remainders, and reversions transferred after December 31, 1970, and before December 1, 1983, is the present value of such interests determined under this section. If the interest to be valued is dependent upon the continuation or termination of one or more lives or upon a term certain concurrent with one or more lives, the factor for the present value is computed on the basis of interest at the rate of 6 percent a year, compounded annually, and life contingencies determined for each male and female life involved, from the values that are set forth in Table LN. Table LN contains values that are taken from the life table for total males and the life table for total females appearing as Tables 2 and 3, respectively, in United States Life Tables: 1959–61, published by the Department of Health and Human Services, Public Health Service. Table LN and accompanying factors are set forth in former § 25.2512–9 (as contained in the 26 CFR part 25 edition revised as of April 1, 1994). Special factors involving one and two lives may be found in or