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TITLE 7—AGRICULTURE

Chapter I—Production and Marketing Administration (Standards, Inspection, Marketing Practices), Department of Agriculture

PART 51—FRUITS, VEGETABLES AND OTHER PRODUCTS (INSPECTION, CERTIFICATION AND STANDARDS)

UNITED STATES CONSUMER STANDARDS FOR FRESH SPINACH LEAVES

Revised United States Consumer Standards for Fresh Spinach Leaves are hereby promulgated to supersede the standards (7 CFR 51.394) which have been in effect since February 28, 1948. The giving of preliminary notice, engaging in public rule making procedure, and postponement of the effective date hereof (60 Stat. 237; 5 U. S. C. 1001 et seq.) with respect to this revision are, for the reasons hereinafter set forth, impracticable and contrary to the public interest.

The following revised United States Consumer Standards for Fresh Spinach Leaves are hereby promulgated pursuant to the provisions of the Department of Agriculture Appropriation Act, 1949 (Pub. Law 712, 80th Cong., 2d Sess., approved June 19, 1948) to become effective upon publication in the FEDERAL REGISTER:

§ 51.394 *Consumer standards for fresh spinach leaves*—(a) *Grades.* (1) U. S. Grade A shall consist of spinach leaves of similar varietal characteristics which are fresh, clean, well trimmed, and of reasonably good green color, and which are free from coarse stalks, seedstems, seedbuds, crowns and roots, sandburs or other kinds of burs, soft rot and from damage caused by clusters of leaves, leaf stems without blades, discoloration, freezing, foreign material, disease, insects, mechanical or other means. Spinach on the shown face shall be reasonably representative in size and quality of the contents of the container.

(i) Incident to proper grading and handling not more than 5 percent, by weight, of the spinach in any lot may be small pieces of leaves, not more than 5 percent of the spinach leaves may be damaged by clusters, and not more than 3 percent may fail to meet the remaining requirements of the grade, including not more than 1 percent for serious damage: *Provided*, That no tolerance shall be permitted for sandburs or other kinds of burs.

(2) U. S. Grade B shall consist of spinach leaves which meet the requirements for U. S. Grade A, except that they shall be reasonably clean, and except for the increased tolerances for defects specified below.

(i) Incident to proper grading and handling, not more than 10 percent, by weight, of the spinach in any lot may be small pieces, not more than 10 percent of the spinach leaves may be damaged by clusters, and not more than 5 percent may fail to meet the remaining requirements of the grade, including not more than 2 percent for serious damage: *Provided*, That no tolerance shall be permitted for sandburs or other kinds of burs.

(b) *Off-Grade spinach leaves.* Spinach leaves which fail to meet the requirements of either of the foregoing grades shall be Off-Grade spinach leaves.

(c) *Definitions.* (1) "Similar varietal characteristics" means that the spinach leaves shall be generally of one type, as crinkly leaf type or flat leaf type. No mixture of varieties shall be permitted which materially affects the appearance of the lot.

(2) "Fresh" means that the leaves are not more than slightly wilted.

(3) "Clean" means that the spinach does not show more than a trace of grit, sand, dirt, silt, muck or other similar water insoluble, inorganic material.

(4) "Well trimmed" means that the leaf stems or petioles are not excessively long in relation to the size of the leaf blades.

(5) "Damage" means any injury or defect which materially affects the appearance, or the edible, shipping or keeping quality of the individual leaves or of the lot as a whole. The following defects or any combination of defects the seriousness of which exceeds the amount allowed for any one defect shall be considered as damage:

(i) Clusters, when there are more than 3 leaves attached, except that clusters of heart leaves with any number of leaves shall not be considered as damaged, provided the length of the longest leaf in the cluster is not over 3 inches.

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CODIFICATION GUIDE

A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.

(ii) Leaf stems without blades attached when present to such an extent as to materially affect the appearance of the lot, or when the individual stem is damaged.

(iii) Discoloration, when the appearance of the leaf is materially affected. Heart leaves which are yellow or partially blanched shall not be considered as damaged by discoloration.

(iv) Mechanical damage, when the leaf is very badly crushed, torn or broken. (Owing to the many necessary handlings in the harvesting, icing, shipping, sorting, washing, and packing operations in preparing spinach for consumer use some leaves are crushed, torn or broken but only those leaves which are very badly crushed, torn or broken shall be considered as damaged by mechanical means.)

(6) "Serious damage" means any injury or defect which seriously affects the appearance, or the edible, shipping or keeping quality of the individual leaves or of the lot as a whole. The following defects shall be considered as serious damage:

(i) Badly discolored leaves.

(ii) Leaves severely affected by mildew or white rust.

(iii) Leaves on which insects are present, or leaves which are seriously damaged by insects.

(iv) Leaves which are affected by soft rot.

(v) Weeds, grass or pieces thereof, and other extraneous matter.

(7) "Reasonably clean" means that the spinach is reasonably free from grit, sand, dirt, silt, muck and other similar water insoluble, inorganic material.

(d) *Effective time and supersedure.* The foregoing revised United States Consumer Standards for Fresh Spinach Leaves (which are the second issue) shall become effective upon publication in the FEDERAL REGISTER and thereupon supersede the United States Consumer Standards for Fresh Spinach Leaves (7 CFR 51.394) which have been in effect since February 28, 1948.

For the reasons hereinafter set forth, it is hereby found and determined that it is impractical and contrary to the public interest to give preliminary notice, engage in public rule making procedure, and postpone the effective date hereof until 30 days after publication in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.).

Since February 28, 1948, the effective date of the current provisions of the United States Consumer Standards for Fresh Spinach Leaves (7 CFR 51.394), packers have been using such standards in packing their fresh spinach leaves.

During the past several months, the Department has conducted extensive investigations and carefully appraised the proposed changes. Discussions have been carried on with interested parties to obtain their views and comments as well as the benefits of their experiences and practices. Also, a large number of samples have been analyzed by the Department with such interested parties. After the use, study, and investigations, as aforesaid, of the current standards, interested parties have now requested that certain modifications be made therein.

The foregoing revised standards modify the present grades by (1) increasing the tolerances for clusters of leaves, and (2) decreasing the tolerances for small pieces of leaves. Interested parties have indicated to the Department of Agriculture that if the present grades are so modified, such modifications will make the standards more equitable and workable.

Interested parties are now strongly urging that the current standards be revised, as set forth herein, and made effective as soon as practicable in order that they may be used as a basis for packing and selling the current crop of spinach. Therefore, no apparent useful purpose would be served, at this time, by giving preliminary notice, engaging in public rule making procedure, and postponing the effective date hereof (Pub. Law 712, 80th Cong.).

Done at Washington, D. C., this 13th day of May 1949.

[SEAL] JOHN I. THOMPSON,
Assistant Administrator, Production and Marketing Administration.

[F. R. Doc. 49-3989; Filed, May 18, 1949; 8:49 a. m.]

TITLE 16—COMMERCIAL PRACTICES

Chapter I—Federal Trade Commission

[Docket No. 5590]

PART 3—DIGEST OF CEASE AND DESIST ORDERS

ADOLFO ENRIQUE BESOSA

§ 3.6 (t) *Advertising falsely or misleadingly—qualities or properties of product or service:* § 3.71 (e) *Neglecting, unfairly or deceptively, to make material disclosure—safety.* In connection with the offering for sale, sale or distribution of respondent's medicinal preparation designated as "Becker's Pills" and as "Pastillas de Becker," or any preparation of substantially similar composition or possessing substantially similar properties, under whatever name sold, disseminating, etc., any advertisements by means of the United States mails, or in commerce, or by any means to induce, etc., directly or indirectly, the purchase in commerce etc., of said preparation, which advertisements represent, directly or by implication, (a) that said preparation will have beneficial effect in counteracting or offsetting damage to the kidneys resulting from the excessive use of alcohol or resulting from any other cause; (b) that said preparation will restore the normal functions of the kidneys or bladder or will cause said organs to act in a normal manner by stimulation or otherwise; (c) that said preparation will relieve or correct swollen ankles, pains in the regions of the back or waist or in any other region, or a burning sensation in the urethra or scanty or too frequent urination; or (d) that said preparation constitutes a competent or effective treatment for any disease or disorder of the kidneys or bladder; or which advertisements fail to reveal (a) that the juniper oil in said preparation will irritate normal kidneys, and that its use by a person whose kidneys are diseased may result in serious injury; and (b) that each of the drugs digitalis and squill in said preparation tends to accumulate in the body, and that the use of these drugs, or either of them, over a period of time may result in serious injury to the heart and circulatory system of the user, and that said drugs should only be used at the direction and under the supervision of a qualified physician; prohibited. (Sec. 5, 38 Stat. 719, as amended by sec. 3, 52 Stat. 112; 15 U. S. C., sec. 45b) [Cease and desist order, Adolfo Enrique Besosa, Docket 5590, March 22, 1949]

At a regular session of the Federal Trade Commission held at its office in the city of Washington, D. C., on the 22d day of March A. D. 1949.

This proceeding having been heard by the Federal Trade Commission upon the complaint of the Commission and the answer of the respondent thereto, in which answer said respondent admitted all the material allegations of fact set forth in said complaint and waived all intervening procedure and further hearing as to said facts; and the Commission having made its findings as to the facts and its conclusion that the respondent has violated the provisions of the Federal Trade Commission Act:

It is ordered, That the respondent, Adolfo Enrique Besosa, individually and trading as A. E. Besosa Co. and the Becker Medicine Co., or trading under any other name, and his agents, representatives, and employees, directly or through any corporate or other device, in connection with the offering for sale, sale or distribution of respondent's medicinal preparation now designated "Becker's Pills" and as "Pastillas de Becker", or any preparation of substantially similar composition or possessing substantially similar properties, under whatever name sold, do forthwith cease and desist from:

(1) Disseminating or causing to be disseminated any advertisement by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement represents, directly or by implication:

(a) That said preparation will have beneficial effect in counteracting or offsetting damage to the kidneys resulting from the excessive use of alcohol or resulting from any other cause;

(b) That said preparation will restore the normal functions of the kidneys or bladder or will cause said organs to act in a normal manner by stimulation or otherwise;

(c) That said preparation will relieve or correct swollen ankles, pains in the regions of the back or waist or in any other region, or a burning sensation in the urethra or scanty or too frequent urination;

(d) That said preparation constitutes a competent or effective treatment for any disease or disorder of the kidneys or bladder.

(2) Disseminating or causing to be disseminated any advertisment by means of the United States mails or by any means in commerce, as "commerce" is defined in the Federal Trade Commission Act, which advertisement fails to reveal:

(a) That the Juniper Oil in said preparation will irritate normal kidneys, and that its use by a person whose kidneys are diseased may result in serious injury; and

(b) That each of the drugs digitalis and squill in said preparation tends to accumulate in the body, and that the use of these drugs, or either of them, over a period of time may result in serious injury to the heart and circulatory system of the user, and that said drugs should only be used at the direction and under the supervision of a qualified physician.

(3) Disseminating or causing to be disseminated any advertisement, by any means, for the purpose of inducing, or which is likely to induce, directly or indirectly, the purchase in commerce, as "commerce" is defined in the Federal Trade Commission Act, of said preparation, which advertisement contains any of the representations prohibited in paragraph (1) hereof or which fails to comply with the affirmative requirements set forth in paragraph (2) hereof.

It is further ordered, That the respondent shall, within sixty (60) days after service upon him of this order, file with the Commission a report in writing setting forth in detail the manner and form in which he has complied with this order.

By the Commission.

[SEAL] D. C. DANIEL,
Secretary.

[F. R. Doc. 49-3979; Filed, May 18, 1949; 8:48 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Bureau of Internal Revenue, Department of the Treasury

Subchapter B—Estate and Gift Taxes

[T. D. 5699]

PART 81—ESTATE TAX UNDER CHAPTER 3 OF THE INTERNAL REVENUE CODE, AS AMENDED

MISCELLANEOUS AMENDMENTS

On November 6, 1948, notice of proposed rule-making, regarding the estate tax provisions of the Revenue Act of 1948, enacted April 2, 1948, and Public Law 869, 80th Congress, approved July 1, 1948, was published in the FEDERAL REGISTER (13 F. R. 6564). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments to Regulations 105 (26 CFR, Part 81) set forth below are hereby adopted. Such amendments are necessary in order to conform such regulations to the Revenue Act of 1948 and Public Law 869, 80th Congress.

PARAGRAPH 1. Section 81.2, as amended by Treasury Decision 5239, approved March 10, 1943, is further amended by striking out the next to the last sentence.

PAR. 2. There is inserted immediately preceding § 81.8 the following:

SEC. 363. CREDIT FOR GIFT TAX. (Revenue Act of 1948; enacted April 2, 1948)

(a) Section 813 (a) (2) (A) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended by inserting before the period at the end thereof the following: "reduced by the aggregate amount of the deductions allowed under subsections (d) and (e) of section 812".

(b) Subparagraph (B) of section 813 (a) (2) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended to read as follows:

(B) In applying, with respect to any gift, the ratio stated in subparagraph (A), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced:

(i) By such amount as will properly reflect the amount of such gift which was excluded in determining (for the purposes of section 1003 (a), or of section 504 (a) of the Revenue Act of 1932) the total amount of gifts made during the year in which the gift was made;

(ii) If a deduction with respect to such gift is allowed under section 812 (e) (the so-called "marital deduction")—then by an amount which bears the same ratio to such value (reduced as provided in clause (i) of this subparagraph) as the aggregate amount of the marital deductions allowed under section 812 (e) bears to the aggregate amount of such marital deductions computed without regard to subparagraph (H) of section 812 (e) (1); and

(iii) If a deduction with respect to such gift is allowed under section 812 (d) (the so-called "charitable deduction")—then by the amount of such value, reduced as provided in clause (i) of this subparagraph.

(C) Where the decedent was the donor of the gift but, under the provisions of section 1000 (f), the gift was considered as made one-half by his spouse:

(i) The term "the amount of the tax paid under chapter 4", as used in subparagraph (A) of this paragraph, includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in subparagraph (D); and

(ii) In applying, with respect to such gift, the ratio stated in subparagraph (A) of this paragraph, the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in clause (i) of subparagraph (B) of this paragraph.

(D) (i) For the purposes of subparagraph (A), the amount of tax paid under chapter 4, or under Title III of the Revenue Act of 1932, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(ii) For the purposes of clause (i) the "amount of such gift" shall be the amount included with respect to such gift in determining (for the purpose of section 1003 (a), or of section 504 (a) of the Revenue Act of 1932) the total amount of gifts made during such year, reduced by the amount of any deduction allowed with respect to such gift under section 1004 (a) (2), or under section 505 (a) (2) of the Revenue Act of 1932 (the so-called "charitable deduction"), or under section 1004 (a) (3) (the so-called "marital deduction").

(c) Section 936 (b) (1) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended by inserting after the words "entire gross estate" in clause (A) thereof the following: "reduced by the aggregate amount of the deductions allowed under subsections (d) and (e) of section 812."

(d) Paragraph (2) of section 936 (b) of the Internal Revenue Code (relating to credit for gift tax) is hereby amended to read as follows:

(2) In applying, with respect to any gift, the ratio stated in clause (A) of paragraph (1), the value at the time of the gift or at the time of the death, referred to in such ratio, shall be reduced:

(A) By such amount as will properly reflect the amount of such gift which was excluded in determining (for the purposes of section 1003 (a), or of section 504 (a) of the Revenue Act of 1932) the total amount of gifts made during the year in which the gift was made;

(B) If a deduction with respect to such gift is allowed under section 812 (e) (the so-called "marital deduction")—then by an amount which bears the same ratio to such value (reduced as provided in subparagraph (A) of this paragraph) as the aggregate amount of the marital deductions allowed under section 812 (e) bears to the aggregate amount of such marital deductions computed without regard to subparagraph (H) of section 812 (e) (1); and

(C) If a deduction with respect to such gift is allowed under section 812 (d) (the so-called "charitable deduction")—then by the amount of such value, reduced as provided in subparagraph (A) of this paragraph.

(3) Where the decedent was the donor of the gift but, under the provisions of section 1000 (f), the gift was considered as made one-half by his spouse:

(A) The term "the amount of the tax paid under chapter 4", as used in paragraph (1) of this subsection, includes the amounts paid with respect to each half of such gift, the amount paid with respect to each being computed in the manner provided in paragraph (4); and

(B) In applying, with respect to such gift, the ratio stated in clause (A) of paragraph (1), the value at the time of the gift or at the time of the death, referred to in such ratio, includes such value with respect to each half of such gift, each such value being reduced as provided in subparagraph (A) of paragraph (2).

(4) (A) For the purposes of paragraph (1), the amount of tax paid under chapter 4, or under Title III of the Revenue Act of 1932, with respect to any gift shall be an amount which bears the same ratio to the total tax paid for the year in which the gift was made as the amount of such gift bears to the total amount of net gifts (computed without deduction of the specific exemption) for such year.

(B) For the purposes of subparagraph (A) the "amount of such gift" shall be the amount included with respect to such gift in determining (for the purposes of section 1003 (a), or of section 504 (a) of the Revenue Act of 1932) the total amount of gifts made during such year, reduced by the amount of any deduction allowed with respect to such gift under section 1004 (a) (2), or under section 505 (a) (2) of the Revenue Act of 1932 (the so-called "charitable deduction", or under section 1004 (a) (3) (the so-called "marital deduction").

(e) The amendments made by this section shall be applicable only with respect to the estates of decedents dying after December 31, 1947.

PAR. 3. Section 81.8, as amended by Treasury Decision 5239, is further amended to read as follows:

§ 81.8 *Credit for gift tax*—(a) *Priority of credits.* If the decedent died after October 21, 1942, the credits authorized against the basic estate tax imposed by section 810 or section 860 are to be deducted in the following order: (1) The credit for estate, inheritance, legacy, or succession taxes under § 81.9, (2) the credit for gift tax under paragraph (b) of this section, and, (3) the credit for gift tax under paragraph (c) of this section. If the decedent died on or before October 21, 1942, such credits are to be deducted in the following order: (1) The credit for gift tax under paragraph (b) of this section, (2) the credit for gift tax under paragraph (c) of this section, and, (3) the credit for estate, inheritance, legacy, or succession taxes under § 81.9.

(b) *Credit for gift tax paid under Revenue Act of 1924.* Credit against the basic estate tax imposed by section 810 or section 860 is authorized by section 813 (a) (1) for gift tax paid under the Revenue Act of 1924 in respect of property included in the gross estate. If the decedent died on or before October 21, 1942, such credit may not exceed the total amount of the basic estate tax; if the decedent died after such date, such credit may not exceed the amount of such estate tax after deduction of the credit allowed, if any, for estate, inheritance, legacy, or succession taxes paid to any State or Territory, possession of the United States, or the District of Columbia. (See § 81.9.) No credit for gift tax paid under the Revenue Act of 1924 is allowable against the additional estate tax imposed by section 935.

If only a part of the property included for the purpose of the gift tax imposed for a certain calendar year under the Revenue Act of 1924 is also included in the decedent's gross estate for the purpose of the estate tax, the gift tax paid in respect of such part of the property is an amount which bears the same ratio to the total gift tax paid for such calendar year as the value of such part of the property bears to the total amount of gifts included for the purpose of the gift tax imposed for such year. For the purpose of computing this proportion, the values finally determined for the purpose of the gift tax will control.

(c) *Credit for gift tax paid under chapter 4 of the Internal Revenue Code or under the Revenue Act of 1932*—(1) *In general.* Credit against both the basic estate tax imposed by section 810 or section 860 and the additional estate tax imposed by section 935 is authorized by sections 813 (a) (2) and 936 (b) for gift tax paid under chapter 4 of the Code or under the Revenue Act of 1932 in respect of property included in the gross estate.

The credit is allowable even though the gift tax is paid by the executor after the decedent's death and the amount of the gift tax is deductible from the gross estate as a debt of the decedent.

The credit under this paragraph in respect of any gift included in the gross estate is limited to the smaller of the following amounts:

(i) The amount of gift tax paid in respect of such gift, computed as set forth under subparagraph (2) of this paragraph.

(ii) The amount of the basic and additional estate taxes attributable to such gift, computed as set forth under subparagraph (3) of this paragraph.

Where more than one gift is included in the gross estate of a decedent dying after December 31, 1947, a separate com-

putation of the two limitations on the credit is to be made with respect to each gift.

(2) *First limitation.* If only one gift was made during a certain calendar year, and such gift is wholly included in the decedent's gross estate for the purpose of the estate tax, the credit with respect to such gift is limited to the amount of the gift tax paid for such calender year. If more than one gift was made during a certain calendar year, the credit with respect to any such gift which is included in the decedent's gross estate for the purpose of the estate tax is limited to an amount, A, which bears the same ratio to B (the total gift tax paid for such calendar year) as C (the amount of such gift, reduced by any portion of such amount excluded under section 1003 (b) of the Code or section 504 (b) of the Revenue Act of 1932 or deducted under section 1004 (a) (2) or (3) of the Code or section 505 (a) (2) of the Revenue Act of 1932) bears to D (the total amount of net gifts for such year, computed without deduction of the specific exemption). The values finally determined for the purpose of the gift tax are to be used in computing this ratio, irrespective of the values determined for the purpose of the estate tax. A like computation is to be made in case only a portion of any gift is included in the decedent's gross estate for the purpose of the estate tax.

Example. A donor, who had used $20,000 specific exemption in prior years, made gifts during the calendar year 1948 on which gift tax was determined as shown below:

Gift of property to son on February 1		$13,000
Gift of property to wife on May 1		86,000
Gift to charitable organization on May 15		10,000
Total gifts		109,000
Less exclusions ($3,000 for each gift)		9,000
Total included amount of gifts		100,000
Marital deduction (for gift to wife)	$43,000	
Charitable deduction	7,000	
Specific exemption	10,000	
Total deductions		60,000
Net gifts		40,000
Total gift tax paid for calendar year 1948		3,600

The donor's gift to his wife was made in contemplation of death and is thereafter included in his gross estate for the purpose of the estate tax. Under the "first limitation", the credit with respect to such gift cannot exceed

$$\frac{\$40{,}000 \text{ (gift to wife, less \$3,000 exclusion and \$43,000 marital deduction)}}{\$50{,}000 \text{ (total amount of net gifts increased by specific exemption allowed)}} \times \$3{,}600 \text{ (gift tax paid)} = \$2{,}880.$$

(3) *Second limitation.* The credit with respect to any gift of property included in the gross estate for the purpose of the estate tax is also limited to an amount, E, which bears the same ratio to F (the total gross basic and additional estate taxes, reduced by any credit under paragraph (b) of this section, and, in case the decedent died after October 21, 1942, by any credit under § 81.9) as G (the value, adjusted as hereinafter indicated, of such property transferred by gift and included in the gross estate) bears to H (the value of the entire gross estate, reduced, in case the decedent died after December 31, 1947, by the total deductions allowed under section 812 (d) and (e)). In computing this ratio, the value of the property transferred by gift and included in the gross estate (amount G of the ratio) is the value determined for the purpose of the gift tax or the value determined for the purpose of the estate tax, whichever is lower. Such value (amount G of the ratio) does not include the portion, if any, of the gift excluded, under section 1003 (b) of the Code or section 504 (b) of the Revenue Act of 1932, in determining the gift tax. For example: A donor, in contemplation of death, transferred property valued at $100,000 to his five children in 1941 and paid the resulting gift tax. The amount of $20,000 was excluded under the provisions of section 1003 (b) (2), and the amount of $80,000 was included for the purpose of the gift tax. The property is thereafter included in his gross estate for the purpose of the estate tax at a value of $90,000. The lower of the two values ($90,000) is to be used in computing the second limitation. Amount G of the ratio is $72,000, the value

$$\frac{80{,}000}{100{,}000} \times \$90{,}000$$

of the portion of the gift included for the purpose of the gift tax.

If in determining the estate tax in the case of a decedent who died after December 31, 1947, a "marital deduction" under section 812 (e) or a "charitable deduction" under section 812 (d) is allowable for a portion of a particular gift, then in computing the "second limitation" such portion of the gift is not to be included in amount G of the ratio. (See §§ 81.47a to 81.47e, relating to the marital deduction, and §§ 81.44 to 81.47, relating to the charitable deduction.) Therefore, if a particular gift is made solely to the decedent's surviving spouse or solely to a charitable, etc., organization, and a deduction under section 812 (d) or (e) is allowed for the full value of the gift, no credit with respect to such gift may be taken. If the gift was (in whole or in part) to the decedent's surviving spouse, and if the aggregate marital deduction allowed is less than the amount of such deduction computed without regard to the limitation stated in § 81.47d, then the portion of the gift which is not to be included in computing the "second limitation" is an amount, I, which bears the same ratio to J (the amount of such gift not excluded in determining the gift tax, and for which a marital deduction would be allowed except for the limitation stated in § 81.47d) as K (the aggregate marital deduction allowed) bears to L (the aggregate marital deduction computed without regard to the limitation stated in § 81.47d).

Example. The facts are the same as in the example in subparagraph (2) of this paragraph of the computation of the "first limitation" with the following additions. The donor was survived by his wife. The value of the donor's gross estate is $350,000. Assume that a marital deduction of $150,000 is actually allowed in determining the net estate, and that the amount of such deduction computed without regard to the limitation under § 81.47d is $250,000. There is no charitable deduction allowed in this example for the purpose of the estate tax. The total basic and additional estate taxes less the credit allowed under § 81.9 amount to $17,500. No credit under paragraph (b) of this section is allowed in this example. The property given by the donor to his wife is included in the gross estate at a value of $90,000, and is property for which a marital deduction may be taken. The value of $86,000 determined for the purpose of the gift tax is lower than such value determined for the purpose of the estate tax and is, therefore, to be used in computing the "second limitation," as shown below:

Portion of gift included for the purpose of the gift tax ($86,000 less $3,000 exclusion) -- $83,000

Portion of gift so included and for which a marital deduction is allowed in determining the estate tax—

$$\frac{\$150{,}000 \text{ (marital deduction allowed for purpose of estate tax)}}{\$250{,}000 \text{ (marital deduction computed without regard to limitation under § 81.47d)}} \times \$83{,}000 \text{ (portion of gift so included and for which a marital deduction would be allowed in full except for limitation under § 81.47d)} = 49{,}800$$

Portion of gift to be used in computing the "second limitation" ($83,000 less $49,800) ---------- 33,200

"Second limitation" upon the credit with respect to such gift—

$$\frac{\$33{,}200}{\$200{,}000 \text{ (gross estate less marital and charitable deductions)}} \times \$17{,}500 \text{ (total basic and additional taxes less credit under § 81.9)} = 2{,}905$$

Since the amount of the "first limitation" upon the credit ($2,880) is lower, such amount is the allowable credit.

(4) *Credit for "split gifts".* Where the decedent made a gift of property which is thereafter included in his gross estate, and, under the provisions of section 1000 (f), such gift was considered for the purpose of the gift tax as made one-half by the decedent and one-half by his spouse, credit against the estate tax is authorized for the gift tax paid with respect to both halves of the gift. The "first limitation" is to be separately computed with respect to each half of the gift. For example: A donor, in contemplation of death, transferred property valued at $106,000 to his son on June 1, 1948, and he and his wife consented

that the gift should be considered as made one-half by him and one-half by his wife. Assume that the property is thereafter included in the donor's gross estate for the purpose of the estate tax. Under the "first limitation" the amount of the gift tax of the donor paid with respect to the half of the gift considered as made by him is determined to be $11,250, and the amount of the gift tax of his wife paid with respect to the half of the gift considered as made by her is determined to be $1,200. Under the "second limitation" the amount of estate tax attributable to the property is determined to be $28,914. The credit allowed ($11,250 plus $1,200) is $12,450.

(5) *Allocation of credit.* The amount computed under the lower of the two limitations is the total credit authorized with respect to the gift against both the basic and additional estate taxes. The amount of such credit authorized against the basic estate tax is the lower of (i) the amount computed under the "first limitation" and (ii) the amount of the basic estate tax attributable to the gift, computed in the manner described under the "second limitation". The amount of such credit authorized against the additional estate tax is the lower of (*a*) the amount computed under the "first limitation" less the credit allowed against the basic estate tax and (*b*) the amount of the additional estate tax attributable to the gift, computed in the manner described under the "second limitation".

PAR. 4. There is inserted immediately preceding § 81.10 the following:

SEC. 364. OPTIONAL VALUATION. (Revenue Act of 1948; enacted April 2, 1948)

(a) The last sentence of section 811 (j) of the Internal Revenue Code (relating to optional valuation) is hereby amended to read as follows: In case of an election made by the executor under this subsection, then:

(A) For the purposes of the deduction under section 812 (d) or section 861 (a) (3), any bequest, legacy, devise, or transfer enumerated therein, and

(B) For the purposes of the deduction under section 812 (e), any interest in property passing to the surviving spouse,

shall be valued as of the date of the decedent's death with adjustment for any difference in value (not due to mere lapse of time or the occurrence or nonoccurrence of a contingency) of the property as of the date one year after the decedent's death (substituting, in the case of property distributed by the executor or trustee, or sold, exchanged, or otherwise disposed of, during such one-year period, the date thereof).

(b) The amendment made by this section shall be applicable only with respect to estates of decedents dying after December 31, 1947.

PAR. 5. Section 81.11 is amended by changing the second sentence of the third paragraph from the end to read as follows: "The amount of any deduction under section 812 (d) or section 861 (a) (3) with respect to property passing to or for public, charitable, religious, etc., uses, or any deduction under section 812 (e) with respect to property passing to the decedent's surviving spouse, shall be determined by the value of such property as of the date of the decedent's death, subject, however, to adjustment for any difference in its value as of the date one year after such death, or as of the date of its distribution, sale, exchange, or other disposition, whichever date first occurs."

PAR. 6. There is inserted immediately after section 401 of the Revenue Act of 1942 (inserted by Treasury Decision 5239), and preceding section 302 (c) of the Revenue Act of 1926 (as originally enacted), which precede § 81.15, the following:

SEC. 351. REPEAL OF COMMUNITY PROPERTY ESTATE TAX AMENDMENTS. (Revenue Act of 1948; enacted April 2, 1948)

(a) Effective with respect to estates of decedents dying after December 31, 1947, sections 811 (d) (5), 811 (e) (2) and 811 (g) (4) of the Internal Revenue Code (relating to community property) are hereby repealed.

* * * * *

(c) Notwithstanding the repeal of sections 811 (d) (5), 811 (e) (2), and 811 (g) (4) provided in subsection (a), the taxes imposed under chapter 3 of the Internal Revenue Code upon the transfer of the net estate of any decedent dying after December 31, 1947, and on or before the date of the enactment of this Act shall not exceed the taxes which would have been imposed under such chapter 3 upon such transfer if this section had not been enacted.

PAR. 7. Section 81.15, as amended by Treasury Decision 5239, is further amended as follows:

(A) By inserting immediately after "October 21, 1942," each time it appears in the second paragraph thereof the following: "and on or before December 31, 1947,".

(B) By inserting at the end of such second paragraph the following sentence: "(With respect to estates of decedents dying after December 31, 1947, and on or before April 2, 1948, involving transfers of community property, see § 81.23.)"

PAR. 8. There is inserted immediately preceding § 81.22 the following:

SEC. 351. REPEAL OF COMMUNITY PROPERTY ESTATE TAX AMENDMENTS. (Revenue Act of 1948; enacted April 2, 1948)

(a) Effective with respect to estates of decedents dying after December 31, 1947, sections 811 (d) (5), 811 (e) (2) and 811 (g) (4) of the Internal Revenue Code (relating to community property) are hereby repealed.

(b) Such section 811 (e) is further amended—

(1) By striking out of the heading of such subsection the words "and community"; and

(2) By striking out of paragraph (1) the following:

"Joint interests.—".

(c) Notwithstanding the repeal of sections 811 (d) (5), 811 (e) (2), and 811 (g) (4) provided in subsection (a), the taxes imposed under chapter 3 of the Internal Revenue Code upon the transfer of the net estate of any decedent dying after December 31, 1947, and on or before the date of the enactment of this Act shall not exceed the taxes which would have been imposed under such chapter 3 upon such transfer if this section had not been enacted.

PAR. 9. Section 81.22, as amended by Treasury Decision 5239, is further amended as follows:

(A) By inserting immediately after "October 21, 1942," each time it appears in the last paragraph thereof the following: "and on or before December 31, 1947,".

(B) By inserting at the end of such last paragraph the following sentence: "(With respect to estates of decedents dying after December 31, 1947, and on or before April 2, 1948, involving joint tenancies or tenancies by the entirety created by the transfer of community property, see § 81.23.)"

PAR. 10. Section 81.23, as amended by Treasury Decision 5239, is further amended as follows:

(A) By inserting immediately after "October 21, 1942," in the first sentence thereof the following: "and on or before December 31, 1947,".

(B) By striking out the last paragraph and by inserting in lieu thereof the following paragraphs:

§ 81.23 *Community property.* * * *

With respect to estates of decedents dying after October 21, 1942, and on or before December 31, 1947, see the provisions of § 81.15, § 81.22, and § 81.27 (b), relating, respectively, to the inclusion of transfers of community property during life, the treatment of joint tenancies and tenancies by the entirety created by the transfer of community property, and the treatment of insurance upon the decedent's life held as, or acquired with, community property.

In the case of a decedent who died after December 31, 1947, and on or before April 2, 1948, the provisions contained in the first two paragraphs of this section and those provisions of §§ 81.15, 81.22, and 81.27 (b) referred to in the preceding paragraph may have a limited effect. Although such provisions are not applicable for the purpose of determining the value of the decedent's gross estate, the estate tax payable is, nevertheless, not to exceed the estate tax which would be imposed if such provisions were applicable.

PAR. 11. Section 81.24 (b) (1), as amended by Treasury Decision 5658, approved October 1, 1948, is further amended by inserting immediately after the second undesignated paragraph thereof the following new paragraph:

§ 81.24 *Property subject to power of appointment by decedent.* * * *

(b) *Estates of decedents dying after October 21, 1942.* * * *

(1) *In general.* * * *

To take another example of the scope of the term "power of appointment", assume that the community property laws of a State confer upon the wife a power of testamentary disposition over property in which she does not have a vested interest. Subject to the exceptions stated in subparagraphs (2) and (3) of this paragraph, such a power is a power of appointment and the property subject thereto is includible in the wife's gross estate.

PAR. 12. There is inserted immediately preceding § 81.25 the following:

SEC. 351. REPEAL OF COMMUNITY PROPERTY ESTATE TAX AMENDMENTS. (Revenue Act of 1948; enacted April 2, 1948)

(a) Effective with respect to estates of decedents dying after December 31, 1947, sections 811 (d) (5), 811 (e) (2) and 811 (g) (4) of the Internal Revenue Code (relating to community property) are hereby repealed.

* * * * *

(c) Notwithstanding the repeal of sections 811 (d) (5), 811 (e) (2), and 811 (g) (4) provided in subsection (a), the taxes imposed under chapter 3 of the Internal Revenue Code upon the transfer of the net estate of any decedent, dying after December 31, 1947, and on or before the date of the enactment of this Act shall not exceed the taxes which would have been imposed under such chapter 3 upon such transfer if this section had not been enacted.

PAR. 13. Section 81.26 is amended by inserting at the end thereof the following:

§ 81.26 *Insurance in favor of the estate.* * * * Where the proceeds of insurance made payable to the decedent's estate are community assets under the local community property law, as a result of which one-half of such proceeds belongs to the decedent's spouse, then only one-half of such insurance is considered to be receivable by the executor within the meaning of section 811 (g) (1).

PAR. 14. Section 81.27, as amended by Treasury Decision 5239, is further amended as follows:

(A) By striking out "this subsection" and "subsection (a)" wherever they appear in such section and by inserting in lieu thereof "this paragraph" and "paragraph (a)".

(B) By changing the heading and first sentence of paragraph (a) to read as follows:

§ 81.27 *Insurance receivable by other beneficiaries*—(a) *In case of decedent dying after December 31, 1947.* The regulations prescribed under this paragraph (except as otherwise indicated in this section) are applicable only in the case of decedents who died after December 31, 1947.

(C) By changing the third undesignated paragraph of paragraph (a) (which undesignated paragraph, prior to the amendment made by (A), began with the words "For the purposes of this paragraph") to read as follows:

For the purposes of this paragraph, where premiums or other consideration are paid with property held as community property by the decedent and his spouse, the decedent shall (in the absence of additional circumstances showing payment indirectly by the decedent) be deemed to have paid only one-half of such premiums or other consideration. The general rule stated in the preceding sentence is not applicable unless the decedent and his spouse had equal and existing interests in the community property used in the payment of the premiums or other consideration. An example of additional circumstances showing payment indirectly by the decedent which will render inapplicable the general rule is a transfer of property by the decedent to the community for the purpose of purchasing the insurance.

(D) By striking from paragraph (a) the last sentence of the sixth undesignated paragraph (which paragraph begins with the words "For the purposes of (1)").

(E) By changing the third sentence of the last undesignated paragraph of paragraph (a) to read as follows: "For examples of 'incidents of ownership' see paragraph (c) of this section."

(F) By inserting at the end of paragraph (a) the following:

In determining whether the decedent possessed an incident of ownership in a policy or in any part of a policy, regard must be given to the effect of the State or other applicable law upon the terms of the policy. As an example, assume that the decedent purchased a policy of insurance on his life with funds held by him and his surviving wife as community property, designating their son as beneficiary but retaining the right to surrender the policy. Under the local law, the proceeds upon surrender would have inured to the marital community, and the wife's transfer of her one-half interest in the policy was not considered absolute prior to the decedent's death. Upon the wife's prior death, one-half of the value of the policy would have been included in her gross estate. Under these circumstances, the power of surrender possessed by the decedent as agent for his wife with respect to one-half of the policy is not, for the purposes of this paragraph, considered an "incident of ownership", and the decedent is, therefore, deemed to possess an incident of ownership in only one-half of the policy.

With respect to estates of decedents dying after December 31, 1947, and on or before April 2, 1948, involving insurance held as community property by the decedent and spouse, or acquired with property so held, see § 81.23.

(b) *In case of decedent dying after October 21, 1942, and on or before December 31, 1947.* The regulations prescribed under this paragraph (except as otherwise indicated in this section) are applicable only in the case of decedents who died after October 21, 1942, and on or before December 31, 1947. In such cases, the regulations prescribed under paragraph (a) of this section with respect to estates of decedents dying after December 31, 1947, are also applicable (except to the extent inconsistent with this paragraph). For the purposes of this paragraph, premiums or other consideration paid with property held as community property by the insured and spouse under the law of any State, Territory, or possession of the United States, or any foreign country, shall be considered to have been paid by the insured, except such part thereof as may be shown to have been received as compensation for personal services actually rendered by the decedent's spouse or derived originally from such compensation or from separate property of such spouse. With respect to the meaning of property derived originally from such compensation or from separate property of the decedent's spouse, see § 81.23. Section 811 (g) (4) provides that the term "incidents of ownership" includes incidents of ownership possessed by the decedent as manager of the community where the insurance policy is property held as community property by the decedent and spouse.

(G) By striking out the heading and first sentence of the original paragraph (b) and by inserting in lieu thereof the following:

(c) *In case of decedent dying on or before October 21, 1942.* The regulations prescribed under this paragraph (except as otherwise indicated in this section) are applicable only in the case of decedents who died on or before October 21, 1942.

PAR. 15. There is inserted immediately preceding § 81.41 the following:

SEC. 362. PROPERTY PREVIOUSLY TAXED. (Revenue Act of 1948; Enacted April 2, 1948)

(a) Section 812 (c) of the Internal Revenue Code (relating to the deduction for property previously taxed) is hereby amended by adding after the first paragraph two new paragraphs to read as follows:

The following property shall not, for the purposes of this subsection, be considered as property with respect to which a deduction may be allowed: (A) property received from a prior decedent who died after December 31, 1947, and was at the time of such death the decedent's spouse, (B) property received by gift after the date of the enactment of the Revenue Act of 1948 from a donor who at the time of the gift was the decedent's spouse, and (C) property acquired in exchange for property described in clause (A) or (B).

Where, under the provisions of section 1000 (f), a gift received by the decedent was considered as made one-half by the donor and one-half by the donor's spouse, one-half of the gift shall be considered as received by the decedent from each such spouse.

(b) Section 812 (c) is further amended by striking out "subsections (a) and (d)" and inserting in lieu thereof "subsections (a), (d), and (e)".

PAR. 16. Section 81.41, as amended by Treasury Decision 5239, and by Treasury Decision 5408, approved October 14, 1944, is further amended as follows:

(A) By inserting at the end of paragraph (a) (4) the following sentence: "Where, under the provisions of section 1000 (f), a gift received by the decedent was considered as made one-half by the donor and one-half by the donor's spouse, the deduction may not be taken in respect of the half of the gift considered as made by the donor unless a gift tax was paid by or on behalf of the donor, nor in respect of the half of the gift considered as made by the donor's spouse unless a gift tax was paid by or on behalf of such spouse.

(B) By inserting immediately after paragraph (a) (5) the following:

(6) The property (or property given in exchange therefor) must not have been received (by gift or otherwise) from a prior decedent who died after December 31, 1947, and was at the time of such death the decedent's spouse, and must not have been received by gift after April 2, 1948, from a donor who at the time of the gift was the decedent's spouse. This rule, added by section 362 of the Revenue Act of 1948, is effective even though the decedent (surviving spouse) died after December 31, 1947, and on or before April 2, 1948; but the estate tax payable by the estate of such spouse is, nevertheless, not to exceed the estate tax which would have been imposed if the Revenue Act of 1948 had not been enacted.

(C) By striking from the second sentence of paragraph (b) (3) "subsections (a) and (d)" and by inserting in lieu thereof the following: "subsections (a), (d), and (e)".

(D) By inserting in the next to the last paragraph, immediately after that sentence thereof which reads in part "Second: The balance of $12,800", the following sentence: "(The deduction under section 812 (e) is not involved in this example.)"

PAR. 17. There is inserted immediately after § 81.47 the following:

DEDUCTIONS—BEQUESTS, ETC., TO SURVIVING SPOUSE

SEC. 812. (Part II, Subchapter A) NET ESTATE.

For the purpose of the tax the value of the net estate shall be determined, in the case of a citizen or resident of the United States by deducting from the value of the gross estate:

* * * * *

(e) *Bequests, etc., to surviving spouse.* (As added by section 361 (a) of the Revenue Act of 1948, enacted April 2, 1948, and amended by Public Law 869, 80th Congress, approved July 1, 1948.)

(1) *Allowance of marital deduction*—(A) *In general.* An amount equal to the value of any interest in property which passes or has passed from the decedent to his surviving spouse, but only to the extent that such interest is included in determining the value of the gross estate.

(B) *Life estate or other terminable interest.* Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, such interest passing to the surviving spouse will terminate or fail, no deduction shall be allowed with respect to such interest:

(i) If an interest in such property passes or has passed (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such surviving spouse (or the estate of such spouse); and

(ii) If by reason of such passing such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest so passing to the surviving spouse;

and no deduction shall be allowed with respect to such interest (even if such deduction is not disallowed under clauses (i) and (ii))—

(iii) If such interest is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by the trustee of a trust.

For the purposes of this subparagraph, an interest shall not be considered as an interest which will terminate or fail merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

(C) *Interest in unidentified assets.* Where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular assets or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for the purposes of subparagraph (A), be reduced by the aggregate value of such particular assets.

(D) *Interest of spouse conditional or survival for limited period.* For the purposes of subparagraph (B) an interest passing to the surviving spouse shall not be considered as an interest which will terminate or fail upon the death of such spouse if:

(i) Such death will cause a termination or failure of such interest only if it occurs within a period not exceeding six months after the decedent's death, or only if it occurs as a result of a common disaster resulting in the death of the decedent and the surviving spouse, or only if it occurs in the case of either such event; and

(ii) Such termination or failure does not in fact occur.

(E) *Valuation of interest passing to surviving spouse.* In determining for the purposes of subparagraph (A) the value of any interest in property passing to the surviving spouse for which a deduction is allowed by this subsection:

(i) There shall be taken into account the effect which a tax imposed by this chapter, or any estate, succession, legacy, or inheritance tax, has upon the net value to the surviving spouse of such interest; and

(ii) Where such interest or property is incumbered in any manner, or where the surviving spouse incurs any obligation imposed by the decedent with respect to the passing of such interest, such incumbrance or obligation shall be taken into account in the same manner as if the amount of a gift to such spouse of such interest were being determined.

(F) *Trust with power of appointment in surviving spouse.* In the case of an interest in property passing from the decedent in trust, if under the terms of the trust his surviving spouse is entitled for life to all the income from the corpus of the trust, payable annually or at more frequent intervals, with power in the surviving spouse to appoint the entire corpus free of the trust (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the corpus to any person other than the surviving spouse:

(i) The interest so passing shall, for the purposes of subparagraph (A), be considered as passing to the surviving spouse, and

(ii) No part of the interest so passing shall, for the purposes of subparagraph (B) (i), be considered as passing to any person other than the surviving spouse.

This subparagraph shall be applicable only if, under the terms of the trust, such power in the surviving spouse to appoint the corpus, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(G) *Life insurance or annuity payments with power of appointment in surviving spouse.* In the case of an interest in property passing from the decedent consisting of proceeds under a life insurance, endowment, or annuity contract, if under the terms of the contract such proceeds are payable in installments or are held by the insurer subject to an agreement to pay interest thereon (whether the proceeds, upon the termination of any interest payments, are payable in a lump sum or in annual or more frequent installments), and such installment or interest payments are payable annually or at more frequent intervals, commencing not later than thirteen months after the decedent's death, and all amounts payable during the life of the surviving spouse are payable only to such spouse, and such spouse has the power to appoint all amounts payable under such contract (exercisable in favor of such surviving spouse, or of the estate of such surviving spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), with no power in any other person to appoint to any person other than the surviving spouse any part of the amounts payable under such contract:

(i) Such proceeds shall, for the purposes of subparagraph (A), be considered as passing to the surviving spouse, and

(ii) No part of such proceeds shall, for the purposes of subparagraph (B) (i), be considered as passing to any person other than the surviving spouse.

This subparagraph shall be applicable only if, under the terms of the contract, such power in the surviving spouse to appoint, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(H) *Limitation on aggregate of deductions.* The aggregate amount of the deductions allowed under this paragraph (computed without regard to this subparagraph) shall not exceed 50 per centum of the value of the adjusted gross estate, as defined in paragraph (2).

(2) *Computation of adjusted gross estate*—(A) *General rule.* Except as provided in subparagraph (B) of this paragraph the adjusted gross estate shall, for the purposes of paragraph (1) (H), be computed by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed by subsection (b) of this section.

(B) *Special rule in cases involving community property.* If the decedent and his surviving spouse at any time held property as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, then the adjusted gross estate shall, for the purposes of paragraph (1) (H), be determined by subtracting from the entire value of the gross estate the sum of:

(i) The value of property which is at the time of the death of the decedent held as such community property; and

(ii) The value of property transferred by the decedent during his life, if at the time of such transfer the property was held as such community property; and

(iii) The amount receivable as insurance under policies upon the life of the decedent to the extent purchased with premiums or other consideration paid out of property held as such community property; and

(iv) An amount which bears the same ratio to the aggregate of the deductions allowed under subsection (b) of this section which the value of the property included in the gross estate, diminished by the amount subtracted under clauses (i), (ii), and (iii) of this subparagraph, bears to the entire value of the gross estate.

For the purposes of clauses (i), (ii), and (iii) community property (except property which is considered as community property solely by reason of the provisions of subparagraph (C) of this paragraph) shall be considered as not "held as such community property" as of any moment of time, if, in case of the death of the decedent at such moment, such property (and not merely one-half thereof) would be or would have been includible in determining the value of this gross estate without regard to the provisions of section 811 (e) (2). The amount to be subtracted under clause (i), (ii), or (iii) shall not exceed the value of the interest in the property described therein which is included in determining the value of the gross estate.

(C) *Same; conversion into separate property.* (i) If during the calendar year 1942 or after the date of the enactment of the Revenue Act of 1948, property held as such community property (unless considered by reason of subparagraph (B) of this paragraph as not so held) was by the decedent and the surviving spouse converted, by one transaction or a series of transactions, into separate property of the decedent and his spouse (including any form of co-ownership by them), the separate property so acquired by the decedent and any property acquired at any time by the decedent in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clauses (i), (ii), and (iii) of subparagraph (B), be considered as "held as such community property".

(ii) Where the value (at the time of such conversion) of the separate property so acquired by the decedent exceeded the value

(at such time) of the separate property so acquired by the decedent's spouse, the rule in clause (i) shall be applied only with respect to the same portion of such separate property of the decedent as the portion which the value (as of such time) of such separate property so acquired by the decedent's spouse is of the value (as of such time) of the separate property so acquired by the decedent.

(3) *Definition.* For the purposes of this subsection an interest in property shall be considered as passing from the decedent to any person if and only if:

(A) Such interest is bequeathed or devised to such person by the decedent; or

(B) Such interest is inherited by such person from the decedent; or

(C) Such interest is the dower or curtesy interest (or statutory interest in lieu thereof) of such person as surviving spouse of the decedent; or

(D) Such interest has been transferred to such person by the decedent at any time; or

(E) Such interest was, at the time of the decedent's death, held by such person and the decedent (or by them and any other person) in joint ownership with right of survivorship; or

(F) The decedent had a power (either alone or in conjunction with any person) to appoint such interest and if he appoints or has appointed such interest to such person, or if such person takes such interest in default upon the release or nonexercise of such power; or

(G) Such interest consists of proceeds of insurance upon the life of the decedent receivable by such person.

Except as provided in subparagraph (F) or (G) of paragraph (1), where at the time of the decedent's death it is not possible to ascertain the particular person or persons to whom an interest in property may pass from the decedent, such interest shall, for the purposes of clauses (i) and (ii) of subparagraph (B) of paragraph (1), be considered as passing from the decedent to a person other than the surviving spouse.

(4) *Disclaimers*—(A) *By surviving spouse.* If under this subsection an interest would, in the absence of a disclaimer by the surviving spouse, be considered as passing from the decedent to such spouse, and if a disclaimer of such interest is made by such spouse, then such interest shall, for the purposes of this subsection, be considered as passing to the person or persons entitled to receive such interest as a result of the disclaimer.

(B) *Disclaimer by any other person.* If under this subsection an interest would, in the absence of a disclaimer by any person other than the surviving spouse, be considered as passing from the decedent to such person, and if a disclaimer of such interest is made by such person and as a result of such disclaimer the surviving spouse is entitled to receive such interest, then such interest shall, for the purposes of this subsection, be considered as passing, not to the surviving spouse, but to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

SEC. 361. MARITAL DEDUCTION. (Revenue Act of 1948; enacted April 2, 1948)

* * * * *

(b) The amendment made by subsection (a) of this section shall be applicable only with respect to estates of decedents dying after December 31, 1947.

JOINT RESOLUTION. (Public Law 869, Eightieth Congress, Second Session, approved July 1, 1948)

* * * * *

SEC. 2. The amendment made by this joint reseolution shall be applicable with respect to estates of decedents dying after December 31, 1947.

§ 81.47a *Bequests, etc., to surviving spouse*—(a) *Allowance of marital deduction.* In the case of the estate of a citizen or resident of the United States dying after December 31, 1947, there may be deducted the value of any property interest (except as otherwise provided in §§ 81.47b and 81.47d) which passed from the decedent to his surviving spouse. Such deduction is hereinafter referred as the "marital deduction". The marital deduction is generally not available in case the decedent's gross estate consists exclusively of property held by him and his surviving spouse as community property under the law of any State, Territory, or possession of the United States, or any foreign country. (See § 81.47d.) The Internal Revenue Code does not authorize a marital deduction in the case of the estate of a nonresident not a citizen of the United States. However, if the decedent was a citizen or resident, his estate is not deprived of the right to the marital deduction by reason of the fact that his surviving spouse was a nonresident not a citizen.

In order to obtain the marital deduction with respect to any property interest the executor must establish the following facts:

(1) That the decedent was survived by his spouse;

(2) That such property interest passed from the decedent to such spouse (see paragraphs (b) to (g), of this section);

(3) That such property interest is a "deductible interest" (see § 81.47b);

(4) The value of such property interest (see § 81.47c); and

(5) The value of the "adjusted gross estate" (see § 81.47d).

Where the order of deaths of the decedent and his spouse cannot be established by proof, a presumption (whether supplied by local law, the decedent's will, or otherwise) that the decedent was survived by his spouse will be recognized as satisfying requirement (1) only to the extent that it has the effect of giving to such spouse an interest in property includible in her gross estate under section 811. Under such circumstances, if an estate tax return is required to be filed for the estate of the decedent's spouse, the marital deduction will not be allowed in the final audit of the estate tax return of the decedent's estate with respect to any property interest which has not been finally determined to be includible in the gross estate of his spouse.

For convenience the surviving spouse is generally referred to in the feminine gender, but if the decedent is a woman the reference is to her surviving husband.

(b) *Definitions*—(1) *Passed from the decedent.* As used in this and the three succeeding sections, the expressions "passed from the decedent", "passed from the decedent to his surviving spouse", and "passed from the decedent to a person other than his surviving spouse", have the meanings stated in this paragraph. Except as otherwise indicated in subparagraphs (2) and (3) of this paragraph, the following rules are applicable in determining the person to whom any property interest "passed from the decedent":

(i) Property interests devolving upon any person (or persons) as surviving coowner with the decedent under any joint ownership wherein the right of survivorship existed are considered as having passed from the decedent to such person (or persons).

(ii) Property interests at any time subject to decedent's power to appoint (whether alone or in conjunction with any person) are considered as having passed from the decedent to the appointee under his exercise of the power, or, in case of release or nonexercise, as having passed from the decedent to the taker in default of exercise.

(iii) The dower or courtesy interest (or statutory interest in lieu thereof) of the decedent's surviving spouse is considered as having passed from the decedent to such spouse.

(iv) In the case of insurance upon the life of the decedent, the proceeds are considered as having passed from the decedent to the person who, at the time of the decedent's death, was entitled to receive such proceeds.

(v) Subject to the rules stated in subdivisions (i) to (iv), of this subparagraph, any property interest transferred during life, bequeathed or devised by the decedent, or inherited from the decedent, is considered as having passed to the person to whom he transferred, bequeathed, or devised such interest, or to the person who inherited such interest from him.

It is comprehended by the foregoing definition that where the surviving spouse had, immediately prior to the decedent's death, merely an expectant interest in property held by her and the decedent under community property laws, such interest is considered as having passed from the decedent to such spouse. As to the circumstances under which the interest of the surviving spouse under community property laws is regarded as merely expectant, see paragraph (b) of § 81.47d.

(2) *Passed from the decedent to his surviving spouse.* In general, the definition stated in subparagraph (1) of this paragraph is applicable in determining the property interests which "passed from the decedent to his surviving spouse". Special rules are provided, however, in the case of certain trusts with power of appointment in the surviving spouse and in the case of proceeds held by the insurer under a life insurance, endowment, or annuity contract, with power of appointment in the surviving spouse. (As to such rules, see paragraphs (c) and (d) of this section.) As to the rules applicable in case of disclaimer by the surviving spouse or by any other person, in case of election by the surviving spouse, and in case of a controversy involving the decedent's will, see paragraphs (e) to (g), of this section.

Except to the extent otherwise provided in paragraphs (c) and (d) of this section, the marital deduction may be taken with respect to a property interest only if it passed to the surviving spouse as beneficial owner. For this purpose, where a property interest passed from the decedent in trust, such interest is considered to have passed from him to his surviving spouse to the extent of her beneficial interest therein. The deduction may not be taken with respect to a property interest which passed to such

spouse merely as trustee, or subject to a binding agreement by such spouse to dispose of such interest in favor of a third person.

The following are given as illustrative:

(i) A property interest bequeathed in trust by H (the decedent) is considered as having passed from him to W (his surviving spouse) if the trust income is payable to W for life and upon her death the corpus is distributable to her executors or administrators, or if W is entitled to the trust income for a term of years following which the corpus is to be paid to W or her estate, or if the trust income is to be accumulated for a term of years or for W's life and the augmented fund paid to W or her estate, or if the terms of the trust meet the requirements of paragraph (c) of this section; (ii) where H devised property to A for life with remainder absolutely to W or her estate, the remainder interest is considered to have passed from H to W; (iii) proceeds of insurance upon the life of H are considered as having passed from H to W if the terms of the contract meet the requirements of paragraph (d) of this section, or if under the terms of the contract the proceeds are payable to W in a lump sum, or are payable in installments to W for life and after her death any remaining installments are payable to her estate, or if interest on the proceeds is payable to W for life and upon her death the principal amount is payable to her estate. However, with respect to the foregoing illustrations which involve interests which are distributable to W's estate (or to her executors or administrators) in the event of the termination of a trust or of a precedent interest at or after her death, it should be noted that the interest so distributable is to be considered as having passed from H to W only if such interest would be includible in her gross estate under section 811 (a).

(3) *Passed from the decedent to a person other than his surviving spouse.* The expression "passed from the decedent to a person other than his surviving spouse" refers to any property interest which, under the definition stated in subparagraph (1) of this paragraph, is considered as having "passed from the decedent" and which, under the rules referred to in subparagraph (2) of this paragraph, is not considered as having "passed from the decedent to his surviving spouse".

(c) *Trust with power of appointment in surviving spouse.* In the case of property interests which passed from the decedent to a trust, the terms of which satisfy the five conditions stated in this paragraph, the expression "passed from the decedent to his surviving spouse" embraces not only the beneficial interest therein of such spouse but also the interest therein subject to her power to appoint. (As to the treatment of trusts not meeting such conditions, see paragraph (b) (2) of this section.) The five conditions which must be satisfied by the terms of the trust are as follows:

(1) The surviving spouse must be entitled for life to all the income from the corpus of the trust.

(2) Such income must be payable annually or at more frequent intervals.

(3) The surviving spouse must have the power, exercisable in favor of herself or of her estate, to appoint the entire corpus free of the trust.

(4) Such power in the surviving spouse must be exercisable by such spouse alone and (whether exercisable by will or during life) must be exercisable in all events.

(5) The corpus of the trust must not be subject to a power in any other person to appoint any part thereof to any person other than the surviving spouse.

In determining whether the above-stated conditions (1) to (5), are satisfied by the terms of the trust, regard is to be had to the applicable provisions of the law of the jurisdiction governing the administration of the trust. For example, silence of the trust as to the frequency of payment will not be regarded as a failure to satisfy condition (2) in case the applicable law requires payment to be made annually or more frequently.

The surviving spouse is "entitled for life to all the income from the corpus of the trust", within the meaning of section 812 (e) (1) (F), if the effect of the trust is to give her substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Such degree of enjoyment is given only if it was the decedent's intention, as manifested by the terms of the trust instrument and the surrounding circumstances, that the trust should produce for the surviving spouse during her life such an income, or that the spouse should have such use of the trust property, as is consistent with the value of the trust corpus and with its preservation. The designation of the spouse as sole income beneficiary for life will be sufficient to qualify the trust unless the terms of the trust considered as a whole evidence an intention to deprive the spouse of the requisite degree of enjoyment. In determining whether a trust evidences such intention the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for the administration of the trust.

If the over-all effect of the trust is to give to the surviving spouse such enforceable rights as will preserve to her the requisite degree of enjoyment, it is immaterial whether such result is effected by rules specifically stated in the trust instrument, or, in their absence, by the rules for the management of the trust property and the allocation of receipts and expenditures supplied by the State law. For example, where the the State law does not provide for amortization of bond premium, a provision in the trust instrument for such amortization by appropriate periodic charges to interest will not disqualify the trust.

The rules to be applied by the trustee in allocation of receipts and expenses between income and corpus must be considered in relation to the nature and expected productivity of the assets passing in trust, the nature and frequency of occurrence of the expected receipts, and any provisions as to change in the form of investments. Where it is evident from the nature of the trust assets and the rules provided for management of the trust that the allocation to income of such receipts as rents, ordinary cash dividends and interest will give to the spouse the substantial enjoyment during life required by the statute, provisions that such receipts as stock dividends and proceeds from the conversion of trust assets shall be treated as corpus will not disqualify the trust. Similarly, provision for a depletion charge against income in the case of trust assets which are subject to depletion will not disqualify the trust, unless the effect is to deprive the spouse of the requisite beneficial enjoyment. The same principle is applicable in the case of depreciation, trustees' commissions, and other charges.

Provisions granting administrative powers to the trustee will not have the effect of disqualifying the trust unless the grant of such powers evidences the intention to deprive the surviving spouse of the beneficial enjoyment required by the statute. Such intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of such powers. Among the powers which if subject to such limitations will not disqualify the trust are the power to allocate receipts between income and corpus, the power to determine the charges which shall be made against income and corpus, the power to apply the income for the benefit of the spouse, and the power to retain the assets passing to the trust. For example, a power to retain trust assets which consists substantially of unproductive property will not disqualify if the applicable rules for the administration of the trust require the trustee to either make the property productive or convert it within a reasonable time. Nor will such a power disqualify if such applicable rules require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. A power to retain a residence for the spouse or other property for her personal use will not disqualify the trust.

A trust will not qualify if its primary purpose is to safeguard property without providing the spouse with the required beneficial enjoyment. Such trusts include not only trusts which expressly provide for the accumulation of the income but also trusts which indirectly accomplish a similar purpose. For example, assume that the corpus of a trust consists substantially of property which is not likely to be income producing during the life of the surviving spouse and that such spouse cannot compel the trustee to convert or otherwise deal with the property as described above. Such a trust will not qualify unless the trustee is directed to provide the required beneficial enjoyment, such as by payments to the spouse out of other assets of the trust.

If the surviving spouse is entitled to only a portion of the trust income, or has power to appoint only a portion of the corpus, the trust fails to satisfy conditions (1) and (3), respectively. However, such conditions may be satisfied by one or more of several separate trusts created by the decedent. An undivided interest in property may constitute the corpus of a trust, and the will or a single trust instrument may create more than one trust.

In the case of a trust created during the decedent's life, it is immaterial whether the trust satisfied conditions

(1) to (5) prior to the decedent's death. In the case of a trust which may be terminated during the life of the surviving spouse, under her exercise of a power of appointment or by distribution of the corpus to her, the trust satisfies condition (1) if such spouse is entitled to the income until the trust terminates.

A trust fails to satisfy condition (1) if the income is required to be accumulated in whole or in part or may be accumulated in the discretion of any person other than the surviving spouse, if the consent of any person other than the surviving spouse is required as a condition precedent to distribution of the income, if any person other than the surviving spouse has the power to alter the terms of the trust so as to deprive such spouse of her right to the income, or if any person other than the surviving spouse is entitled to any part of the income during the life of such spouse. A trust will not fail to satisfy condition (1) merely because its terms provide that the right of the surviving spouse to the income shall not be subject to assignment, alienation, pledge, attachment or claims of creditors.

The terms "entitled for life" and "payable annually or more frequently," as used in conditions (1) and (2), require that under the terms of the trust the income referred to must be currently (at least annually) distributable to the spouse or that she must have such command over the income that it is virtually hers. Thus, conditions (1) and (2) are satisfied in this respect if, under the terms of the trust instrument, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of the trust income, and otherwise the trust income is to be accumulated and added to corpus. Similarly, as respects the income for the period between the last distribution date and the date of the spouse's death, it is sufficient if such income is subject to the spouse's power to appoint.

A trust is not to be regarded as failing to satisfy conditions (1) and (2) merely because the spouse is not entitled to the income from estate assets for the period prior to distribution of such assets to the trustee, unless the executor is, by the decedent's will, authorized or directed to delay such distribution beyond the period reasonably required therefor. As to the valuation of the property interest passing to the spouse in trust where the right to income is postponed, see § 81.47c (a).

In order to satisfy conditions (3) and (4), the power of the surviving spouse to appoint the entire corpus free of the trust must fall within one of the following categories:

(i) A power so to appoint fully exercisable in her own favor at any time following the decedent's death (as, for example, an unlimited power to invade).

(ii) A power so to appoint exercisable in favor of her estate. Such power, if exercisable during life, must be fully exercisable at any time during life, or, if exercisable by will, must be fully exercisable irrespective of the time of her death.

(iii) A combination of the powers described under (i) and (ii). For example, the surviving spouse may until she attains the age of 50 years have a power to appoint to herself and thereafter have a power to appoint to her estate. However, condition (4) is not satisfied unless irrespective of when the surviving spouse may die the trust corpus will at the time of her death be subject to one or the other such power.

The power in the surviving spouse must be a power to appoint the corpus to herself as unqualified owner or to appoint the corpus as a part of her estate, that is, in effect, to dispose of it to whomsoever she pleases. Thus, if the surviving spouse entered into a binding agreement with the decedent to exercise the power only in favor of their issue, condition (3) is not met. The trust will not be regarded as failing to satisfy condition (3) merely because takers in default of the surviving spouse's exercise of the power are designated by the decedent. The decedent may provide that, in default of exercise of the power, the trust shall continue for an additional period.

In order for condition (4) to be satisfied, the power in the surviving spouse to appoint the corpus to herself or to her estate must be exercisable without the joinder or consent of any other person. The power is not "exercisable in all events", as required by section 812 (e) (1) (F), if it can be terminated during the life of the surviving spouse by any event other than her complete exercise or release thereof. For example, a power which is not exercisable in the event of the spouse's remarriage is not exercisable in all events.

The power in the surviving spouse is exercisable in all events only if it exists immediately following the decedent's death. For example, if the power given to the surviving spouse is exercisable during life, but cannot be effectively exercised prior to distribution of the trust assets by the executor to the trustee, such power is not exercisable in all events. Similarly, if the power is exercisable by will, but cannot be effectively exercised in the event the surviving spouse dies before receipt of the trust assets by the trustee, such power is not exercisable in all events. However, the trust will not be disqualified by the mere fact that, in the event the power is exercised during administration of the estate, payment of the assets to the appointee will be delayed for the period of administration. If the power is in existence at all times following the decedent's death, limitations of a formal nature will not disqualify. Examples of formal limitations on a power exercisable during life are requirements that exercise must be in a particular form, that it must be filed with the trustee, that reasonable notice must be given, or that reasonable intervals must elapse between successive partial exercises. Examples of formal limitations on a power exercisable by will are that it must be exercised by a will executed by the surviving spouse after the decedent's death or that exercise must be by specific reference to the power.

The trust will fail to satisfy condition (5) if the decedent created a power in the trustee, or in another person, to invade the corpus of the trust for the benefit of any person other than the surviving spouse. However, only powers in other persons which are in opposition to that of the surviving spouse will cause the trust to fail to satisfy condition (5). For example, assume that a decedent created a trust, designating his surviving spouse as income beneficiary for life and as donee of a power to appoint the corpus. The decedent further provided that in the event the surviving spouse should die without having exercised the power, the trust should continue for the life of his son with power in such son to appoint the corpus. Since the power in the son could become exercisable only after the death of the surviving spouse, the trust is not regarded as failing to satisfy condition (5).

(d) *Proceeds held by the insurer under a life insurance, endowment, or annuity contract, with power of appointment in surviving spouse.* Section 812 (e) (1) (G) provides a special rule in the case of a property interest which passed from the decedent in the form of proceeds held by the insurer under the terms of a life insurance, endowment, or annuity contract which satisfy the five conditions hereinafter stated. With respect to such proceeds, the expression "passed from the decedent to his surviving spouse" embraces not only the interest of such spouse under the contract but also the interest thereunder, subject to her power to appoint. The five conditions which must be satisfied by the terms of the contract are as follows:

(1) The proceeds must be held by the insurer subject to an agreement either to pay the proceeds in installments, or to pay interest thereon, with all such amounts payable during the life of the surviving spouse payable only to her.

(2) Such installments or interest must be payable annually, or more frequently, commencing not later than 13 months after the decedent's death.

(3) The surviving spouse must have the power, exercisable in favor of herself or of her estate, to appoint all amounts so held by the insurer.

(4) Such power in the surviving spouse must be exercisable by such spouse alone and (whether exercisable by will or during life) must be exercisable in all events.

(5) The amounts payable under such contract must not be subject to a power in any other person to appoint any part thereof to any person other than the surviving spouse.

If the interest of the surviving spouse under a life insurance, endowment, or annuity contract is in proceeds held by the insurer which do not, however, represent the entire amount payable under such contract, the provisions of section 812 (e) (1) (G) nevertheless apply to such proceeds so held to which all five of the above conditions apply. For example, an insurance contract on the decedent's life may provide for payment of the proceeds into two funds to be held by the insurer. In such case, if all five of the above conditions are satified with respect to all amounts payable into one such fund, then the special rule of section 812 (e) (1) (G) is applicable to the proceeds held in such fund.

The provisions of section 812 (e) (1) (G), are applicable with respect to a property interest which passed from the

decedent in the form of proceeds of a policy of insurance upon the decedent's life, a policy of insurance upon the life of a person who predeceased the decedent, a matured endowment policy, or an annuity contract, but only in case such proceeds are to be held by the insurer. With respect to proceeds under any such contract which are to be held by a trustee, with power of appointment in the surviving spouse, see paragraph (c) of this section. As to the treatment of proceeds not meeting the requirements of such paragraph (c) or of this paragraph, see paragraph (b) of this section.

In the case of a contract under which payments by the insurer commenced during the decedent's life, it is immaterial whether conditions (1) to (5) were satisfied prior to the decedent's death.

Conditions (1) and (2) are satisfied if, under the terms of the contract, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of installments of the proceeds, or interest on the proceeds, as the case may be, and otherwise such installments or interest is to be accumulated and held by the insurer pursuant to the terms of the contract. A contract which otherwise requires the insurer to make annual or more frequent payments to the surviving spouse following the decedent's death, will not be disqualified merely because the surviving spouse must comply with certain formalities in order to obtain the first payment. For example, the contract may satisfy conditions (1) and (2) even though it requires the surviving spouse to furnish proof of death before the first payment is made. Condition (1) is satisfied where interest on the proceeds is payable, annually or more frequently, for a term, or until the occurrence of a specified event, following which the proceeds are to be paid in annual or more frequent installments.

In determining whether the terms of the contract satisfy conditions (3), (4), and (5), the principles stated in paragraph (c) of this section are applicable. As stated in such paragraph (c), the surviving spouse's power to appoint is "exercisable in all events" only if it is in existence immediately following the decedent's death. For examples of formal limitations on the power which will not disqualify the contract, see such paragraph (c). Where the power is exercisable from the moment of the decedent's death, the contract is not disqualified merely because the insurer may require proof of the decedent's death as a condition to making payment to the appointee. Where the submission of proof of the decedent's death is a condition to the exercise of the power, the power will not be considered "exercisable in all events" unless, in the event the surviving spouse had died immediately following the decedent, her power to appoint would have been considered to exist at the time of her death, within the meaning of section 811 (f) (3). (See § 81.24 (b) (1).)

It is sufficient for the purposes of condition (3) if the surviving spouse has the unqualified power, exercisable in favor of herself or her estate, to appoint all amounts held by the insurer which are payable after her death. Such power to appoint need not extend to installments or interest which will be paid to such spouse during her life.

It is not necessary that the phrase "power to appoint" be used in the contract. For example, condition (3) is satisfied by terms of a contract which give the surviving spouse a right which is in substance and effect a power to appoint to herself or her estate, such as a right to withdraw the amount remaining in the fund held by the insurer, or a right to direct that any amount held by the insurer under the contract at her death shall be paid to her estate.

(e) *Effect of disclaimer.* Section 812 (e) (4) (A) provides that where the surviving spouse makes a disclaimer of any property interest which would otherwise be considered as having passed from the decedent to such spouse, such disclaimed interest is to be considered as having passed from the decedent to the person or persons entitled to receive such interest as a result of the disclaimer. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. It is, therefore, necessary, for the purpose of section 812 (e) (4) (A), to distinguish between the surviving spouse's disclaimer of a property interest and her acceptance and subsequent disposal of a property interest For example, if proceeds of insurance are payable to the surviving spouse and she refuses such proceeds which consequently pass to an alternative beneficiary designated by the decedent, the provisions of section 812 (e) (4) (A) are applicable and the proceeds are considered as having passed from the decedent to the alternative beneficiary. On the other hand, if the surviving spouse directs the insurance company to hold the proceeds at interest during her life and, upon her death, to pay the principal sum to another person designated by her, thus effecting a transfer of a remainder interest therein, such proceeds are considered as having passed from the decedent to such spouse.

However, under the provisions of section 812 (e) (4) (B), it is unnecessary to distinguish, for the purposes of the marital deduction, between a disclaimer by a person other than the surviving spouse and a transfer by such person. Such section provides that where the surviving spouse becomes entitled to receive an interest in property from the decedent as a result of a disclaimer made by some other person, such interest is, nevertheless, considered as having passed from the decedent, not to the surviving spouse, but to the person who made the disclaimer, as though the disclaimer had not been made. Where, as a result of a disclaimer made by a person other than the surviving spouse, a property interest passes to a trust which meets the conditions set forth in paragraph (c) of this section, the rule stated in the preceding sentence applies, not only with respect to the portion of such interest which beneficially vests in the surviving spouse, but also with respect to the portion over which such spouse acquires a power to appoint. Such rule applies also in the case of proceeds under a life insurance, endowment, or annuity contract, which, as a result of a disclaimer made by a person other than the surviving spouse, are held by the insurer subject to the conditions set forth in paragraph (d) of this section.

(f) *Effect of election by surviving spouse.* The following rules are applicable where the surviving spouse may elect between a property interest offered to her under the decedent's will or other instrument and a property interest to which she is otherwise entitled (such as dower, a right in the decedent's estate, or her interest under community property laws) of which adverse disposition was attempted under such will or other instrument. If the surviving spouse elects to take against the will or other instrument, then (1) the property interest offered thereunder is not considered as having "passed from the decedent to his surviving spouse" and (2) the dower or other property interest retained by her is considered as having so passed only if it otherwise so qualifies under this section. If the surviving spouse elects to take under the will or other instrument, then (i) the dower or other property interest relinquished by her is not considered as having "passed from the decedent to his surviving spouse" (irrespective of whether it otherwise comes within the definition stated in paragraph (b) of this section) and (ii) the interest taken under the will or other instrument is considered as having so passed only if it otherwise so qualifies under this section. As to the valuation of the property interest taken under the will or other instrument, see paragraph (b) of § 81.47c.

(g) *Will contests.* If as a result of a controversy involving the decedent's will, or involving any bequest or devise thereunder, his surviving spouse assigns or surrenders a property interest in settlement of such controversy, the interest so assigned or surrendered is not considered as having "passed from the decedent to his surviving spouse".

If as a result of a controversy involving the will, or involving any bequest or devise thereunder, a property interest is assigned or surrendered to the surviving spouse, the interest so acquired will be regarded as having "passed from the decedent to his surviving spouse" only if such assignment or surrender was a bona fide recognition of enforceable rights of the surviving spouse in the decedent's estate. Such a bona fide recognition will be presumed where such assignment or surrender was pursuant to a decision of a local court upon the merits in an adversary proceeding following a genuine and active contest. However, such a decree will be accepted only to the extent that the court passed upon the facts upon which deductibility of the property interest depends. If such assignment or surrender was pursuant to a decree rendered by consent, or pursuant to an agreement not to contest the will or not to probate the will, it will not necessarily be accepted as a bona fide evaluation of the rights of the spouse.

§ 81.47b *Nondeductible interests*—(a) *General.* The property interests which passed from the decedent to his surviving spouse (as set forth in § 81.47a)

fall within two general categories: (1) Those with respect to which the marital deduction is authorized, and (2) those with respect to which the marital deduction is not authorized. Such categories are hereinafter referred to as "deductible interests" and "nondeductible interests", respectively. As to the several classes of "nondeductible interests", see paragraphs (b) to (f), of this section. Subject to the limitation set forth in § 81.47d, the marital deduction is equal in amount to the aggregate value of the "deductible interests", that is, the property interests which passed from the decedent to his surviving spouse and do not fall within any of the classes described in such paragraphs (b) to (f) of this section.

(b) *Interests not included in gross estate.* Any property interest which passed from the decedent to his surviving spouse is a "nondeductible interest" to the extent it is not included in the decedent's gross estate.

(c) *Interests with respect to which a deduction is taken under section 812 (b).* Where a deduction taken under section 812 (b) specifically pertains to a property interest which passed from the decedent to his surviving spouse, such interest is, to the extent of such deduction under section 812 (b), a "nondeductible interest". Thus, a property interest which passed from the decedent to his surviving spouse in satisfaction of a deductible claim of such spouse against the estate is, to the extent of the claim, a "nondeductible interest". (See paragraph (b) of § 81.47c.) If during settlement of the estate a loss deductible under section 812 (b) occurs with respect to a property interest, then such interest is, to the extent of the deductible loss, a "nondeductible interest" for the purposes of the marital deduction. Amounts deducted under section 812 (b) (5) for any allowance for the support of the surviving spouse during the settlement of the estate, or under section 812 (b) (2) for commissions allowed to the surviving spouse as executor do not come within the definition of interests which "passed from the decedent to his surviving spouse". As to the valuation, for the purpose of the marital deduction, of any property interest which passed from the decedent to his surviving spouse subject to a mortgage or other incumbrance, see paragraph (b) of § 81.47c.

(d) *Interest in property which another person may possess or enjoy.* Section 812 (e) (1) (B) provides that no marital deduction shall be allowed with respect to certain property interests (referred to generally as "terminable interests") which passed from the decedent to his surviving spouse, in case:

(1) An interest in the same property passed at any time (for less than an adequate and full consideration in money or money's worth) from the decedent to any person other than such spouse (or the estate of such spouse), and

(2) By reason thereof, such person (or his heirs or assigns) may possess or enjoy any part of such property after the termination or failure of the interest therein which passed from the decedent to his surviving spouse.

The foregoing provision is applicable only where interests in the same property passed from the decedent both to his surviving spouse, and to some other person (for less than an adequate and full consideration in money or money's worth), and is applicable irrespective of whether both such interests passed from the decedent at the same time or under the same instrument. Under such circumstances, if the other person to whom an interest passed may, by reason thereof, possess or enjoy any part of the property after the termination or failure of the interest therein which passed from the decedent to his surviving spouse, the latter interest is a "nondeductible interest". As to the meaning of the term "passed from the decedent to a person other than his surviving spouse", see paragraph (b) of § 81.47a.

In determining whether an interest in the same property passed from the decedent both to his surviving spouse and to some other person, a distinction is to be drawn between "property", as such term is used in section 812 (e), and an "interest in property". The term "property" refers to the underlying property in which various interests exist; each such interest is not for this purpose to be considered as "property".

Interests which passed to a person other than the surviving spouse include interests so passing under the decedent's exercise, release, or nonexercise of a nontaxable power to appoint. It is immaterial whether the property interest which passed from the decedent to a person other than his surviving spouse is included in the decedent's gross estate.

The term "person other than his surviving spouse" includes the possible unascertained takers of a property interest, as, for example, the members of a class to be ascertained in the future. As another example, assume that the decedent created a power of appointment over a property interest, which does not come within the purview of paragraph (c) or (d) of § 81.47a. In such a case, the term "person other than his surviving spouse" refers to the possible appointees and possible takers in default (other than the spouse) of such property interest. Whether there is a possibility that the "person other than his surviving spouse" (or the heirs or assigns of such person) may possess or enjoy the property following termination or failure of the interest therein which passed from the decedent to his surviving spouse is to be determined as of the time of the decedent's death.

In the following examples it is assumed that the property interest which passed from the decedent to a person other than his surviving spouse was not for an adequate and full consideration in money or money's worth:

(i) H (the decedent) devised real property to W (his surviving wife) for life, with remainder to A and his heirs. The interest which passed from H to W is a "nondeductible interest" since it will terminate upon her death and A (or his heirs or assigns) will thereafter possess or enjoy the property.

(ii) H devised real property to W for life, and created in W a power, exercisable by will, to appoint the remainder interest to any person. In default of appointment by W, the remainder interest was to go to A and his heirs. Assuming that under the local law W did not take the real property as absolute owner, nor as trustee of a trust meeting the requirements of § 81.47a (c), the interest which passed from H to W is a "nondeductible interest" since such interest will terminate upon her death and A (or his heirs or assigns) may thereafter possess or enjoy the property. (As to cases in which a "deductible interest" may exist where a life interest is coupled with a power to appoint under a trust or insurance contract, see paragraphs (c) and (d) of § 81.47a.)

(iii) H bequeathed the residue of his estate in trust for the benefit of W and A. The trust income is to be paid to W for life, and upon her death the corpus is to be distributed to A or his issue. However, if A should die without issue, leaving W surviving, the corpus is then to be distributed to W. The interest which passed from H to W is a "nondeductible interest" since it will terminate in the event of her death if A or his issue survive, and A or his issue will thereafter possess or enjoy the property.

(iv) H during his lifetime purchased an annuity contract providing for payments to himself for life and then to W for life if she should survive him. Upon the death of the survivor of H and W, the excess, if any, of the cost of the contract over the annuity payments theretofore made was to be refunded to A. The interest which passed from H to W is a "nondeductible interest" since A may possess or enjoy a part of the property following the termination of the interest of W. If, however, the contract provided for no refund upon the death of the survivor of H and W, or provided that any refund was to go to the estate of the survivor, then the interest which passed from H to W is (to the extent it is included in H's gross estate) a "deductible interest."

(v) H devised property to W and A as joint tenants with right of survivorship. The interest which passed from H to W is a "nondeductible interest" since, if the tenancy is not severed and A survives W, the interest of W will terminate and A will continue to possess or enjoy the property.

(vi) H, in contemplation of death, transferred a residence to A for life with remainder to W provided W survives A, but if W predeceases A, the property is to pass to B and his heirs. If it is assumed that H died during A's lifetime, and the value of the residence was included in determining the value of his gross estate, the interest which passed from H to W is a "nondeductible interest" since such interest will terminate if W predeceases A and the property will thereafter be possessed or enjoyed by B (or his heirs or assigns). This result is not affected by B's assignment of his interest during H's lifetime, whether made in favor of W or another person, since the term "assigns" (as used in section 812 (e) (1) (B)) includes such assignee. However, if it is assumed that A predeceased H, the interest of B in the property was extinguished, and, viewed as of the time of the subsequent death of H, the interest which passed from him to W is the entire interest in the property and, therefore, a "deductible interest".

(vii) H transferred real property to A, reserving the right to the rentals of the property for a term of 20 years. H died within such 20-year term, bequeathing the right to the remaining rentals to a trust. The terms of the trust satisfy the five conditions stated in paragraph (c) of § 81.47a, so that the property interest which passed in trust is considered to have passed from H to W. Such interest is a "nondeductible interest" since it will terminate upon the expiration of the term and A will thereafter possess or enjoy the property.

(viii) H bequeathed a patent to W and A as tenants in common. In this case, the in-

terest of W will terminate upon the expiration of the term of the patent, but possession or enjoyment of the property by A must necessarily cease at the same time. Therefore, since A's possession or enjoyment cannot outlast the termination of W's interest, the latter is a "deductible interest".

The above-stated provision is to be applied with respect to the property interests which actually passed from the decedent. Subsequent conversions of the property are immaterial for this purpose. Thus, where a decedent bequeathed his estate to his wife for life with remainder to his children, the interest which passed to his wife is a "nondeductible interest", even though the wife agrees with the children to take a fractional share of the estate in lieu thereof, or sells the life estate for cash, or acquires the remainder interest of the children either by purchase or gift.

Section 812 (e) (1) (D) provides an exception to the general rule stated in this paragraph. In general, the object of section 812 (e) (1) (D) is to prevent a property interest from being classified as "nondeductible" where (i) the only condition under which it will terminate is the death of the surviving spouse within 6 months after the decedent's death, or the death of such spouse as a result of a common disaster which also resulted in the decedent's death, and (ii) such condition does not in fact occur. The following examples illustrate the application of the exception provided by section 812 (e) (1) (D):

Example (1). A decedent bequeathed his entire estate to his spouse on condition that she survive him by 6 months. In the event his spouse failed to survive him by 6 months, his estate was to go to his niece and her heirs. The decedent was survived by his spouse. It will be observed that, as of the time of the decedent's death, it was possible that the niece would, by reason of the interest which passed to her from the decedent, possess or enjoy the estate after the termination of the interest therein which passed to the spouse. Hence, under the general rule set forth in this paragraph, the interest which passed to the spouse would be regarded as a "nondeductible interest". If the surviving spouse in fact died within 6 months after the decedent's death, such general rule is to be applied, and the interest which passed to such spouse is a "nondeductible interest". However, if such spouse in fact survived the decedent by 6 months, thus extinguishing the interest of the niece, the case comes within the exception provided by section 812 (e) (1) (D), and the interest which passed to such spouse is a "deductible interest". (It is assumed for the purpose of this example that no other factor which would cause such interest to be "nondeductible" is present.)

Example (2). The facts are the same as in example (1) except that the will provided that the estate was to go to the niece either in case the decedent and his spouse should both die as a result of a common disaster, or in case the spouse should fail to survive the decedent by 3 months. It is assumed that the decedent was survived by his spouse. In this example, the interest which passed from the decedent to his surviving spouse is to be regarded as a "nondeductible interest" in case the surviving spouse in fact died either within 3 months after the decedent's death or as a result of a common disaster which also resulted in the decedent's death. However, if such spouse in fact survived the decedent by 3 months, and did not thereafter die as a result of a common disaster which also resulted in the decedent's death, the exception provided under section 812 (e) (1) (D) will apply.

Where the only condition which will cause the interest taken by the surviving spouse to terminate is of such nature that it can occur only within 6 months following the decedent's death, the exception provided under section 812 (e) (1) (D) will apply, provided the condition does not in fact occur. However, where such condition (unless it relates to death as a result of a common disaster) is one which may occur either within such 6-month period or thereafter, the exception provided under section 812 (e) (1) (D) will not apply.

Where a property interest passed from the decedent to his surviving spouse subject to the condition that she does not die as a result of a common disaster which also resulted in the decedent's death, the exception provided under section 812 (e) (1) (D) will not be applied in the final audit of the return if there is still a possibility that the surviving spouse may be deprived of such property interest by operation of the common disaster provision as given effect by the local law.

(e) *Terminable interest to be acquired by executor or trustee.* Section 812 (e) (1) (B) also provides that no marital deduction may be taken with respect to a life estate or other "terminable interest" which is to be acquired for the surviving spouse, pursuant to directions of the decedent, by his executor or by a trustee. Other examples of "terminable interests" are an annuity, an estate for years, a patent, and a copyright. Section 812 (e) (1) (B) provides that a property interest shall not be considered a "terminable interest" merely because it is the ownership of a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity for life or for a term.

The foregoing provision is applicable only with respect to any property interest which the decedent directed his executor or a trustee to expend, subsequently to his death, in the acquisition of a life estate, annuity, or other "terminable interest" for his surviving spouse. In such a case the property interest which is to be so expended is a "nondeductible interest." The foregoing provision is not applicable, however, in the case of a general authorization to reinvest property, whereunder the executor or trustee may acquire either "terminable interests" or other property interests.

Example. A decedent bequeathed $100,000 to his wife, subject to a direction to his executor to use such bequest for the purchase of an annuity for the wife. The bequest is of a "nondeductible interest."

(f) *Interest payable out of a group of assets.* Section 812 (e) (1) (C) provides that where the assets (included in the decedent's gross estate) out of which, or the proceeds of which, an interest passing to the surviving spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets passed from the decedent to such spouse, then the value of such interest passing to such spouse shall, for the purpose of the marital deduction, be reduced by the aggregate value of such particular assets.

In order for the foregoing provision to apply, two circumstances must coexist, as follows:

(1) The property interest which passed from the decedent to his surviving spouse must be payable out of a group of assets included in the gross estate. Examples of property interests payable out of a group of assets are a general legacy, a bequest of the residue of the decedent's estate or of a portion of the residue, and a right to a share of the corpus of a trust upon its termination.

(2) The group of assets out of which the property interest is payable must include one or more particular assets which, if passing specifically to the surviving spouse, would be "nondeductible interests".

If the above circumstances are both present, the property interest payable out of the group of assets is (except as to any excess of its value over the aggregate value of the particular asset or assets which would not be deductible if passing specifically to the surviving spouse) a "nondeductible interest".

Example. A decedent bequeathed one-third of the residue of his estate to his wife; The property passing under the decedent's will included a right to the rentals of an office building for a term of years, reserved by the decedent under a deed of the building by way of gift to his son. The decedent did not make a specific bequest of the right to such rentals. Such right, if passing specifically to the wife, would be a "nondeductible interest". (See paragraph (d) of this section.) If it is assumed that the value of the bequest of one-third of the residue of the estate to the wife was $85,000, and that the right to the rentals was included in the gross estate at a value of $60,000, then the bequest is, to the extent of $60,000, a "nondeductible interest".

§ 81.47c *Valuation of property interest passing to surviving spouse*—(a) *In general.* The value, for the purpose of the marital deduction, of any "deductible interest" which passed from the decedent to his surviving spouse is to be determined as of the date of the decedent's death, unless the executor elects the optional valuation method in accordance with the provisions of § 81.11, in which case the value of any such interest is to be determined as of such date with adjustment as explained in § 81.11. The marital deduction may be taken only with respect to the net value of any "deductible interest" which passed from the decedent to his surviving spouse, the same principles being applicable as if the amount of a gift to such spouse were being determined. In determining the value of the interest in property passing to the spouse account must be taken of the effect of any material limitations upon her right to income from the property. An example of a case in which this rule may be applied is a case in which the decedent bequeaths property in trust for the benefit of his spouse but the income from such property from the date of the decedent's death until distribution of the property to the trustee is to be used to pay expenses incurred in the administration of the estate.

(b) *Property interest subject to an incumbrance or obligation.* Section 812 (e) (1) (E) provides that where a property interest passed from the decedent to his surviving spouse subject to a mortgage or other incumbrance, or where an obligation is imposed upon the surviving spouse by the decedent in connection with the passing of a property interest, the value of such property interest is to be reduced by the amount of such mortgage, other incumbrance, or obligation. The passing of a property interest subject to the imposition of an obligation by the decedent does not include a bequest, devise, or transfer in lieu of dower, curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the decedent's property or estate. The passing of a property interest subject to the imposition of an obligation by the decedent does, however, include a bequest, etc., in lieu of the interest of his surviving spouse under community property laws unless such interest was, immediately prior to the decedent's death, a mere expectancy. (As to the circumstances under which the interest of the surviving spouse is regarded as a mere expectancy see paragraph (b) of § 81.47d.)

The following are illustrative of property interests which passed from the decedent to his surviving spouse subject to the imposition of an obligation by the decedent:

(1) A decedent devised a residence valued at $25,000 to his wife, with a direction that she pay $5,000 to his sister. For the purpose of the marital deduction, the value of the property interest passing to the wife is only $20,000.

(2) A decedent devised real property to his wife in satisfaction of a debt owing to her. The debt is a deductible claim under section 812 (b) (3). Since the wife is obliged to relinquish such claim as a condition to acceptance of the devise, the value of the devise is, for the purpose of the marital deduction, to be reduced by the amount of such claim.

(3) A decedent bequeathed certain securities to his wife in lieu of her interest in property held by them as community property under the law of the State of their residence. The wife elected to relinquish her community property interest and to take the bequest. For the purpose of the marital deduction, the value of the bequest is to be reduced by the value of the community property interest relinquished by the wife.

(c) *Effect of death taxes.* Section 812 (e) (1) (E) provides that in the determination of the value of any property interest which passed from the decedent to his surviving spouse, there shall be taken into account the effect which the Federal estate tax, or any estate, succession, legacy, or inheritance tax, has upon the net value to the surviving spouse of such property interest.

For example, assume that the only bequest to the surviving spouse is of $100,000 and such spouse is required to pay State inheritance tax in the amount of $1,500. If no other death taxes affect the net value of the bequest, such value, for the purpose of the marital deduction, is $98,500.

To take another example, assume that a decedent devised to his wife real property having a value for Federal estate tax purposes of $100,000, and also bequeathed to her a "nondeductible" interest for life under a trust. The State of residence values the real property at $90,000 and the life interest at $30,000, and imposes an inheritance tax (at graduated rates) of $4,800 with respect to the two interests. If it is assumed that such inheritance tax is required to be paid by the wife, the amount thereof to be ascribed to the devise is—

$$\frac{90,000}{120,000} \times \$4,800 = \$3,600.$$

Accordingly, if no other death taxes affect the net value of the bequest, such value, for the purpose of the marital deduction, is $100,000 less $3,600, or $96,400.

If the decedent bequeaths his residuary estate, or a portion thereof, to his surviving spouse, and his will contains a direction that all death taxes shall be payable out of such residuary estate, the value of the bequest, for the purpose of the marital deduction, is based upon the amount of the residue as reduced pursuant to such direction. If the residuary estate, or a portion thereof, is bequeathed to the surviving spouse, and by the local law the Federal estate tax is payable out of the residuary estate, the value of the bequest, for the purpose of the marital deduction, may not exceed the amount thereof as reduced by the Federal estate tax.

(d) *Remainder interests.* Where the income from property is made payable to another individual for life, or for a term of years, with remainder absolutely to the surviving spouse or to her estate, the marital deduction is based upon the present value of the remainder. The present value of the remainder is to be determined in accordance with the rules stated in § 81.10 (i). For example, if the surviving spouse is to receive $50,000 upon the death of a person aged 31 years, the present value of the remainder is $15,631. (See example in § 81.10 (i) (4).) If the remainder is such that its value is to be determined by a special computation (see § 81.10 (i) 3)), a request for a specific factor accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments may be submitted to the Commissioner who in his discretion may supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present worth made, in accordance with the principles set forth in § 81.10 (i), by one skilled in actuarial computations.

§ 81.47d *Limitation on amount of marital deduction*—(a) *In general.* The allowable marital deduction is limited to the smaller of the following amounts:

(1) The aggregate value of the "deductible interests" which passed from the decedent to his surviving spouse, as determined under §§ 81.47a to 81.47c.

(2) Fifty percent of the value of the "adjusted gross estate", as determined under this section.

Except as provided in paragraph (b) of this section (relating to community property), the "adjusted gross estate" is to be determined by subtracting from the entire value of the gross estate the aggregate amount of the deductions allowed under section 812 (b). (See §§ 81.29 to 81.40.)

Example. The value of a decedent's gross estate is $200,000 and the aggregate amount of the deductions allowed by section 812 (b) is $30,000. (It is assumed for the purpose of this example that the decedent and his spouse never held any property as community property.) The value of the "adjusted gross estate" is, therefore, $200,000 less $30,000, which is $170,000. It is assumed that the aggregate value of the "deductible interests" which passed from the decedent to his surviving spouse is $100,000. The allowable marital deduction is limited to $85,000 (50 per cent of the value of the "adjusted gross estate").

(b) *Special rule in case involving community property.* If the decedent and his surviving spouse at any time held property as "community property", as hereinafter defined, the "adjusted gross estate" referred to in paragraph (a) of this section is to be determined by subtracting from the entire value of the gross estate the sum of the following values and amounts:

(1) The value of any property included in the gross estate which was at the time of the decedent's death held by him and his surviving spouse as "community property", as hereinafter defined.

(2) The value of property (to the extent included in the gross estate) transferred by the decedent during his life, if at the time of such transfer the property was held by him and his surviving spouse as "community property", as hereinafter defined.

(3) The amount (to the extent included in the gross estate) receivable as insurance under policies upon the life of the decedent to the extent purchased with premiums or other consideration paid out of property then held by him and his surviving spouse as "community property", as hereinafter defined.

(4) An amount, A, which bears the same ratio to B (the aggregate amount of the deductions allowed by section 812 (b)) as C (the value of the gross estate, diminished by the aggregate amount subtracted under subparagraphs (1), (2), and (3) of this paragraph) bears to D (the entire value of the gross estate).

Where a policy of insurance upon the life of the decedent was purchased partly with property held by him and his surviving spouse as "community property," as hereinafter defined, and partly with other property, the amount receivable under such policy is considered, for the purpose of subparagraph (3) of this paragraph, to have been purchased with such "community property" in the proportion that the payments made with such "community property" bear to the total amount paid. If only a portion of the proceeds of a policy is included in the gross estate, only such portion of the proceeds, and only the premiums or other consideration paid for such portion, are to be included in the computation stated in the preceding sentence. (See § 81.27.)

In determining the "adjusted gross estate" under this paragraph, property held by the decedent and his surviving spouse as "community property," at the time of the death of the decedent (for the purpose of subparagraph (1) of this paragraph), at the time of the transfer (for the purpose of subparagraph (2) of this paragraph), or at the time of the payment of insurance premiums or other consideration (for the purpose of subparagraph (3) of this paragraph), is considered to include:

(i) Any property held by them at such time as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, except such property in which the surviving spouse had at such time merely an expectant interest.

(ii) Separate property acquired by the decedent as a result of a "conversion" (during the calendar year 1942 or after April 2, 1948) of property held by him and his surviving spouse as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, (except such property in which the surviving spouse had at the time of the "conversion" merely an expectant interest) into their separate property.

(iii) Property acquired by the decedent in exchange (by one exchange or a series of exchanges) for separate property acquired as set forth under subdivision (ii) of this subparagraph.

The surviving spouse is regarded as having merely an expectant interest in property held as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, (*a*) at the time of the decedent's death if the entire value of such property (and not merely one-half thereof) is includible in the decedent's gross estate, or (*b*) at the time of any transfer, payment of insurance premiums or other consideration, or "conversion" if, in case of the death of the decedent at such time, the entire value of the property involved in such transfer, payment, or "conversion" (and not merely one-half thereof) would, without regard to the provisions of section 811 (e) (2), have been so includible.

The characteristics of property which acquired a non-community instead of a community status by reason of an agreement (whether antenuptial or postnuptial) are such that section 812 (e) (2) (C) classifies the property as community property of the decedent and his surviving spouse in the computation of the "adjusted gross estate". In distinguishing property which thus acquired a non-community status from property which acquired such a status solely by operation of the community property law, section 812 (e) (2) (C) refers to the former category of property as "separate property" acquired as a result of a "conversion" of "property held as such community property". As used in section 812 (e) (2) (C), the phrase "property held as such community property" is used to denote the body of property comprehended within the community property system; the expression "separate property" includes any non-community property (whether held in joint tenancy, tenancy by the entirety, tenancy in common, or otherwise); and the term "conversion" includes any transaction or agreement which transforms property from a community status into a non-community status.

The separate property which section 812 (e) (2) (C) classifies as community property is not limited to that which was in existence at the time of the conversion. The following are illustrative of the scope of section 812 (e) (2) (C): A partition of community property between husband and wife, whereby a portion of such property became the separate property of each, is a conversion of such property; a transfer of community property into some other form of coownership, such as a joint tenancy, is a conversion of such property; an agreement (whether made before or after marriage) that future earnings and gains which would otherwise be community property shall be shared by them as separate property effects a conversion of such earnings and gains; a change in the form of ownership of property which causes the future rentals therefrom, which would otherwise have been acquired as community property, to be acquired as separate property effects a conversion of such rentals.

The rules of section 812 (e) (2) (C) are applicable, however, only if the conversion took place during the calendar year 1942 or after April 2, 1948, and only to the extent stated herein.

Where the value of the separate property acquired by the decedent as a result of a conversion did not exceed the value of the separate property thus acquired by the surviving spouse, the entire separate property thus acquired by the decedent is to be considered, for the purposes of this paragraph, as held by him and his surviving spouse as community property. Where the value (at the time of the conversion) of the separate property so acquired by the decedent exceeded the value (at such time) of the separate property so acquired by the spouse, only a part of the separate property so acquired by the decedent (and only the same fractional part of property acquired by him in exchange for such separate property) is to be considered, for the purposes of this paragraph, as held by him and his surviving spouse as community property. The part of such separate property (or property acquired in exchange therefor) which is considered as so held is the same proportion thereof which the value (at the time of the conversion) of the separate property so acquired by the spouse is of the value (at such time) of the separate property so acquired by the decedent.

Example (1). The value of a decedent's gross estate is $300,000, of which $200,000 represents his separate property and $100,000 represents his one-half interest in community property. The decedent's separate property was inherited from his father. The deductions allowed under section 812 (b) total $45,000. In this example, the "adjusted gross estate" is computed as follows:

Value of gross estate		$300,000
Reduction under subparagraph (1)	$100,000	
Reduction under subparagraph (4) (200,000/300,000 of $45,000)	30,000	
Total reduction		130,000
Adjusted gross estate		170,000

In this example the marital deduction will be $85,000 (one-half the value of the "adjusted gross estate") in case the aggregate value of the "deductible interests" which passed from the decedent to his surviving spouse equals or exceeds such amount.

Example (2). The facts are the same as in example (1) except that the decedent's separate property was not inherited from his father, but was acquired under the following transaction: On November 1, 1942, the decedent and his surviving spouse partitioned certain community property then having a value of $224,000. A portion of such property, then having a value of $160,000, was converted into the decedent's separate property, and the remaining portion, then having a value of $64,000, was converted into his spouse's separate property. The portion of the separate property so acquired by the decedent which is considered as held as community property at the time of his death is represented by that proportion of $200,000 (the value, at the time of death, of such separate property) which $64,000 (the value, at the time of the conversion, of the separate property so acquired by his spouse) bears to $160,000 (the value, at the time of the conversion, of the separate property so acquired by the decedent), which proportion equals $80,000. The "adjusted gross estate" is computed as follows:

Value of gross estate		$300,000
Reduction under subparagraph (1) ($100,000 plus $80,000)	$180,000	
Reduction under subparagraph (4) (120,000/300,000 of $45,000)	18,000	
Total reduction		198,000
Adjusted gross estate		102,000

The burden of establishing the extent to which separate property of the decedent was acquired other than as described in subdivisions (ii) and (iii) of this subparagraph rests upon the executor.

§ 81.47e *Proof required.* The executor must submit such proof as is necessary to establish the right of the estate to the marital deduction, including any evidence requested by the Commissioner.

PAR. 18. Section 81.53, as amended by Treasury Decision 5239, is further amended as follows:

(A) By striking out "the three following exceptions" and by inserting in lieu thereof the following: "the four following exceptions".

(B) By inserting at the end thereof the following subparagraph:

§ 81.53 *Deduction of the value of property previously taxed.* * * *

(4) The condition set forth under § 81.41 (a) (6) should be disregarded in determining whether the deduction is available.

PAR. 19. There is inserted immediately preceding § 81.83 the following:

SEC. 365. LIABILITY OF LIFE INSURANCE BENEFICIARIES, ETC. (Revenue Act of 1948; Enacted April 2, 1948)

(a) Section 826 (c) of the Internal Revenue Code (relating to liability of life insurance beneficiaries) is hereby amended by adding at the end thereof the following new sentence: "In the case of such proceeds receivable by the surviving spouse of the decedent for which a deduction is allowed under section 812 (e) (the so-called 'marital deduction'), this subsection shall not apply to such proceeds except as to the amount thereof in excess of the aggregate amount of the

marital deductions allowed under such subsections."

(b) Section 826 (d) of the Internal Revenue Code (relating to liability of recipient of property over which decedent had power of appointment) is hereby amended by adding at the end thereof the following new sentence: "In the case of such property received by the surviving spouse of the decedent for which a deduction is allowed under section 812 (e) (the so-called 'marital deduction'), this subsection shall not apply to such property except as to the value thereof reduced by an amount equal to the excess of the aggregate amount of the marital deductions allowed under section 812 (e) over the amount of proceeds of insurance upon the life of the decedent receivable by the surviving spouse for which proceeds a marital deduction is allowed under such subsection."

(c) The amendments made by this section shall be applicable only with respect to estates of decedents dying after December 31, 1947.

PAR. 20. Section 81.79 (b) is amended by inserting immediately preceding the period at the end of the first sentence of the fourth undesignated paragraph thereof the following: "; (5) the portion of the marital deduction allowed under the provisions of section 812 (e) on account of bequests, etc., of such interests to the decedent's surviving spouse".

(53 Stat. 467; 26 U. S. C. 3791. Interprets or applies Pub. Laws 471, 869, 80th Cong.)

[SEAL] FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved: May 13, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

[F. R. Doc. 49-3993; Filed, May 18, 1949; 8:50 a. m.]

[T. D. 5698]

PART 86—GIFT TAX UNDER CHAPTER 4 OF THE INTERNAL REVENUE CODE, AS AMENDED

MISCELLANEOUS AMENDMENTS

On November 6, 1948, notice of proposed rule-making, regarding the gift tax provisions of the Revenue Act of 1948, enacted April 2, 1948, was published in the FEDERAL REGISTER (13 F. R. 6576). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the amendments to Regulations 108 (26 CFR, Part 86) set forth below are hereby adopted. Such amendments are necessary in order to conform such regulations to the Revenue Act of 1948.

PARAGRAPH 1. There is inserted immediately preceding § 86.1 the following:

SEC. 371. GIFTS OF COMMUNITY PROPERTY. (Revenue Act of 1948; enacted April 2, 1948.)

Section 1000 (d) of the Internal Revenue Code (relating to gifts of property held as community property) is amended by adding at the end thereof a new sentence to read as follows: "This subsection shall be applicable only to gifts made after the calendar year 1942 and on or before the date of the enactment of the Revenue Act of 1948."

SEC. 374. GIFT OF HUSBAND OR WIFE TO THIRD PARTY. (Revenue Act of 1948; enacted April 2, 1948.)

Section 1000 of the Internal Revenue Code (relating to imposition of gift tax) is hereby amended by adding at the end thereof a new subsection to read as follows:

(f) *Gift of husband or wife to third party*—(1) *Considered as made one-half by each*—(A) *In general.* A gift made after the date of the enactment of the Revenue Act of 1948 by one spouse to any person other than his spouse shall, for the purposes of this chapter, be considered as made one-half by him and one-half by his spouse, but only if at the time of the gift each spouse is a citizen or resident of the United States. This subparagraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a power of appointment, as defined in subsection (c) of this section, over such interest. For the purposes of this subsection an individual shall be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

(B) *Consent of both spouses.* Subparagraph (A) shall be applicable only if both spouses have signified (in accordance with the regulations provided for in paragraph (2)) their consent to the application of subparagraph (A) in the case of all such gifts made during the calendar year by either while married to the other.

(2) *Manner and time of signifying consent*—(A) *Manner.* A consent under this subsection shall be signified in such manner as is provided under regulations prescribed by the Commissioner with the approval of the Secretary.

(B) *Time.* Such consent may be so signified at any time after the close of the calendar year in which the gift was made, subject to the following limitations:

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

(ii) The consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 1012 (a).

(3) *Revocation of consent.* Revocation of a consent previously signified shall be made in such manner as is provided under regulations prescribed by the Commissioner with the approval of the Secretary, but the right to revoke a consent previously signified with respect to a calendar year:

(A) Shall not exist after the 15th day of March following the close of such year if the consent was signified on or before such 15th day; and

(B) Shall not exist if the consent was not signified until after such 15th day.

(4) *Joint and several liability for tax.* If the consent required by paragraph (1) (B) is signified with respect to a gift made in any calendar year the liability with respect to the entire tax imposed by this chapter of each spouse for such year shall be joint and several.

PAR. 2. Section 86.2 (a) is amended as follows:

(A) By inserting immediately after the seventh sentence (in parentheses), the following: "Where a joint income tax return is filed under chapter 1 by 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 which is subject to gift tax. The same rule is applicable to the payment of gift tax for a calendar year in the case of husband and wife who have consented to the application of section 1000 (f) for such year."

(B) By inserting at the end thereof the following:

(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 such death of one-half the amount of the proceeds of such insurance. (For special provisions with respect to transfers of community property after 1942 and on or before April 2, 1948, see paragraph (c) of this section.)

PAR. 3. Section 86.2 (c) is amended as follows:

(A) By inserting in the heading immediately following *"1942"* and preceding the period the following: *"and on or before April 2, 1948"*.

(B) By striking from the first sentence "During the calendar year 1943 and any calendar year thereafter any gift" and by inserting in lieu thereof the following: "Any gift after December 31, 1942, and on or before April 2, 1948,".

(C) By striking from the last sentence of the second undesignated paragraph "on or after January 1, 1943" and by inserting in lieu thereof the following: "after December 31, 1942, and on or before April 2, 1948".

PAR. 4. There is inserted immediately following § 86.3 the following:

§ 86.3a *Gift of husband or wife to third party after April 2, 1948*—(a) *In general.* Section 1000 (f), as added by section 374 of the Revenue Act of 1948, makes provision whereby a gift made after April 2, 1948, by one spouse to a person other than his spouse may, for the purpose of the gift tax, be considered as made one-half by him and 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 the purposes of section 1000 (f) an individual is to be considered as the spouse of another individual only if he is married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

The provisions of section 1000 (f) will apply only if both spouses consent. As to the manner and time of signifying such consent, see paragraph (b) of this section. Such consent, if signified with respect to any calendar year, is effective with respect to all gifts made to third parties during such year, except as follows:

(1) If the consenting spouses were not married to each other during a portion of the calendar year, the consent is not effective with respect to any gift made during such portion of the calendar year.

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

(3) The consent is not effective with respect to a gift by one spouse of a property interest if he created in his spouse a power of appointment (as defined in sec-

tion 1000 (c)) over such property interest.

(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. Section 86.19 (f) indicates the principles to be applied in the valuation of annuities, life estates, terms for years, remainders and reversions.

(5) A consent signified for the calendar year 1948 is not effective with respect to gifts made on or before April 2, 1948.

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 foregoing exceptions. The consent may not be applied only to a portion of the property interests constituting such gifts.

If consent to the application of the provisions of section 1000 (f) is signified as provided in paragraph (b) of this section for any calendar year and not revoked as provided in paragraph (c) of this section, the liability with respect to the entire gift tax of each spouse for such calendar year shall be joint and several.

(b) *Manner and time of signifying consent.* Consent to the application of the provisions of section 1000 (f) with respect to a calendar year shall, in order to be effective, be signified by both spouses. If both spouses file gift tax returns, Form 709, within the time for signifying consent it is sufficient if (1) the consent of both spouses is signified on one of such returns or (2) the consent of one spouse is signified on one such return and the consent of the other spouse is signified on the other return. 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 such return. However, wherever possible notice of the consent is to be shown on both returns. The consent may be revoked only as provided in paragraph (c) of this section. (As to whether one or both spouses are required to file returns, see § 86.20.) Where one spouse files more than one Form 709 for a calendar year on or before the 15th day of March following the close of such year, the last Form 709 so filed will, for the purpose of determining whether a consent has been signified, be considered as the return.

The consent may be so signified at any time after the close of the calendar year, subject to the following limitations:

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

(2) The consent may not be signified after a notice of deficiency with respect to the tax for such year has been sent to either spouse in accordance with section 1012 (a).

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 such consent.

As to the preparation of the return in case consent is signified, see § 86.23.

(c) *Revocation of consent.* If the consent to the application of the provisions of section 1000 (f) with respect to a calendar year was effectively signified on or before the 15th day of March following the close of such year, either spouse may revoke such consent by filing in duplicate with the collector of internal revenue a signed statement of revocation; but the right to revoke shall not exist after such 15th day. A consent which was not effectively signified until after the 15th day of March following the close of the calendar year to which it applies may not be revoked.

PAR. 5. Section 86.7 is amended by inserting immediately after the sixth sentence thereof the following: "Where a consent under section 1000 (f) was effectively signified with respect to any preceding calendar year, the aggregate sum of the net gifts for such preceding calendar year is to be determined pursuant to the provisions of such section."

PAR. 6. Section 86.9 is amended by changing the last sentence thereof to read as follows: "(See §§ 86.12 to 86.16d.)"

PAR. 7. There is inserted immediately preceding § 86.12 the following:

SEC. 372. MARITAL DEDUCTION. (Revenue Act of 1948; enacted April 2, 1948.)

Section 1004 (a) of the Internal Revenue Code (relating to deductions in computing net gifts in the case of a citizen or resident of the United States) is hereby amended by adding at the end thereof a new paragraph to read as follows:

(3) *Gift to spouse*—(A) *In general.* Where the donor transfers during the calendar year (and after the date of the enactment of the Revenue Act of 1948) by gift an interest in property to a donee who at the time of the gift is the donor's spouse—an amount with respect to such interest equal to one-half of its value.

(B) *Life estate or other terminable interest.* Where, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, such interest transferred to the spouse will terminate or fail, no deduction shall be allowed with respect to such interest:

(i) If the donor retains in himself, or transfers or has transferred (for less than an adequate and full consideration in money or money's worth) to any person other than such donee spouse (or the estate of such spouse), an interest in such property, and if by reason of such retention or transfer the donor (or his heirs or assigns) or such person (or his heirs or assigns) may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse; or

(ii) If the donor immediately after the transfer to the donee spouse has a power to appoint an interest in such property which he can exercise (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after such termination or failure of the interest transferred to the donee spouse. For the purposes of this clause the donor shall be considered as having immediately after the transfer to the donee spouse such power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for the purposes of clause (i) of this subparagraph, be considered as a transfer by him. Except as provided in subparagraph (E), where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive from the donor an interest in property so transferred by him, such interest shall, for the purposes of clause (i) of this subparagraph, be considered as transferred to a person other than the donee spouse.

(C) Where the assets out of which, or the proceeds of which, the interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for the purposes of subparagraph (A), be reduced by the aggregate value of such particular assets.

(D) *Joint interests.* If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for the purposes of subparagraph (B) as an interest retained by the donor in himself.

(E) *Trust with power of appointment in donee spouse.* Where the donor transfers in trust an interest in property, if under the terms of the trust his spouse is entitled for life to all the income from the corpus of the trust, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire corpus free of the trust (exercisable in favor of such donee spouse, or of the estate of such donee spouse, or in favor of either, whether or not in each case the power is exercisable in favor of others), and with no power in any other person to appoint any part of the corpus to any person other than the donee spouse:

(i) The interest so transferred in trust shall, for the purposes of subparagraph (A), be considered as transferred to the donee spouse, and

(ii) No part of the interest so transferred in trust shall, for the purposes of subparagraph (B) (i), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subparagraph shall be applicable only if, under the terms of the trust, such power in the donee spouse to appoint the corpus, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

(F) *Community property.* (i) A deduction otherwise allowable under this paragraph shall be allowed only to the extent that the transfer can be shown to represent a gift of property which is not, at the time of the gift, held as community property under the law of any State, Territory, or possession of the United States, or of any foreign country.

(ii) For the purposes of clause (i), community property (except property which is considered as community property solely by reason of the provisions of clause (iii)) shall not be considered as "held as community property" if the entire value of such property (and not merely one-half thereof) is treated as the amount of the gift.

(iii) If during the calendar year 1942 or after the date of the enactment of the Revenue Act of 1948, property held as such community property (unless considered by reason of clause (ii) as not so held) was by the

donor and the donee spouse converted, by one transaction or a series of transactions, into separate property of the donor and such spouse (including any form of co-ownership by them), the separate property so acquired by the donor and any property acquired at any time by the donor in exchange therefor (by one exchange or a series of exchanges) shall, for the purposes of clause (i), be considered as "held as community property".

(iv) Where the value (at the time of such conversion) of the separate property so acquired by the donor exceeded the value (at such time) of the separate property so acquired by such spouse, the rule in clause (iii) shall be applied only with respect to the same portion of such separate property of the donor as the portion which the value (as of such time) of such separate property so acquired by such spouse is of the value (as of such time) of the separate property so acquired by the donor.

SEC. 373. TECHNICAL AMENDMENT. (Revenue Act of 1948; enacted April 2, 1948.)

Section 1004 (c) of the Internal Revenue Code is hereby amended to read as follows:

(c) *Extent of deductions.* The deductions provided in subsection (a) (2) or (3) or in subsection (b) shall be allowed only to the extent that the gifts therein specified are included in the amount of gifts against which such deductions are applied.

PAR. 8. There is inserted immediately following § 86.16 the following:

§ 86.16a *Gifts to spouse after April 2, 1948*—(a) *Allowance of marital deduction.* In determining the amount of net gifts for the calendar year 1949 or for any calendar year thereafter, in the case of a donor who was a citizen or resident of the United States at the time the gift was made, there may be deducted an amount equal to one-half the value of any property interest (except as otherwise provided herein or in §§ 86.16b and 86.16c) transferred by gift to a donee who at the time of the gift was the donor's spouse. Such deduction is also authorized for the calendar year 1948, except with respect to gifts made on or before April 2, 1948. Such deduction is hereinafter referred to as the "marital deduction".

No marital deduction is authorized with respect to a gift in case the donor was, at the time of the gift, a nonresident not a citizen of the United States. However, if the donor was, at the time of the gift, a citizen or resident, he is not deprived of the right to the marital deduction by reason of the fact that his spouse was a nonresident not a citizen.

For convenience the donor's spouse is generally referred to in the feminine gender, but if the donor is a woman the reference is to her husband.

(b) *Trust with power of appointment in donee spouse.* In the case of property interests transferred by the donor in trust, if the terms of the trust satisfy the five conditions stated in the next sentence, the donor's spouse is (for the purpose of determining the marital deduction) considered as the donee, not only of her beneficial interest therein, but also of the interest therein subject to her power to appoint. The five conditions which must be satisfied by the terms of the trust are as follows:

(1) The donee spouse must be entitled for life to all the income from the corpus of the trust.

(2) Such income must be payable annually or at more frequent intervals.

(3) The donee spouse must have the power, exercisable in favor of herself or of her estate, to appoint the entire corpus free of the trust.

(4) Such power in the donee spouse must be exercisable by such spouse alone and (whether exercisable by will or during life) must be exercisable in all events.

(5) The corpus of the trust must not be subject to a power in any other person to appoint any part thereof to any person other than the donee spouse.

In determining whether the above-stated conditions (1) to (5), inclusive, are satisfied by the terms of the trust, regard is to be had to the applicable provisions of the law of the jurisdiction governing the administration of the trust. For example, silence of the trust as to the frequency of payment will not be regarded as a failure to satisfy condition (2) in case the applicable law requires payment to be made annually or more frequently.

The donor's spouse is "entitled for life to all the income from the corpus of the trust", within the meaning of section 1004 (a) (3) (E), if the effect of the trust is to give her substantially that degree of beneficial enjoyment of the trust property during her life which the principles of the law of trusts accord to a person who is unqualifiedly designated as the life beneficiary of a trust. Such degree of enjoyment is given only if it was the donor's intention, as manifested by the terms of the trust instrument and the surrounding circumstances, that the trust should produce for the spouse during her life such an income, or that the spouse should have such use of the trust property, as is consistent with the value of the trust corpus and with its preservation. The designation of the spouse as sole income beneficiary for life will be sufficient to qualify the trust unless the terms of the trust considered as a whole evidence an intention to deprive the spouse of the requisite degree of enjoyment. In determining whether a trust evidences such intention the treatment required or permitted with respect to individual items must be considered in relation to the entire system provided for the administration of the trust.

If the over-all effect of the trust is to give to the donor's spouse such enforceable rights as will preserve to her the requisite degree of enjoyment, it is immaterial whether such result is effected by rules specifically stated in the trust instrument, or, in their absence, by the rules for the management of the trust property and the allocation of receipts and expenditures supplied by the State law. For example, where the State law does not provide for amortization of bond premium, a provision in the trust instrument for such amortization by appropriate periodic charges to interest will not disqualify the trust.

The rules to be applied by the trustee in allocation of receipts and expenses between income and corpus must be considered in relation to the nature and expected productivity of the assets transferred in trust, the nature and frequency of occurrence of the expected receipts, and any provisions as to change in the form of investments. Where it is evident from the nature of the trust assets and the rules provided for management of the trust that the allocation to income of such receipts as rents, ordinary cash dividends and interest will give to the spouse the substantial enjoyment during life required by the statute, provisions that such receipts as stock dividends and proceeds from the conversion of trust assets shall be treated as corpus will not disqualify the trust. Similarly, provision for a depletion charge against income in the case of trust assets which are subject to depletion will not disqualify the trust, unless the effect is to deprive the spouse of the requisite beneficial enjoyment. The same principle is applicable in the case of depreciation, trustees' commissions, and other charges.

Provisions granting administrative powers to the trustee will not have the effect of disqualifying the trust unless the grant of such powers evidences the intention to deprive the spouse of the beneficial enjoyment required by the statute. Such intention will not be considered to exist if the entire terms of the instrument are such that the local courts will impose reasonable limitations upon the exercise of such powers. Among the powers which if subject to such limitations will not disqualify the trust are the power to allocate receipts between income and corpus, the power to determine the charges which shall be made against income and corpus, the power to apply the income for the benefit of the spouse, and the power to retain the assets transferred in trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify if the applicable rules for the administration of the trust require the trustee to either make the property productive or convert it within a reasonable time. Nor will such a power disqualify if such applicable rules require the trustee to use the degree of judgment and care in the exercise of the power which a prudent man would use if he were owner of the trust assets. A power to retain a residence for the spouse or other property for her personal use will not disqualify the trust.

A trust will not qualify if its primary purpose is to safeguard property without providing the spouse with the required beneficial enjoyment. Such trusts include not only trusts which expressly provide for the accumulation of the income but also trusts which indirectly accomplish a similar purpose. For example, assume that the corpus of a trust consists substantially of property which is not likely to be income producing during the life of the spouse and that such spouse cannot compel the trustee to convert or otherwise deal with the property as described above. Such a trust will not qualify unless the trustee is directed to provide the required beneficial enjoyment, such as by payments to the spouse out of other assets of the trust.

If the donee spouse is entitled to only a portion of the trust income, or has power to appoint only a portion of the corpus, the trust fails to satisfy conditions (1) and (3), respectively. However, such conditions may be satisfied by

one or more of several separate trusts created by the donor. An undivided interest in property may constitute the corpus of a trust, and a single trust instrument may create more than one trust.

A trust fails to satisfy condition (1) if the income is required to be accumulated in whole or in part, or may be accumulated in the discretion of any person other than the donee spouse, if the consent of any person other than the donee spouse is required as a condition precedent to distribution of the income, if any person other than the donee spouse has the power to alter the terms of the trust so as to deprive such spouse of her right to the income, or if any person other than the donee spouse is entitled to any part of the income during the life of such spouse. A trust will not fail to satisfy condition (1) merely because its terms provide that the right of the spouse to the income shall not be subject to assignment, alienation, pledge, attachment or claims of creditors.

The terms "entitled for life" and "payable annually or more frequently", as used in conditions (1) and (2), require that under the terms of the trust the income referred to must be currently (at least annually) distributable to the spouse or that she must have such command over the income that it is virtually hers. Thus, conditions (1) and (2) are satisfied in this respect if, under the terms of the trust instrument, the spouse has the right exercisable annually (or more frequently) to require distribution to herself of the trust income, and otherwise the trust income is to be accumulated and added to corpus. Similarly, as respects the income for the period between the last distribution date and the date of the spouse's death, it is sufficient if such income is subject to the spouse's power to appoint. In the case of a trust which may be terminated during the life of the donee spouse, under her exercise of a power of appointment or by distribution of the corpus to her, the trust satisfies condition (1) if such spouse is entitled to the income until the trust terminates.

In order to satisfy conditions (3) and (4), the power of the donor's spouse to appoint the entire corpus free of the trust must fall within one of the following categories:

(i) A power so to appoint fully exercisable in her own favor at any time during life (as for example, an unlimited power to invade).

(ii) A power so to appoint exercisable in favor of her estate. Such power, if exercisable during life, must be fully exercisable at any time during life, or if exercisable by will, must be fully exercisable irrespective of the time of her death.

(iii) A combination of the powers described under (i) and (ii). For example, the donor's spouse may until she attains the age of 50 years have a power to appoint to herself and thereafter have a power to appoint to her estate. However, condition (4) is not satisfied unless irrespective of when the spouse may die the trust corpus will at the time of her death be subject to one or the other such power.

The power in the donee spouse must be a power to appoint the corpus to herself as unqualified owner or to appoint the corpus as a part of her estate, that is, in effect, to dispose of it to whomsoever she pleases. Thus, if the donee spouse entered into a binding agreement with the donor to exercise the power only in favor of their issue, condition (3) is not met. The trust will not be regarded as failing to satisfy condition (3) merely because takers in default of the donee spouse's exercise of the power are designated by the donor. The donor may provide that, in default of exercise of the power, the trust shall continue for an additional period.

In order for condition (4) to be satisfied, the power in the donee spouse to appoint the corpus to herself or to her estate must be exercisable without the joinder or consent of any other person. The power is not "exercisable in all events", as required by section 1004 (a) (3) (E), if it can be terminated during the life of the donee spouse by any event other than her complete exercise or release thereof. For example, a power which is not exercisable in the event of the spouse's remarriage is not exercisable in all events. If the power in the donee spouse is in existence at all times following creation of the trust, limitations of a formal nature will not disqualify. Examples of formal limitations on a power exercisable during life are requirements that exercise must be in a particular form, that it must be filed with the trustee, that reasonable notice must be given or that reasonable intervals must elapse between successive partial exercises. Examples of formal limitations on a power exercisable by will are that it must be exercised by a will executed by the donee spouse after the creation of the trust by the donor or that exercise must be by specific reference to the power.

The trust will fail to satisfy condition (5) if the donor created a power in the trustee, or in another person, to invade the corpus of the trust for the benefit of any person other than the donee spouse. However, only powers in other persons which are in opposition to that of the donee spouse will cause the trust to fail to satisfy condition (5). For example, assume that a donor created a trust, designating his donee spouse as income beneficiary for life and as donee of a power to appoint the corpus. The donor further provided that in the event the donee spouse should die without having exercised the power, the trust should continue for the life of his son with power in such son to appoint the corpus. Since the power in the son could become exercisable only after the death of the donee spouse, the trust is not regarded as failing to satisfy condition (5).

(c) *Remainder interests.* Where the income from property is made payable to the donor or another individual for life, or for a term of years, with remainder absolutely to the donor's spouse or to her estate, the marital deduction is equal to one-half the present value of the remainder. It should be noted, however, that where such remainder is distributable to the estate of the donor's spouse (or to her executors or administrators) in the event of her death prior to the termination of a trust or of a precedent interest, the marital deduction is allowable only if under such circumstances the remainder interest would be includible in her gross estate under section 811 (a). The present value of the remainder (that is, its value as of the date of the gift) is to be determined in accordance with the rules stated in § 86.19 (f). For example, if the donor's spouse is to receive $50,000 upon the death of a person aged 31 years, the present value of the remainder is $15,631. (See example in § 86.19 (f) (6).) If the remainder is such that its value is to be determined by a special computation (see § 86.19 (f) (4)), a request for a specific factor accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments may be submitted to the Commissioner who in his discretion may supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present worth made, in accordance with the principles set forth in § 86.19 (f), by one skilled in actuarial computations.

(d) *Limitation on deduction.* Under the provisions of section 1004 (c), as amended by section 373 of the Revenue Act of 1948, the marital deduction is allowable only to the extent that the gifts with respect to which such deduction is authorized are included in the "total amount of gifts made during the calendar year" computed as provided in section 1003. (See § 86.10.) The limitation under section 1004 (c) is effective where less than one-half of the gifts with respect to which the deduction is authorized is included in such "total amount of gifts".

Example. The only gifts made by a donor to his spouse during the calendar year 1948 were a gift of $3,000 in May and a gift of $2,000 in August. The first $3,000 of such gifts is excluded under the provisions of section 1003 in determining the "total amount of gifts made during the calendar year". The marital deduction of $2,500 (one-half of $3,000 plus one-half of $2,000) otherwise allowable is limited by section 1004 (c) to $2,000.

§ 86.16b *Gift of life estate or other terminable interest*—(a) *In general.* The provisions of section 1004 (a) (3) (B) generally prevent the allowance of the marital deduction with respect to certain property interests (referred to generally as "terminable interests") transferred to the donee spouse, in case the transfer was upon the terms described in paragraphs (b), (c), or (d) of this section. In general, the provisions of section 1004 (a) (3) (B) are applicable in case the donor transferred an interest in property to the donee spouse and also (1) transferred an interest in the same property to another donee, or (2) retained an interest in the same property in himself, or (3) retained a power to appoint an interest in the same property. Under such circumstances, if the other donee, the donor, or the possible appointee, may, by reason of such transfer or retention, possess or en-

joy any part of the property after the termination or failure of the interest therein transferred to the donee spouse, no marital deduction may be taken with respect to such transfer to the donee spouse.

For the purposes of this section, a distinction is to be drawn between "property", as such term is used in section 1004 (a) (3), and an "interest in property". The "property" referred to is the underlying property in which various interests exist; each such interest is not, for this purpose, to be considered as "property".

The expression "terminable interest" refers to a life estate, an estate for years, or any other property interest which, upon the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur, will terminate or fail.

(b) *Interest in property which another donee may possess or enjoy.* Section 1004 (a) (3) (B) provides that no marital deduction shall be allowed with respect to the transfer to the donee spouse of a "terminable interest" in property, in case:

(1) The donor transferred (for less than an adequate and full consideration in money or money's worth) an interest in the same property to any person other than the donee spouse (or the estate of such spouse), and

(2) By reason of such transfer, such person (or his heirs or assigns) may possess or enjoy any part of such property after the termination or failure of the interest therein transferred to the donee spouse.

The above-stated provision is applicable whether the transfer to the person other than the donee spouse was made at the same time as the transfer to such spouse, or at any earlier time.

Except as provided in paragraph (b) of § 86.16a, where at the time of the transfer it is impossible to ascertain the particular person or persons who may receive a property interest transferred by the donor, such interest shall, for the purpose of section 1004 (a) (3) (B), be considered as transferred to a person other than the donee spouse. This rule is particularly applicable in the case of the transfer of a property interest by the donor subject to a reserved power. (See § 86.3.) Under this rule, any property interest over which the donor reserved a power to revest the beneficial title in himself, or over which the donor reserved the power to name new beneficiaries or to change the interests of the beneficiaries as between themselves, is, for the purpose of section 1004 (a) (3) (B), considered as transferred to a "person other than the donee spouse". Thus, if a donor transferred property in trust, naming his wife as income beneficiary for 10 years, and providing that, upon the expiration of such term, the corpus should be distributed among his wife and children in such proportions as he should determine, the right to the corpus is, for the purpose of the marital deduction, considered as transferred to a "person other than the donee spouse". Or, if the donor had provided that, upon the expiration of the 10-year term, the corpus was to be paid to his wife, but had reserved the power to revest such corpus in himself instead, the right to the corpus is, for the purpose of the marital deduction, considered as transferred to a "person other than the donee spouse".

Under the above-stated rule, the term "person other than the donee spouse" includes the possible unascertained takers of a property interest, as, for example, the members of a class to be ascertained in the future. As another example, assume that the donor created a power of appointment over a property interest, which does not come within the purview of paragraph (b) of § 86.16a. In such a case, the term "person other than the donee spouse" refers to the possible appointees and possible takers in default (other than the spouse) of such property interest.

An exercise or release at any time by the donor (either alone or in conjunction with any person) of a power to appoint an interest in property, even though not otherwise a transfer by him, shall, in determining for the purpose of section 1004 (a) (3) (B) whether he transferred an interest in such property to a person other than the donee spouse, be considered as a transfer by him.

In the following examples it is assumed that the property interest which the donor transferred to a person other than the donee spouse was not for an adequate and full consideration in money or money's worth:

(i) H (the donor) transferred real property to W (his wife) for life, with remainder to A and his heirs. No marital deduction may be taken with respect to the interest transferred to W, since it will terminate upon her death and A (or his heirs or assigns) will thereafter possess or enjoy the property.

(ii) H transferred real property to W for life, and created in W a power, exercisable by will, to appoint the remainder interest to any person. In default of appointment by W, the remainder interest was to go to A and his heirs. Assuming that under the local law W did not take the real property as absolute owner, nor as trustee of a trust meeting the requirements of § 86.16a (b), no marital deduction may be taken with respect to the interest which passed from H to W, since such interest will terminate upon her death and A (or his heirs or assigns) may thereafter possess or enjoy the property. (As to cases in which a marital deduction may be taken where a life interest is coupled with a power to appoint under a trust, see paragraph (b) of § 86.16a.)

(iii) H transferred property in trust for the benefit of W and A. The trust income was payable to W for life, and upon her death the corpus was to be distributed to A or his issue. However, if A should die without issue, leaving W surviving, the corpus was then to be distributed to W. No marital deduction may be taken with respect to the interest transferred to W, since it will terminate in the event of her death if A or his issue survive, and A or his issue will thereafter possess or enjoy the property.

(iv) H purchased for $100,000 a life annuity for W. If the annuity payments made during the life of W should be less than $100,000, further payments were to be made to A. No marital deduction may be taken with respect to the interest transferred to W, since A may possess or enjoy a part of the property following the termination of such interest. If, however, the contract provided for no continuation of payments, and provided for no refund upon the death of W or provided that any refund was to go to the estate of W, then a marital deduction may be taken with respect to the gift.

(v) H transferred property to W and A as joint tenants with right of survivorship. No marital deduction may be taken with respect to the interest transferred to W, since, if the tenancy is not severed and A survives W, the interest of W will terminate and A will continue to possess or enjoy the property.

(vi) H transferred property to A for life with remainder to W provided W survives A, but if W predeceases A, the property is to pass to B and his heirs. No marital deduction may be taken with respect to the interest transferred to W.

(vii) H transferred real property to A, reserving the right to the rentals of the property for a term of 20 years. H later transferred the right to the remaining rentals to a trust. The terms of the trust satisfy the five conditions stated in paragraph (b) of § 86.16a, so that the interest transferred in trust is considered as transferred solely to W. No marital deduction may be taken with respect to such interest, since it will terminate upon the expiration of the balance of the 20-year term and A will thereafter possess or enjoy the property.

(viii) H transferred a patent to W and A as tenants in common. In this case, the interest of W will terminate upon the expiration of the term of the patent, but possession and enjoyment of the property by A must necessarily cease at the same time. Therefore, since A's possession or enjoyment cannot outlast the termination of W's interest, the provisions of section 1004 (a) (3) (B) do not disallow the marital deduction with respect to such interest.

(c) *Interest in property which the donor may possess or enjoy.* Section 1004 (a) (3) (B) also provides that no marital deduction shall be allowed with respect to the transfer to the donee spouse of a "terminable interest" in property, in case:

(1) The donor retained in himself an interest in the same property, and

(2) By reason of such retention, the donor (or his heirs or assigns) may possess or enjoy any part of such property after the termination or failure of the interest therein transferred to the donee spouse.

However, section 1004 (a) (3) (D) provides that if a property interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, is not for the purposes of section 1004 (a) (3) (B), to be considered as an interest retained by the donor in himself. Under this provision, the fact

that the donor may, as surviving tenant, possess or enjoy the property after the termination of the interest therein transferred to the donee spouse does not preclude the allowance of the marital deduction with respect to the latter interest.

In general, the principles illustrated by the examples under paragraph (b) of this section are applicable in determining whether the marital deduction may be taken with respect to a property interest transferred to the donee spouse subject to the retention by the donor of an interest in the same property.

Example. The donor purchased three annuity contracts for the benefit of his wife and himself. The first contract provided for payments to the wife for life, with refund to the donor in case the aggregate payments made to the wife were less than the cost of the contract. The second contract provided for payments to the donor for life, and then to the wife for life if she survived the donor. The third contract provided for payments to the donor and his wife for their joint lives, and then to the survivor of them for life. No marital deduction may be taken with respect to the gifts consummated by the purchases of the contracts since, in the case of each contract, the donor may possess or enjoy a part of the property after the termination or failure of the interest therein transferred to the wife.

(d) *Interest in property over which the donor retained a power to appoint.* Section 1004 (a) (3) (B) also provides that no marital deduction shall be allowed with respect to the transfer to the donee spouse of a "terminable interest" in property, in case:

(1) The donor had, immediately after such transfer, a power to appoint an interest in the same property, and

(2) Such power was exercisable (either alone or in conjunction with any person) in such manner that the appointee may possess or enjoy any part of such property after the termination or failure of the interest therein transferred to the donee spouse.

For the purposes of section 1004 (a) (3) (B), the donor is to be considered as having, immediately after the transfer to the donee spouse, such a power to appoint even though such power cannot be exercised until after the lapse of time, upon the occurrence of an event or contingency, or upon the failure of an event or contingency to occur. It is immaterial whether the power retained by the donor was a taxable power of appointment under section 1000 (c).

In general, the principles illustrated by the examples under paragraph (b) of this section are applicable in determining whether the marital deduction may be taken with respect to a property interest transferred to the donee spouse subject to retention by the donor of a power to appoint an interest in the same property.

Example. The donor, having a power of appointment over certain property, appointed a life estate therein to his spouse. No marital deduction may be taken with respect to such transfer, since, if the retained power is exercised, the appointee thereunder may possess or enjoy the property after the termination or failure of the interest taken by the donee spouse.

(e) *Interest payable out of a group of assets.* Section 1004 (a) (3) (C) provides that where the assets out of which, or the proceeds of which, an interest transferred to the donee spouse may be satisfied include a particular asset or assets with respect to which no deduction would be allowed if such asset or assets were transferred from the donor to such spouse, then the value of the interest transferred to such spouse shall, for the purpose of the marital deduction, be reduced by the aggregate value of such particular assets.

In order for the foregoing provision to apply, two circumstances must coexist, as follows:

(1) The property interest transferred to the donee spouse must be payable out of a group of assets. An example of a property interest payable out of a group of assets is a right to a share of the corpus of a trust upon its termination.

(2) The group of assets out of which the property interest is payable must include one or more particular assets which, if transferred by the donor to the donee spouse, would not qualify for the marital deduction.

If the above circumstances are both present, the marital deduction with respect to such property interest may not exceed one-half of the excess, if any, of its value over the aggregate value of the particular asset or assets which, if transferred to the donee spouse, would not qualify for the marital deduction.

§ 86.16c *Gift of community property*—(a) *General.* The marital deduction is allowable with respect to any transfer by a donor to his spouse only to the extent that such transfer can be shown to represent a gift of property which was not, at the time of the gift, held as "community property", as defined in paragraph (b) of this section. The burden of establishing the extent to which a transfer represents a gift of property not so held rests upon the donor.

(b) *Definition of "community property".* For the purpose of paragraph (a) of this section, the term "community property" is considered to include:

(1) Any property held by the donor and his spouse as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, except such property in which the donee spouse had at the time of the gift merely an expectant interest. The donee spouse is regarded as having, at any particular time, merely an expectant interest in property held at such time by the donor and herself as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, if, in case such property were transferred by gift into the separate property of the donee spouse, the entire value of such property (and not merely one-half thereof) would be treated as the amount of the gift.

(2) Separate property acquired by the donor as a result of a "conversion" (during the calendar year 1942 or after April 2, 1948) of property held by him and the donee spouse as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, (except such property in which the donee spouse had at the time of the "conversion" merely an expectant interest) into their separate property.

(3) Property acquired by the donor in exchange (by one exchange or a series of exchanges) for separate property resulting from such a "conversion".

The characteristics of property which acquired a non-community instead of a community status by reason of an agreement (whether antenuptial or postnuptial) are such that section 1004 (a) (3) (F) classifies the property as community property of the donor and his spouse in the computation of the marital deduction. In distinguishing property which thus acquired a non-community status from property which acquired such a status solely by operation of the community property law, section 1004 (a) (3) (F) refers to the former category of property as "separate property" acquired as a result of a "conversion" of "property held as such community property". As used in section 1004 (a) (3) (F), the phrase "property held as such community property" is used to denote the body of property comprehended within the community property system; the expression "separate property" includes any non-community property (whether held in joint tenancy, tenancy by the entirety, tenancy in common, or otherwise); and the term "conversion" includes any transaction or agreement which transforms property from a community status into a non-community status.

The separate property which section 1004 (a) (3) (F) classifies as community property is not limited to that which was in existence at the time of the conversion. The following are illustrative of the scope of section 1004 (a) (3) (F): A partition of community property between husband and wife, whereby a portion of such property became the separate property of each, is a conversion of such property; a a transfer of community property into some other form of coownership, such as a joint tenancy, is a conversion of such property; an agreement (whether made before or after marriage) that future earnings and gains which would otherwise be community property shall be shared by them as separate property effects a conversion of such earnings and gains; a change in the form of ownership of property which causes the future rentals therefrom, which would otherwise have been acquired as community property, to be acquired as separate property effects a conversion of such rentals.

The rules of section 1004 (a) (3) (F) are applicable, however, only if the conversion took place during the calendar year 1942 or after April 2, 1948, and only to the extent stated herein.

Where the value of the separate property acquired by the donor as a result of a conversion did not exceed the value of the separate property thus acquired by the donee spouse, the entire separate property thus acquired by the donor is to be considered, for the purposes of this section, as held by him and the donee spouse as community property. Where the value (at the time of the conversion)

of the separate property so acquired by the donor exceeded the value (at such time) of the separate property so acquired by the donee spouse, only a part of the separate property so acquired by the donor (and only the same fractional part of property acquired by him in exchange for such separate property) is to be considered, for the purposes of this section, as held by him and the donee spouse as community property. The part of such separate property (or property acquired in exchange therefor) which is considered as so held is the same proportion thereof which the value (at the time of the conversion) of the separate property so acquired by the donee spouse is of the value (at such time) of the separate property so acquired by the donor.

Example. On November 1, 1942, the donor and his spouse partitioned certain real property held by them under community property laws. The real property then had a value of $224,000. A portion of such property, then having a value of $160,000, was converted into the donor's separate property, and the remaining portion, then having a value of $64,000, was converted into his spouse's separate property. On August 1, 1948, the donor made a gift to his spouse of the property acquired by him as a result of the partition, which property then had a value of $200,000. The portion of the property transferred by gift which is considered as "community property" is:

$$\frac{64,000}{160,000} \times \$200,000 = \$80,000.$$

The marital deduction with respect to the gift is, therefore, limited to one-half of the difference between $200,000 (the value of the gift) and $80,000 (the portion of the gift considered to have been of "community property"). The marital deduction with respect to the gift is, therefore, $60,000.

§ 86.16d *Proof required.* The donor must submit such proof as is necessary to establish the right to the marital deduction, including any evidence requested by the Commissioner.

PAR. 9. Section 86.20 is amended as follows:

(A) By striking the heading and by inserting in lieu thereof the following: *"Persons required to file return—(a) In general."*

(B) By inserting at the end thereof the following paragraph:

(b) *In case of consent under section 1000 (f).* Except as otherwise provided herein, the provisions of paragraph (a) of this section are applicable with respect to the filing of a gift tax return or returns for the calendar year 1948 or any subsequent calendar year in the case of a husband and wife who consent (see § 86.3a) to the application of the provisions of section 1000 (f) for such year. In such cases, if both of the consenting spouses are (without regard to the provisions of section 1000 (f)) required under the provisions of paragraph (a) of this section to file returns for such year, returns must be filed by both spouses. If only one of the consenting spouses is (without regard to the provisions of section 1000 (f)) required under the provisions of such paragraph (a) to file a return for such year, a return must be filed by such spouse. In the latter case, if after giving effect to the provisions of section 1000 (f) the other spouse is considered to have made any gift (regardless of value) of a future interest in property or any gift or gifts to any one third-party donee exceeding $3,000 in value then a return for such year must also be filed by such other spouse. Thus, if during any such calendar year the husband made a gift of $5,000 to a son and the wife made no gifts, only the husband is required to file a return for such year. However, if the wife had made a gift of $2,000 to the same son, or if the gift made by the husband had amounted to $7,000, each spouse would be required to file a return in the event consent is signified as provided under section 1000 (f).

PAR. 10. Section 86.21, as amended by Treasury Decision 5608, approved March 19, 1948, is further amended by inserting immediately preceding the last sentence thereof the following sentence: "Where a husband and wife consent (or contemplate consenting) that gifts made by either of them to third-party donees during the calendar year 1948 or any subsequent calendar year shall be considered as made one-half by each spouse, as provided by section 1000 (f), the notice on Form 710 shall, nevertheless, identify the actual donor."

PAR. 11. Section 86.23 is amended by inserting immediately after the sixth sentence thereof the following: "If the return is filed for the calendar year 1948 or for any calendar year thereafter and the donor and his spouse consent (see § 86.3a) to the application of the provisions of section 1000 (f) for such year the return must set forth, to the extent provided thereon, information with respect to transfers made by each spouse."

PAR. 12. Section 86.34 is amended by inserting immediately after the third sentence thereof the following: "If a husband and wife effectively signify consent (see § 86.3a) to the application of the provisions of section 1000 (f) for any calendar year, the liability with respect to the entire gift tax of each spouse for such calendar year shall be joint and several."

(53 Stat. 157, 467; 26 U. S. C. 1029, 3791. Interprets or applies Pub. Law 471, 80th Cong.)

[SEAL] FRED S. MARTIN,
Acting Commissioner of Internal Revenue.

Approved: May 13, 1949.

THOMAS J. LYNCH,
Acting Secretary of the Treasury.

[F. R. Doc. 49-3994; Filed, May 18, 1949; 8:50 a. m.]

TITLE 34—NATIONAL MILITARY ESTABLISHMENT

Chapter VII—Department of the Air Force

Subchapter D—Military Education

PART 845—AVIATION INSTRUCTION AT NON-FEDERAL ESTABLISHMENTS

RESPONSIBILITIES OF INSTITUTIONS; PROPERTY; LOAN OF GOVERNMENT PROPERTY

Part 845 (13 F. R. 6605, 13 F. R. 8307) is hereby amended by rescinding §§ 845.3 (c), 845.8 and 845.9 (f) (1) and (2), and (g) (1) and substituting the following therefor:

§ 845.3 *Responsibilities of institutions.* * * *

(c) To comply with regulations prescribed by proper civil authorities to insure safety and with such supplementary instructions issued by the Chief of Staff, United States Air Force, or his representatives, in regard thereto, and not in conflict therewith as may be considered necessary in the premises.

* * * * *

§ 845.8 *Property.* All Government-owned property required at institutions, regardless of the purpose for which intended, will be consigned to the commanding officer of the local Air Force training detachment. Property transactions between the Air Force supervisor and a school will be governed by § 845.9 (e) (2) (i). The Chief of Staff, United States Air Force, will designate an accountable officer who will act for all Government property located at each institution. Where the contractor is furnished Government-owned industrial property, the contract provision will provide that accountability thereof will be maintained in accordance with appropriate directives.

§ 845.9 *Loan of Government property.* * * *

(f) *Transportation.* (1) Property authorized to be loaned under the provisions of paragraph (a) of this section will be delivered to an institution through the Air Force supervisor by air, rail, or motor transportation as interests of the Government may require, and at expense of the Government except for drayage as provided for in subparagraph (2) of this paragraph. Return of such property as requires rail, motor, or air transportation, including property in possession of the Air Force supervisor, will be accomplished by institution making delivery, f. o. b. carrier's freight dock in city nearest institution concerned. Property will be packed, boxed, crated, and prepared for shipment to such destination as may be determined by the Government in accordance with Air Force specifications and carrier tariff requirements.

(2) All drayage of Government property to and from carrier's terminal in city nearest the institution concerned will be furnished by and at the expense of the institution. Bills of lading will be prepared and accomplished accordingly.

(g) *Lost, damaged, or destroyed property.* (1) Government property which becomes unserviceable through fair wear and tear incident to the proper and authorized use thereof will occasion no liability to the institution. Such property may be returned to the Government for replacement or credit or should be repaired by the institution in accordance with the terms of the written agreement that is entered into with the Government for the instruction of military personnel.

[AFR 50-14, May 5, 1949] (Sec. 2, 53 Stat. 556, 55 Stat. 577; secs. 207 (f), 208 (e), 305 (a), 61 Stat. 503, 504, 508; 10 U. S. C. 298a, 5 U. S. C. Sup. 626, 626c,

171L; Transfer Order 21, Sept. 4, 1948, 13 F. R. 5383)

Subchapter F—Organized Reserves

PART 861—OFFICERS' RESERVE CORPS

APPOINTMENT IN THE AIR FORCE RESERVE OF EX-AIR NATIONAL GUARD OFFICERS

Part 861 (14 F. R. 1592) is hereby amended by rescinding § 861.6 and substituting the following therefor:

§ 861.6 *Appointment in the Air Force Reserve of Ex-Air National Guard Officers.* (a) Upon termination of Air National Guard of the United States status, officers may, at their own request, be commissioned in the Air Force Reserve and may be assigned, if a vacancy exists, to the Organized Reserve, Volunteer Reserve, or Honorary Air Reserve in any grade for which qualified.

(b) An officer of the Air National Guard of the United States whose appointment is withdrawn because of failure to maintain the standards established for retention of appointment in the Air National Guard of the United States may apply for a commission in the Air Force Reserve in any grade in which qualified and, if so commissioned, will be assigned to the Volunteer Air Reserve, Inactive Air Reserve, or Honorary Air Reserve as appropriate. The individual who has been assigned to the Volunteer Air Reserve will not be eligible for transfer to the Organized Air Reserve for a period of one year. Officers of the Air National Guard of the United States whose appointment has been withdrawn for dishonorable reasons or for cause, are not eligible for appointment in the Air Force Reserve.

[AFR 45–5A, May 5, 1949] (Sec. 3, 48 Stat. 154, sec. 207 (f), 208 (e), 61 Stat. 503, 504, 10 U. S. C. 352, 353, 5 U. S. C. Sup. 626, 626c; Transfer Order 10, Apr. 27, 1948, 13 F. R. 2428)

[SEAL] L. L. JUDGE,
Colonel, U. S. Air Force,
Air Adjutant General.

[F. R. Doc. 49-3962; Filed, May 18, 1949; 8:46 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 41—THE PRIVACY AND SAFEGUARDING OF THE MAILS

EMPLOYEES FORBIDDEN TO PLACE MAIL IN CLOTHING, HAND GRIPS, PARCELS, OR OTHER LUGGAGE

Amend § 41.3 *Employees forbidden to place mail in clothing* (13 F. R. 8929) to read as follows:

§ 41.3 *Employees forbidden to place mail in clothing, hand grips, parcels, or other luggage.* Employees of the postal service shall not place or carry in their pockets or in other parts of their clothing, or in hand grips, parcels, or other luggage, any mail which is in the custody of the postal service. (R. S. 161, 396, secs. 304, 309, 42 Stat. 24, 25; 5 U. S. C. 22, 369)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49-3964; Filed, May 18, 1949; 8:46 a. m.]

PART 127—INTERNATIONAL POSTAL SERVICE: POSTAGE RATES, SERVICE AVAILABLE, AND INSTRUCTIONS FOR MAILING

AIR MAIL SERVICE

1. In § 127.20 *Air-mail service* (13 F. R. 9081) add a new paragraph (i) to read as follows:

(i) However, in the case of the countries shown below, "other articles" in the regular mails are acceptable at special air mail rates, as shown in the subcaption "Air mail service" under the appropriate country heading, appearing in Subpart D of this part:

Austria.
Azores.
Belgian Congo.
Belgium.
Bermuda.
Czechoslovakia.
Denmark.
Egypt.
Estonia.
Faroe Islands.
Finland.
France.
Germany.
Gold Coast Colony.
Great Britain and Northern Ireland.
Greece.
Iceland.
India.
Iraq.
Ireland (Eire)
Italy.
Latvia.
Lithuania.
Luxemburg.
Netherlands.
Norway.
Portugal.
Sweden.
Switzerland.
Syria.
Trieste.
Tunisia.
Turkey.
Union of South Africa.
Union of Soviet Socialist Republics.
Vatican City State.

Such articles must be plainly marked "Commercial Papers", "Printed Matter", etc., to designate their classification in the mails.

2. In § 127.210 *Austria* (13 F. R. 9113) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 45 cents for the first two ounces and 24 cents for each additional two ounces. (See § 127.20.)

3. In § 127.211 *Azores* (13 F. R. 9114) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 41 cents for the first two ounces and 20 cents for each additional two ounces. (See § 127.20.)

4. In § 127.215 *Belgian Congo* (13 F. R. 9116) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 25 cents per half-ounce. Other regular-mail articles, 59 cents for the first two ounces and 38 cents for each additional two ounces. (See § 127.20.)

5. In § 127.216 *Belgium* (13 F. R. 9117) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 42 cents for the first two ounces and 21 cents for each additional two ounces. See § 127.20.)

6. In § 127.217 *Bermuda* (13 F. R. 9118) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 10 cents per half-ounce. Other regular-mail articles, 27 cents for the first two ounces and 6 cents for each additional two ounces. (See § 127.20.)

7. In § 127.239 *Czechoslovakia* (13 F. R. 9138) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 44 cents for the first two ounces and 23 cents for each additional two ounces. (See § 127.20.)

8. In § 127.241 *Denmark* (13 F. R. 9140) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages, and post cards, 15 cents per half-ounce. Other regular-mail articles, 43 cents for the first two ounces and 23 cents for each additional two ounces. (See § 127.20.)

9. In § 127.244 *Egypt* (13 F. R. 9144) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages, and post cards, 15 cents per half-ounce. Other regular-mail articles, 52 cents for the first two ounces and 31 cents for each additional two ounces. (See § 127.20.)

10. In § 127.246 *Estonia* (13 F. R. 9146) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 52 cents for the first two ounces and 31 cents for each additional two ounces. (See § 127.20.)

11. In § 127.249 *Faroe Islands* (13 F. R. 9147) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages, and post cards, 15 cents per half-ounce. Other regular-mail articles, 43 cents for the first two ounces and 23 cents for each additional two ounces. (See § 127.20.)

12. In § 127.251 *Finland* (13 F. R. 9148) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages, and post cards, 15 cents per half-ounce. Other regular-mail articles, 46 cents for the first two ounces and 25 cents for each additional two ounces. (See § 127.20.)

13. In § 127.252 *France (including Monaco)* (13 F. R. 9149) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages, and post cards, 15 cents per half-ounce. Other regular-mail articles, 42 cents for the first two ounces and 21 cents for each additional two ounces. (See § 127.20.)

14. In § 127.264 *Germany* (13 F. R. 9155) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 43 cents for the first two ounces and 22 cents for each additional two ounces. (See § 127.20.)

15. In § 127.267 *Gold Coast Colony (including Ashanti, British Togoland, and Northern Territories)* (13 F. R. 9157) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 25 cents per half-ounce. Other regular-mail articles, 52 cents for the first two ounces and 31 cents for each additional two ounces. (See § 127.20.)

16. In § 127.268 *Great Britain and Northern Ireland (England, Scotland and Wales; also Northern Ireland)* (13 F. R. 9158) amend paragraph (a) (4) *Air mail service* to read as follows:

(4) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 41 cents for the first two ounces and 20 cents for each additional two ounces. (See § 127.20.)

17. In § 127.269 *Greece (including Crete and Dodecanese Islands)* (13 F. R. 9162) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 48 cents for the first two ounces and 28 cents for each additional two ounces. (See § 127.20.)

18. In § 127.277 *Iceland* (13 F. R. 9168) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 37 cents for the first two ounces and 16 cents for each additional two ounces. (See § 127.20.)

19. In § 127.278 *India (including the Andaman Islands, Nepal and Tibet)* (13 F. R. 9169) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 25 cents per half-ounce. Other regular-mail articles 64 cents for the first two ounces and 44 cents for each additional two ounces. (See § 127.20.)

20. In § 127.280 *Iraq* (13 F. R. 9170) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 25 cents per half-ounce. Other regular-mail articles, 56 cents for the first two ounces and 35 cents for each additional two ounces. (See § 127.20.)

21. In § 127.281 *Ireland (Eire)* (13 F. R. 9171) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 39 cents for the first two ounces and 18 cents for each additional two ounces. (See § 127.20.)

22. In § 127.283 *Italy (including the Republic of San Marino)* (13 F. R. 9174) amend paragraph (a) (6) *Air mail service* to read as follows:

(6) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 45 cents for the first two ounces and 24 cents for each additional two ounces. (See § 127.20.)

23. In § 127.290 *Latvia* (13 F. R. 9179) amend paragraph (a) (4) *Air mail service* to read as follows:

(4) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 52 cents for the first two ounces and 31 cents for each additional two ounces. (See § 127.20.)

24. In § 127.294 *Lithuania* (13 F. R. 9181) amend paragraph (a) (4) *Air mail service* to read as follows:

(4) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 52 cents for the first two ounces and 31 cents for each additional two ounces. (See § 127.20.)

25. In § 127.295 *Luxemburg (Grand Duchy)* (13 F. R. 9181) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 42 cents for the first two ounces and 21 cents for each additional two ounces. (See § 127.20.)

26. In § 127.309 *Netherlands* (13 F. R. 9189) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 42 cents for the first two ounces and 21 cents for each additional two ounces. (See § 127.20.)

27. In § 127.320 *Norway (including Spitzbergen)* (13 F. R. 9197) amend paragraph (a) (4) *Air mail service* to read as follows:

(4) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 43 cents for the first two ounces and 23 cents for each additional two ounces. (See § 127.20.)

28. In § 127.332 *Portugal* (13 F. R. 9207) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 41 cents for the first two ounces and 20 cents for each additional two ounces. (See § 127.20.)

29. In § 127.359 *Sweden* (13 F. R. 9220) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 45 cents for the first two ounces and 24 cents for each additional two ounces. (See § 127.20.)

30. In § 127.360 *Switzerland (including Liechtenstein)* (13 F. R. 9221) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 43 cents for the first two ounces and 22 cents for each additional two ounces. (See § 127.20.)

31. In § 127.361 *Syria* (13 F. R. 9223) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 25 cents per half-ounce. Other regular-mail articles 52 cents for the first two ounces and 31 cents for each additional two ounces. (See § 127.20.)

32. In § 127.365 *Trieste (Free Territory of)* (13 F. R. 9225) amend paragraph (a) (6) *Air mail service* to read as follows:

(6) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 45 cents for the first two ounces and 24 cents for each additional two ounces. (See § 127.20.)

33. In § 127.369 *Tunisia (Tunis)* (13 F. R. 9226) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 47 cents for the first two ounces and 26 cents for each additional two ounces. (See § 127.20.)

34. In § 127.370 *Turkey* (13 F. R. 9227) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 49 cents for the first two ounces and 28 cents for each additional two ounces. (See § 127.20.)

35. In § 127.372 *Union of South Africa* (13 F. R. 9229) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 25 cents per half-ounce. Other regular-mail articles, 68 cents for the first two ounces and 47 cents for each additional two ounces. (See § 127.20.)

36. In § 127.373 *Union of Soviet Socialist Republics* (13 F. R. 9230) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards,

15 cents per half-ounce. Other regular-mail articles, 52 cents for the first two ounces and 31 cents for each additional two ounces. (See § 127.20.)

37. In § 127.375 *Vatican City State* (13 F. R. 9234) amend paragraph (a) (5) *Air mail service* to read as follows:

(5) *Air mail service.* Postage rates: Letters, letter packages and post cards, 15 cents per half-ounce. Other regular-mail articles, 45 cents for the first two ounces and 24 cents for each additional two ounces. (See § 127.20.)

(R. S. 161, 396, 398, secs. 304, 309, 42 Stat. 24, 25, 48 Stat. 943; 5 U. S. C. 22, 369, 372)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49-3965; Filed, May 18, 1949; 8:46 a. m.]

PART 127—INTERNATIONAL POSTAL SERVICE: POSTAGE RATES, SERVICE AVAILABLE, AND INSTRUCTIONS FOR MAILING

SAUDI ARABIA

In § 127.348 *Saudi Arabia (Kingdom of)* (13 F. R. 9215) make the following changes:

1. Amend subparagraph (1) *Table of rates* of paragraph (b) *Parcel post* by the addition of a new subdivision (ii) to read as follows:

(ii) *Air parcels.* (Applicable only to the offices of Dhahran, Hassa, Khobar, and Riyadh.)

Lb.	Oz.	Rate	Lb.	Oz.	Rate
0	4	$1.56	5	12	$18.50
0	8	2.33	6	0	19.27
0	12	3.10	6	4	20.04
1	0	3.87	6	8	20.81
1	4	4.64	6	12	21.58
1	8	5.41	7	0	22.35
1	12	6.18	7	4	23.12
2	0	6.95	7	8	23.89
2	4	7.72	7	12	24.66
2	8	8.49	8	0	25.43
2	12	9.26	8	4	26.20
3	0	10.03	8	8	26.97
3	4	10.80	8	12	27.74
3	8	11.57	9	0	28.51
3	12	12.34	9	4	29.28
4	0	13.11	9	8	30.05
4	4	13.88	9	12	30.82
4	8	14.65	10	0	31.59
4	12	15.42	10	4	32.36
5	0	16.19	10	8	33.13
5	4	16.96	10	12	33.90
5	8	17.73	11	0	34.67

Each air parcel and the relative dispatch note must have affixed the blue Par Avion Label (Form 2978). (See § 127.55 (b).)

Weight limit: 11 pounds.
Customs declarations: 2 Form 2966.
Dispatch note: 1 Form 2972.
Parcel-post sticker: 1 Form 2922.
Sealing: Optional.
Group shipments: Limited to 8 parcels. (See § 127.76.)
Registration: No.
Insurance: No.
C. o. d.: No.

2. Amend subparagraph (4) *Observations* of paragraph (b) *Parcel post* to read as follows:

(4) *Observations.* (i) The surface parcel-post service extends to the following offices only: Dhahran, Hassa, Jidda (Jedda), Khobar, Mecca, Medina, Riyadh, and Yenbo. Addressees of parcels for Dhahran must take delivery at the post office of Khobar.

(ii) The air parcel-post service extends to the following offices only: Dhahran, Hassa, Khobar, and Riyadh.

(R. S. 161, 396, 398, secs. 304, 309, 42 Stat. 24, 25, 48 Stat. 943; 5 U. S. C. 22, 369, 372)

[SEAL] J. M. DONALDSON,
Postmaster General.

[F. R. Doc. 49-3963; Filed, May 18, 1949; 8:46 a. m.]

NOTICES

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Administrative Order 6]

CALIFORNIA AND NEVADA

DESIGNATING CERTAIN LANDS TO BE ADMINISTERED AS PARTS OF ELDORADO, TAHOE AND TOIYABE NATIONAL FORESTS

Whereas, the hereinafter described lands situate within the States of California and Nevada have been acquired by the United States under authority of the act of March 1, 1911 (36 Stat. 961), as amended and supplemented, and

Whereas, the said lands are subject to all laws applicable to lands acquired under the above-mentioned act, and

Whereas, pursuant to the provisions of section 11 of said act, the Secretary of Agriculture may from time to time divide the lands acquired under the act into such specific National Forests and so designate the same as he may deem best for administrative purposes, and

Whereas, the said lands are so situated that the public interest and economy will be served best by having them administered as parts of the Eldorado, Tahoe and Toiyabe National Forests;

Now, therefore, I, Charles F. Brannan, Secretary of Agriculture, by virtue of the authority vested in me by section 11 of the act of March 1, 1911, do hereby order that the lands described below shall hereafter be administered as parts of the indicated National Forests.

ELDORADO NATIONAL FOREST

MOUNT DIABLO MERIDIAN

T. 8 N., R. 13 E.,
Sec. 1, N½N½, SE¼NE¼, S½S½, NE¼SE¼;
Sec. 2, S½S½;
Sec. 3, SE¼;
Sec. 10;
Sec. 11, N½NE¼, NW¼, SW¼SW¼, SE¼SE¼;
Sec. 12, N½, NE¼SW¼;
Sec. 13, SW¼NW¼;
Sec. 14, N½N½;
Sec. 15, N½N½, SE¼SW¼;
Sec. 17, S½SE¼;
Sec. 20, N½NE¼;
Sec. 21, SE¼SW¼, SW¼SE¼;
Sec. 28, NE¼, E½NW¼.

T. 8 N., R. 14 E.,
Sec. 1, N½N½, W½SW¼, SW¼SE¼, E½SE¼;
Sec. 2;
Sec. 3, E½, E½W½, W½NW¼, SW¼SW¼;
Sec. 4, E½NE¼, N½NW¼, SW¼SW¼;
Sec. 5, E½, E½W½, NW¼NW¼, W½SW¼;
Sec. 6, N½NE¼, NW¼, W½SW¼, SE¼SE¼;
Sec. 7, NE¼NE¼, W½E½, NW¼, SE¼SE¼;
Sec. 8, N½NE¼, NE¼NW¼, S½SW¼;
Sec. 9, NW¼NW¼;
Sec. 10, NE¼NE¼;
Sec. 12, NE¼NE¼;
Sec. 17, NW¼NE¼, N½NW¼;
Sec. 18, NE¼NE¼, NW¼SE¼.

TAHOE NATIONAL FOREST

MOUNT DIABLO MERIDIAN

T. 18 N., R. 15 E.,
Sec. 1;
Sec. 2, S½;
Secs. 10, 11, and 12;
Sec. 14, NE¼, N½NW¼;
Sec. 24, N½NE¼.

T. 19 N., R. 15 E.,
Sec. 1;
Sec. 10, N½, SW¼, W½SE¼, SE¼SE¼;
Sec. 11, NE¼, S½SW¼, N½SE¼, SW¼SE¼;
Sec. 12, NE¼, S½NW¼, N½SW¼, SW¼SW¼, N½SE¼;
Sec. 13, S½;
Sec. 14, W½, N½SE¼, SE¼SE¼;
Sec. 15;
Sec. 16, NE¼, N½NW¼;
Sec. 17, N½;
Sec. 20, Lots 1 to 3, inclusive, E½NW¼, NE¼SW¼, N½SE¼;
Sec. 22;
Sec. 23, N½, N½SW¼, SE¼;
Sec. 24, N½NE¼, SW¼, S½SE¼;
Sec. 25;
Sec. 26;
Sec. 27;
Sec. 28, N½NE¼, SE¼NE¼;
Sec. 36.

T. 20 N., R. 15 E.,
Sec. 19, SW¼NE¼, SE¼SW¼, SE¼;
Sec. 36.

T. 18 N., R. 16 E.,
Sec. 2, Lots 1 and 2 of NE¼, SE¼;
Sec. 3, Lots 1 and 2 of NW¼, W½SW¼;
Sec. 4;
Sec. 5;
Sec. 6, N½, SW¼, S½SE¼;
Sec. 7;
Sec. 8;
Sec. 9;
Sec. 10, E½;
Sec. 11;
Sec. 12, W½;
Sec. 13;
Sec. 14, SW¼;
Sec. 15;
Sec. 16;
Sec. 17;
Sec. 18, E½, Lot 1 of NW¼, S½ of Lot 2 of NW¼, Lot 1 of SW¼, N½ of Lot 2 of SW¼;
Sec. 19;
Sec. 20;

Sec. 21;
Sec. 22, N½NE¼NE¼NE¼, W½SW¼NE¼, S½SE¼SW¼NE¼, NW¼, SE¼;
Sec. 23;
Sec. 26, N½NW¼;
Sec. 27;
Sec. 28;
Sec. 29;
Sec. 30, all except N½ of Lot 2 of SW¼;
Sec. 32;
Sec. 33;
Sec. 34, SW¼.

T. 19 N., R. 16 E.,
Sec. 1, all except a certain tract of land containing 100 acres more or less, described as follows: Beginning at NE corner of Sec. 1, said township and range, thence westerly along the northerly line of said section 825 feet; thence southerly parallel with the easterly line of said Section 1, 5,280 feet to the southerly line thereof; thence easterly along the last mentioned line, 825 feet to the easterly line of said Section 1; thence northerly along the last mentioned line, 5,280 feet to the point of beginning;
Sec. 4, SE¼SW¼, SW¼SE¼;
Sec. 5, all of that portion of Section 5 lying West of the summit or ridge running through said section, containing 402.93 acres, more or less; the summit or ridge being particularly described in deed dated April 23, 1937, recorded in Book 36 of Deeds, page 85, Sierra County, California, records; executed by Edmond E. Payen and wife to the United States of America, as follows: Beginning at the southeast corner of said Section 5, run North 29 degrees 0 minutes West 11 chains; thence North 33 degrees 0 minutes East 9 chains; thence North 31 degrees 0 minutes West 4 chains; thence North 63 degrees 30 minutes West 15 chains; thence South 54 degrees 35 minutes West 17 chains; thence North 76 degrees 40 minutes West 6 chains; thence South 61 degrees 20 minutes West 9 chains; thence North 51 degrees 10 minutes West 11.72 chains; thence North 52 degrees 45 minutes East 21.10 chains; thence North 4 degrees 45 minutes West 45.55 chains to the north quarter corner;
Sec. 6, N½, SW¼, S½SE¼;
Sec. 7;
Sec. 8, S½SW¼, SW¼SE¼;
Sec. 9;
Sec. 10, E½NW¼;
Sec. 11;
Sec. 12, W½NE¼, NW¼;
Secs. 13, 14, 15, 16, and 17;
Sec. 18, N½, Lot 1 of SW¼, N½ of Lot 2 of SW¼, SE¼;
Secs. 19, 20, and 21;
Sec. 22, N½;
Secs. 23 and 24;
Sec. 26, S½;
Sec. 28, N½, S½S½;
Sec. 29, NE¼, W½NW¼, W½SW¼, NE¼SE¼;
Sec. 30, E½, Lot 1 of NW¼, S½ Lot 2 of NW¼, Lot 1 of SW¼, N½ Lot 2 of SW¼;
Secs. 31, 32, and 33;
Sec. 34, S½NE¼, S½NW¼, S½;
Secs. 35 and 36.

T. 20 N., R. 16 E.,
Sec. 36.

T. 18 N., R. 17 E.,
Sec. 2, Lots 1 and 2 of NW¼, SW¼;
Sec. 4, Lots 1 and 2 of NE¼, SW¼;
Sec. 6, W½ Lot 2 of NW¼.

T. 19 N., R. 17 E.,
Sec. 2, W½SW¼;
Secs. 3, 4, and 5;
Sec. 6, Lots 1 and 2 of NE¼, E½ Lot 1 of NW¼, E½ Lot 2 of NW¼, E½SE¼;
Sec. 8, N½N½, S½S½;
Secs. 9 and 10;
Sec. 11, SW¼NE¼, W½, W½SE¼, SE¼SE¼;
Secs. 14, 15, and 17;
Sec. 23, W½;
Sec. 26;
Sec. 28, E½, E½NW¼, SW¼NW¼, NE¼SW¼;
Sec. 30, Lots 1 and 2 of SW¼;
Sec. 34, W½NE¼, N½NW¼.

T. 20 N., R. 17 E.,
Sec. 32, NW¼, S½.

TOIYABE NATIONAL FOREST

MOUNT DIABLO MERIDIAN

T. 19 N., R. 17 E.,
Sec. 1;
Sec. 2, W½ Lots 1 and 2 of NE¼, Lot 1 of NW¼, E½ Lot 2 of NW¼, E½SW¼, W½SE¼, SE¼SE¼;
Sec. 11, N½NE¼, SE¼NE¼, NE¼SE¼;
Sec. 12, W½NE¼, NW¼, SE¼SW¼, N½SE¼, SW¼SE¼.

T. 20 N., R. 17 E.,
Sec. 1;
Sec. 2, NW¼, S½;
Sec. 3;
Sec. 9, S½NE¼, N½SE¼;
Sec. 10;
Sec. 11;
Sec. 12, NE¼, S½;
Sec. 13;
Sec. 14, N½, SE¼;
Sec. 15, E½;
Sec. 16, E½NE¼, E½SE¼;
Sec. 22, NE¼;
Sec. 23;
Sec. 24, NE¼, SW¼, E½SE¼, SW¼SE¼;
Sec. 25;
Sec. 26, E½, SW¼;
Sec. 27, E½;
Sec. 34, W½NE¼, E½NW¼, S½;
Sec. 35;
Sec. 36.

T. 21 N., R. 17 E.,
Sec. 33, S½;
Sec. 34, SW¼;
Sec. 35, S½;
Sec. 36, Lots 1 to 4, inclusive, W½SE¼, SW¼.

T. 13 N., R. 18 E.,
Sec. 2, Lot 2 of NW¼;
Sec. 21, all (fractional);
Sec. 22, Lot 1 and part of Lot 2;
Sec. 25, S½SE¼;
Sec. 36.

T. 14 N., R. 18 E.,
Sec. 35, S½NW¼, SW¼.

T. 19 N., R. 18 E.,
Sec. 6, N½ Lot 6 of NW¼;
Sec. 7, S½ Lot 3 of NW¼, Lots 4, 5, and 6 of NW¼, Lot 1 of SW¼, N½ Lots 3, 4, 5, and 6 of SW¼.

T. 20 N., R. 18 E.,
Sec. 7, Lots 1 to 20, inclusive;
Sec. 18, Lots 2, 3, and 4, S½ Lot 5, S½ Lot 8, Lots 9, 13, 14, N½ Lot 15, Lots 18 and 19;
Sec. 19, Lots 1 to 20, inclusive;
Sec. 30, Lots 2, 4, and 5, S½ Lot 6, Lots 7 to 12, inclusive, S½ Lot 13, Lot 15, S½ Lot 16, Lots 19 and 20;
Sec. 31, Lots 1 to 20, inclusive;

T. 13 N., R. 19 E.,
Sec. 5, W½SW¼;
Sec. 6, SE¼NE¼, E½SE¼;
Sec. 7, NE¼, N½SE¼, SE¼SE¼;
Sec. 8;
Sec. 9, SW¼NW¼, NW¼SW¼, SE¼SW¼, SW¼SE¼;
Sec. 17, NW¼, NE¼SW¼, S½SW¼;
Sec. 18, E½NE¼;
Sec. 20, NE¼, E½NW¼, NE¼SE¼;
Sec. 21, W½NE¼, NW¼, SW¼, W½SE¼;
Sec. 28, NW¼;
Sec. 29, N½NE¼, S½SW¼, SE¼;
Sec. 30, SE¼SW¼, S½SE¼;
Sec. 31, N½, SW¼, NW¼SE¼;
Sec. 32, N½.

T. 15 N., R. 19 E.,
Sec. 2, W½ Lot 2 of NW¼;
Sec. 20, NE¼, NE¼NW¼, E½SE¼;
Sec. 21, N½, SE¼, N½SW¼;
Sec. 22, NW¼;
Sec. 28, N½, SW¼;
Sec. 29, S½NW¼, S½;
Sec. 30, NE¼, E½NW¼, S½;
Sec. 31;
Sec. 32, N½, N½SW¼, N½SE¼;
Sec. 33, NW¼, N½SW¼, SW¼SW¼, S½SE¼;
Sec. 34, SW¼SW¼.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be affixed, in the City of Washington, this 13th day of May 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-3991; Filed, May 18, 1949; 8:50 a. m.]

LANGLADE COUNTY, WISCONSIN

TRANSFER OF CERTAIN LANDS TO UNITED STATES FOR ADMINISTRATION AS PART OF NICOLET NATIONAL FOREST

Whereas, the Secretary of Agriculture is administering the hereinafter described lands as trustee, under an agreement of transfer dated May 16, 1937, with the Wisconsin Rural Rehabilitation Corporation, and

Whereas, by act of the Congress approved June 19, 1948 (Pub. L. No. 719, 80th Cong., 2d Sess.), the Secretary of Agriculture is directed, upon the written consent of the majority of directors of the Wisconsin Rural Rehabilitation Corporation, to convey and transfer the described lands to the United States for subsequent administration as a part of the Nicolet National Forest, and

Whereas, a majority of the directors of the Wisconsin Rural Rehabilitation Corporation, by a resolution duly adopted on March 22, 1949, gave their written consent to the transfer of the described lands to the United States.

Now, therefore, by virtue of and pursuant to the authority vested in me by the aforementioned act of June 19, 1948, all right, title, claim, interest, equity and estate in and to the lands hereinafter described, together with the improvements thereon and the rights and appurtenances thereunto belonging or appertaining, is hereby conveyed, granted, transferred and quitclaimed to the United States for administration by the Forest Service of the United States Department of Agriculture as a part of the Nicolet National Forest and subject to the rules and regulations applicable to national forest lands acquired under the act of March 1, 1911 (36 Stat. 961), as amended, to-wit, the following described lands situated in the County of Langlade, State of Wisconsin:

Township 33 North, Range 9 East, 4th Principal Meridian.
Section 16—NW¼, N½NE¼, SW¼NE¼ and N½S½.
Section 17—NE¼.
Section 22—E½NW¼.

The Chief of the Forest Service is hereby directed to utilize, insofar as practicable, the property hereby transferred as an experimental demonstration forest.

In testimony whereof, I have hereunto set my hand and caused the official seal of the Department of Agriculture to be

affixed in the City of Washington, this 13th day of May, 1949.

[SEAL] CHARLES F. BRANNAN,
Secretary of Agriculture.

[F. R. Doc. 49-3990; Filed, May 18, 1949; 8:49 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Designation Order 33]

DESIGNATION OF MOTIONS COMMISSIONER FOR MAY, 1949

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 29th day of April 1949;

It is ordered, Pursuant to Section 0.111 of the Statement of Delegations of Authority, that E. M. Webster, Commissioner, is hereby, designated as Motions Commissioner for the month of May, 1949.

It is further ordered, That in the event said Motions Commissioner is unable to act during any part of said period the Chairman or Acting Chairman will designate a substitute Motions Commissioner.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3982; Filed, May 18, 1949; 8:48 a. m.]

[Docket No. 9068]

OLIVER BROADCASTING CORP. (WPOR)

ORDER DELETING ISSUE

In re application of Oliver Broadcasting Corporation (WPOR), Portland, Maine, Docket No. 9068, File No. BP-6344; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 5th day of May 1949;

The Commission having under consideration a petition, filed January 24, 1949, by Oliver Broadcasting Corporation (WPOR) requesting reconsideration and grant without a hearing of its above-entitled application for authorization to change operating facilities at Portland, Maine, from 1490 kc., 250 w. power, unlimited time to 1060 kc., 5 kw. power, unlimited time, change transmitter location, install new transmitter and directional antenna for day and night use (DA-2);

It appearing, that the Commission, on July 12, 1948, designated the WPOR application for hearing in a consolidated proceeding with the Lowell Sun Publishing Company application (File No. BP-6675; Docket No. 9069) for a new standard broadcast station at Lowell, Massachusetts, to determine, among other things (1) the interference, if any, which the simultaneous operation of the two stations would involve; (2) whether Station WPOR, operating as proposed, would involve interference with Station KYW, Philadelphia, Pennsylvania; (3) whether the proposed Lowell, Massachusetts, station and Station WPOR, as proposed, would involve objectionable interference with Canadian Station CBA, Sackville, New Brunswick, as defined in the North American Regional Broadcasting Agreement; and (4) whether the installation and operation of the proposed Lowell, Massachusetts, station and Station WPOR, as proposed, would be in compliance with the Commission's rules and standards; and

It further appearing, that, on November 26, 1948, the Lowell Sun Publishing Company application was dismissed without prejudice; and

It further appearing, that it cannot be determined from the data in the petition and the application, (a) whether the business district of Portland, Maine, will receive service in accordance with the Standards of Good Engineering Practice; (b) whether it can be expected that the theoretical radiation values in the direction of the nighttime service area of Station KYW, Philadelphia, Pennsylvania, can be secured and maintained in actual operation; (c) whether a grant of this application would be in the public interest in view of possible objectionable interference as defined in NARBA with Canadian Station CBA, Sackville, New Brunswick; and (d) whether, in connection with the proposed site, there are any factors that would prevent an adequate proof of performance or would cause possible reradiation problems;

It is ordered, That the Oliver Broadcasting Corporation petition for reconsideration and grant without a hearing of its above-entitled application is denied.

It is further ordered, That the Commission's order of July 12, 1948, designating the Lowell Sun Publishing Company and Oliver Broadcasting Corporation applications for hearing, is amended to the extent that Issue No. 8 and reference to the Lowell Sun Publishing Company application in all other issues contained therein are deleted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3983; Filed, May 18, 1949; 8:48 a. m.]

[Docket No. 9161]

VALLEY BROADCASTING CORP.

ORDER DELETING ISSUES

In re application of Valley Broadcasting Corporation, Holyoke, Massachusetts, Docket No. 9161, File No. BP-6615; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 5th day of May 1949;

The Commission having under consideration a petition filed February 16, 1949 by Valley Broadcasting Corporation requesting reconsideration and grant without hearing of its above-entitled application for a permit to construct a new standard broadcast station to operate on the frequency 930 kilocycles, with 500 watts power, daytime only at Holyoke, Massachusetts;

It appearing, that the above-entitled application was designated for hearing October 27, 1948 in a consolidated proceeding with the applications of North Jersey Broadcasting Company, Incorporated (File No. BP-4613; Docket No. 8285) and of The Monocacy Broadcasting Company (File No. BP-5128; Docket No. 8627) and that Central Connecticut Broadcasting Company, licensee of Station WHAY, New Britain, Connecticut was made a party to the proceeding and has entered an appearance therein; and

It further appearing, that, February 17, 1949 the application of North Jersey Broadcasting Company, Incorporated as amended and the application of The Monocacy Broadcasting Company were severed from this proceeding and granted and that issue 7 in the Commission's order of October 27, 1948 is no longer applicable to the proceeding; and

It further appearing, that, on the basis of information submitted with the instant petition and in the above-entitled application Valley Broadcasting Corporation is legally, technically, financially and otherwise qualified to construct and operate the proposed station and that the type and character of program service proposed to be rendered would meet the requirements of the populations and areas proposed to be served, but that on the basis of the aforementioned information the Commission is unable to determine the other issues in the proceeding;

It is ordered, That, the said petition of Valley Broadcasting Corporation is denied; and

It is further ordered, That, on the Commission's own motion, the order of October 27, 1948 designating the application of Valley Broadcasting Corporation for hearing is amended to show deletion of issues 1, 3, and 7 therefrom and to show the removal from this proceeding of the applications of North Jersey Broadcasting Company, Incorporated as amended and of The Monocacy Broadcasting Company.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3984; Filed, May 18, 1949; 8:48 a. m.]

[Docket No. 9316]

HERMITAGE BROADCASTING CORP.

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Hermitage Broadcasting Corporation, Nashville, Tennessee, Docket No. 9316, File No. BP-6438; for construction permit.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 5th day of May 1949;

The Commission having under consideration (1) a petition and supporting engineering affidavit, filed September 20, 1948, by The Middle Tennessee Broadcasting Company, licensee of Station WKRM, Columbia, Tennessee, requesting that the Commission reconsider its September 1, 1948, action granting the

Hermitage Broadcasting Corporation application (BP-6488) for authorization to construct a new standard broadcast station to operate on 1350 kc., with 1 kw power, daytime only, at Nashville, Tennessee; set the grant aside; designate the application for hearing and make the petitioner a party to the proceeding, and (2) Opposition (styled Petition of Opposition) to the said petition, filed October 6, 1948, by Hermitage Broadcasting Corporation (WNAH);

It appearing, that opposition to the aforesaid WKRM petition was submitted subsequent to the time within which such oppositions may be filed under § 1.390 (d) of the Commission's rules and regulations, but that acceptance of the WNAH opposition would be in the public interest; and

It further appearing, that the engineering affidavit accompanying the aforesaid petition of The Middle Tennessee Broadcasting Company indicates that Station WNAH, operating in conformance with its grant, would cause some interference within the normally protected contour of Station WKRM, and that the petition meets all of the other requirements of § 1.390 of the Commission's rules and regulations;

It is ordered, That, for the purpose of accepting the late filed WNAH opposition, the requirements of § 1.390 (d) of the Commission's rules are waived.

It is further ordered, That the aforesaid Middle Tennessee Broadcasting Company (WKRM, Columbia, Tennessee) petition is granted; that the Commission's September 1, 1948 grant of the above-entitled application of Hermitage Broadcasting Corporation to operate on 1350 kc., with 1 kw. power, daytime only at Nashville, Tennessee is set aside; and that the application is designated for hearing at 10:00 a. m. on June 10, 1949, at Washington, D. C., upon the following issue: To determine whether operation of the station proposed for Nashville, Tennessee by Hermitage Broadcasting Corporation would cause interference within the 0.5 mv/m contour of Station WKRM, Columbia, Tennessee, or involve interference with any other existing or proposed broadcast operations and, if so, to determine the extent thereof, the populations affected thereby and the nature of other services available to such areas and populations.

It is further ordered, That The Middle Tennessee Broadcasting Company, licensee of Station WKRM, Columbia, Tennessee, is made a party to this proceeding.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3985; Filed, May 18, 1949; 8:49 a. m.]

[Docket No. 9308]

GREAT NORTHERN RADIO, INC. (WWSC)

ORDER DESIGNATING APPLICATION FOR HEARING ON STATED ISSUES

In re application of Great Northern Radio, Inc. (WWSC), Glens Falls, New York, Docket No. 9308, File No. BP-6402; for construction permit.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 5th day of May 1949;

The Commission having under consideration the above-entitled application requesting construction permit to change frequency and power, install new transmitter and directional antenna for night use, and change transmitter location of radio Station WWSC, Glens Falls, New York;

It is ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of Great Northern Radio, Inc., is designated for hearing, at a time and place to be designated by subsequent order of the Commission, upon the following issues:

1. To determine the areas and populations which may be expected to gain or lose primary service from the operation of station WWSC as proposed and the character of other broadcast service available to those areas and populations.

2. To determine whether the operation of station WWSC as proposed would involve objectionable interference with station WONS, Hartford, Connecticut, or with any other existing broadcast stations, with particular reference as to whether the protection angle of the proposed operation is sufficient to adequately protect the nighttime service area of station WONS, and, if there is objectionable interference, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

3. To determine whether the operation of station WONS as proposed would involve objectionable interference with the services proposed in any other pending applications for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

4. To determine whether the installation and operation of station WONS as proposed would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary.

[F. R. Doc. 49-3986; Filed, May 18, 1949; 8:49 a. m.]

[Docket Nos. 8459, 9059, 9312]

SURETY BROADCASTING CO. ET AL

ORDER DESIGNATING APPLICATION FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Surety Broadcasting Company, Charlotte, North Carolina, File No. BP-6088, Docket No. 8459; Tar Heel Broadcasting System, Inc., Washington, N. C., File No. BP-6750, Docket No. 9059; WSAZ, Inc. (WSAZ), Huntington, West Virginia, File No. BP-7106, Docket No. 9312; for construction permits.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 5th day of May 1949;

The Commission having under consideration the above-entitled application of WSAZ, Inc., for a construction permit to change facilities of Station WSAZ, Huntington, West Virginia, from 930 kc., 1 kw., 5 kw.-LS, DA-N, U, to 930 kc., 5 kw., DA-N, U; a petition filed February 9, 1949 by WSAZ, Inc., requesting that the above application be designated for hearing in consolidation with the above-entitled applications of Surety Broadcasting Company, Charlotte, North Carolina, and Tar Heel Broadcasting System, Inc. (WRRF), Washington, North Carolina; oppositions to the said petition filed on February 18 and February 21, 1949, by Tar Heel Broadcasting System, Inc., and Surety Broadcasting Company, respectively; a reply to said oppositions filed March 2, 1949, and answers to the reply filed March 9, 1949;

It appearing, that on September 8, 1948, the Commission designated for consolidated hearing the above-entitled applications of Surety Broadcasting Company, Charlotte, North Carolina, for a construction permit for a new standard broadcast station to operate on 930 kc., 1 kw., 5 kw.-LS, DA-N, U, at Charlotte, North Carolina, and Tar Heel Broadcasting System, Inc., for a construction permit to change facilities of Station WRRF, Washington, North Carolina, from 930 kc., 5 kw., D, to 930 kc., 1 kw., 5 kw.-LS, DA-N, U.

It further appearing, that the said petition, oppositions and other pleadings filed by the parties herein, are directed to the question of whether a joint waiver of hearing filed September 10, 1948 by Surety Broadcasting Company and Tar Heel Broadcasting System, Inc., would, in the event of its acceptance by the Commission, preclude comparative consideration of the application of WSAZ, Inc., and the applications of Surety Broadcasting Company and Tar Heel Broadcasting System, Inc.; that on April 6, 1949, the Commission adopted a Memorandum Opinion and Order refusing the said joint waiver of hearing for the reason that the proceeding on the applications of Surety Broadcasting Company and Tar Heel Broadcasting System, Inc., was not an appropriate one for determination without the presentation of oral testimony; and that, accordingly, the question raised by the said petition and other pleadings is moot;

It is ordered, That the said petition of WSAZ, Inc., requesting that its above-entitled application be designated for hearing in consolidation with the above-entitled applications of Surety Broadcasting Company and Tar Heel Broadcasting System, Inc., is granted;

It is further ordered, That, pursuant to section 309 (a) of the Communications Act of 1934, as amended, the said application of WSAZ, Inc., is designated for hearing in a consolidated proceeding with the said applications of Surety Broadcasting Company, Charlotte, North Carolina, and Tar Heel Broadcasting System, Inc., Washington, North Caro-

lina, commencing at 10:00 a. m. on the 25th day of May, 1949, at Washington, D. C., upon the following issues:

1. To determine the technical, financial and other qualifications of WSAZ, Inc., its officers, directors and stockholders to construct and operate the proposed station.

2. To determine the areas and populations which may be expected to gain or lose primary service from the operation of Station WSAZ as proposed and the character of other broadcast service available to those areas and populations.

3. To determine the type and character of program service proposed to be rendered and whether it would meet the requirements of the populations and areas proposed to be served.

4. To determine whether the proposed operation of Station WSAZ would involve objectionable interference with any existing broadcast station and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

5. To determine whether the proposed operation of Station WSAZ would involve objectionable interference with the services proposed in the other applications in this consolidated proceeding or with the services proposed in any other pending application for broadcast facilities and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other broadcast service to such areas and populations.

6. To determine whether the proposed installation and operation of Station WSAZ would be in compliance with the Commission's rules and Standards of Good Engineering Practice Concerning Standard Broadcast Stations, with particular reference to section 4 of the Standards relating to locations of transmitters of standard broadcast stations.

7. To determine on a comparative basis which, if any, of the applications in this consolidated proceeding should be granted.

It is further ordered, That the Commission's order of September 8, 1948, designating for consolidated hearing the above-entitled applications of Surety Broadcasting Company and Tar Heel Broadcasting System, Inc. is amended to include the said application of WSAZ, Inc., and to substitute for Issue 9 thereof the above Issue No. 7.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary,

[F. R. Doc. 49-3987; Filed, May 18, 1949; 8:49 a. m.]

[Docket Nos. 9313, 9314]

'49ER BROADCASTING CO. ET AL

ORDER DESIGNATING APPLICATION FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of '49er Broadcasting Company, (assignor), File No. Bal-834, Docket No. 9313; and Joe D. Carroll, (assignee), and H. Neil Black, (competing assignee), File No. Bal-834 (Supplement), Docket No. 9314; for consent to assignment of license of Station KGFN, Grass Valley, California.

At a session of the Federal Communications Commission, held at its offices in Washington, D. C., on the 5th day of May 1949;

The Commission having under consideration the above-entitled application of '49er Broadcasting Company and Joe D. Carroll requesting assignment of license of Station KGFN, Grass Valley, California, and the competing application of H. Neil Black, filed pursuant to § 1.321 of the Commission's rules and regulations;

Whereas, that Commission is unable to determine upon consideration of said applications on their merits that Joe D. Carroll is better qualified and that an assignment to that applicant would otherwise be in the public interest;

It is ordered, That, pursuant to section 310 (b) of the Communications Act of 1934, as amended, and § 1.321 of the Commission's rules and regulations, the above applications are designated for hearing in a consolidated proceeding at a time and place to be designated by subsequent order of the Commission, on the following issues:

1. To determine whether the proposed assignees are legally, technically, financially and otherwise qualified to own, operate and control Station KGFN.

2. To determine the full contractual arrangements between the assignor and proposed assignee, Joe D. Carroll, including the consideration to be paid, the manner of payment and the properties to be received therefor.

3. To secure full information as to the plans and policies of the proposed assignees with respect to staffing and programming at Station KGFN and all of their other plans of arrangements for operating said station.

4. To determine on a comparative basis which, if either, of the applications filed by the proposed assignees in this proceeding should be granted.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] T. J. SLOWIE,
Secretary,

[F. R. Doc. 49-3988; Filed, May 18, 1949; 8:49 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6210]

MONTANA-DAKOTA UTILITIES CO. AND DAKOTAS ELECTRIC COOPERATIVE, INC.

NOTICE OF ORDER AUTHORIZING SALE AND MERGER OF FACILITIES AND ASSUMPTION OF LIABILITY ON PROMISSORY NOTES

MAY 16, 1949.

Notice is hereby given that, on May 12, 1949, the Federal Power Commission issued its order entered May 11, 1949, authorizing merger of facilities of Dakotas Electric Cooperative, Inc., with those of Montana-Dakota Utilities Co.; the issuance of securities by Montana-Dakota Utilities Co., and the sale of those facilities by Dakotas Electric Cooperative, Inc.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3971; Filed, May 18, 1949; 8:47 a. m.]

[Docket No. G-883]

CONSOLIDATED GAS UTILITIES CORP.

NOTICE OF ORDER DISMISSING APPLICATION

MAY 16, 1949.

Notice is hereby given that, on May 11, 1949, the Federal Power Commission issued its order entered May 11, 1949, dismissing the remaining portion of application for certificate of public convenience and necessity in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3972; Filed, May 18, 1949; 8:48 a. m.]

[Docket No. G-1096]

TEXAS EASTERN TRANSMISSION CORP.

NOTICE OF ORDER TERMINATING PROCEEDINGS

MAY 16, 1949.

Notice is hereby given that, on May 11, 1949, the Federal Power Commission issued its order entered May 11, 1949, in the above-designated matter, terminating proceedings instituted by order of August 3, 1948, which suspended certain rate schedules and set hearing without date.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3973; Filed, May 18, 1949; 8:48 a. m.]

[Docket Nos. IT-6087, IT-6088, IT-6089, IT-6090]

BONNEVILLE PROJECT, COLUMBIA RIVER, WASHINGTON-OREGON

NOTICE OF ORDER CONFIRMING AND APPROVING TEMPORARY RATE SCHEDULES

MAY 16, 1949.

Notice is hereby given that, on May 12, 1949, the Federal Power Commission issued its order entered May 11, 1949, in the above-designated matters, confirming and approving temporary rate schedules for a period not extending beyond September 30, 1949.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3974; Filed, May 18, 1949; 8:48 a. m.]

[Project No. 432]

CAROLINA POWER & LIGHT CO.

NOTICE OF ORDER APPROVING REVISED EXHIBIT

MAY 16, 1949.

Notice is hereby given that, on May 13, 1949, the Federal Power Commission is-

sued its order entered May 11, 1949, approving revised Exhibit M in the above-designated matter.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3975; Filed, May 18, 1949; 8:48 a. m.]

[Docket No. E-6215]

NORTHWESTERN PUBLIC SERVICE CO.

NOTICE OF APPLICATION

MAY 13, 1949.

Notice is hereby given that on May 13, 1949, an application was filed with the Federal Power Commission, pursuant to section 204 of the Federal Power Act, by Northwestern Public Service Company, a corporation organized under the laws of the State of Delaware and doing business in the States of South Dakota and Nebraska, with its principal business office at Huron, South Dakota, seeking an order authorizing the issuance of $700,000 principal amount of First Mortgage Bonds, 3⅛% Series due 1978, to be issued under the Indenture of Applicant, dated August 1, 1949, as amended and supplemented, to The Chase National Bank of the City of New York and Carl E. Buckley, as Trustees. The Bonds will be a new series of bonds issued under said Trust Indenture and will be dated June 1, 1949, and mature June 1, 1978. The Bonds will be sold to institutional investors; all as more fully appears in the application on file with the Commission.

Any person desiring to be heard or to make any protest with reference to said application should, on or before the 3d day of June, 1949, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure.

[SEAL] LEON FUQUAY,
Secretary.

[F. R. Doc. 49-3977; Filed, May 18, 1949; 8:48 a. m.]

[Project No. 485]

GEORGIA POWER CO.

NOTICE OF SUPPLEMENT TO APPLICATION FOR AMENDMENT OF LICENSE (MAJOR)

MAY 13, 1949.

Notice is hereby given that Georgia Power Company, of Atlanta, Georgia, has filed a further supplement to its pending application for amendment of license for Project No. 485 (Bartletts Ferry) on Chattahoochee River in Chambers and Lee Counties, Alabama, and Harris County, Georgia. The supplement seeks permission to install a larger waterwheel than contemplated in the licensee's pending application for amendment of license covering installation of a fourth generating unit. The effect of the supplement will be to increase the installed capacity of the project from 88,000 to 94,500 horsepower.

Any protest against approval of this supplementary application or request for hearing thereon, with the reasons for such protest or request, and the name and address of the party or parties so protesting or requesting, should be submitted on or before June 20, 1949, to the Federal Power Commission, Washington 25, D. C.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3976; Filed, May 18, 1949; 8:48 a. m.]

[Project Nos. 175, 1925, 1988]

FRESNO IRRIGATION DISTRICT AND PACIFIC GAS AND ELECTRIC CO.

ORDER GRANTING MOTIONS FOR ORAL ARGUMENT

MAY 12, 1949.

In the matters of Fresno Irrigation District, Project No. 1925; and Pacific Gas and Electric Company, Projects Nos. 175 and 1988.

Pursuant to the provisions of § 1.31 of the Commission's general rules and regulations, Fresno Irrigation District and Pacific Gas and Electric Company, applicants in the above-entitled matters, filed on April 18, 1949, their respective exceptions to the decision of the Presiding Examiner in those matters and on the same date each applicant filed a motion requesting an opportunity to present oral argument before the Commission in support of its exceptions.

The Commission finds: It is appropriate under the circumstances to grant applicants' motions.

The Commission orders: Oral argument in the above-entitled matters be had before the Commission on July 21, 1949, at 10 o'clock a. m. (e. d. s. t.) in the Hearing Room of the Commission, 1800 Pennsylvania Avenue NW., Washington, D. C., the scope and content of the argument to be as provided by the aforesaid § 1.31.

Date of issuance: May 13, 1949.

By the Commission.

[SEAL] LEON M. FUQUAY,
Secretary.

[F. R. Doc. 49-3978; Filed, May 18, 1949; 8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File No. 70-2127]

KENTUCKY WEST VIRGINIA GAS CO.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C., on the 12th day of May 1949.

Notice is hereby given that a declaration has been filed with the Commission pursuant to the Public Utility Holding Company Act of 1935 by Kentucky West Virginia Gas Company, a subsidiary of Philadelphia Company, a registered holding company. Declarant designates sections 6 (a) and 7 of the act as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than May 26, 1949, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request, and the issues, if any, of fact or law raised by said declaration proposed to be controverted, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time thereafter such declaration as filed, or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated pursuant to said act, or the Commission may exempt such transactions as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said declaration which is on file in the office of this Commission for a statement of the transactions therein proposed which are summarized below:

Declarant proposes to issue two promissory notes in the principal amounts of $1,800,000 and $1,200,000, respectively, each of said notes to be dated on or about May 10, 1949, to mature 12 months from date of issuance and to bear interest at the rate of 2¼% per annum. The notes will be issued to the Farmers Deposit National Bank of Pittsburgh and Mellon National Bank and Trust Company in payment of declarant's two outstanding 1¾% promissory notes, dated May 10, 1948, maturing May 10, 1949, which are held by the said banks in the principal amounts of $1,800,000 and $1,200,000, respectively.

Declarant states that the proposed transaction is necessary to provide additional time to complete details of a program for the divestiture of stock interests in the declarant held by its affiliates, Louisville Gas and Electric Company and Pittsburgh and West Virginia Gas Company, and for the reorganization of the gas and oil properties of the Philadelphia Company system located in the States of Kentucky and West Virginia.

Declarant states that no State Commission has jurisdiction over the proposed transaction and requests that the Commission's order herein issue at the earliest possible date.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-3967; Filed, May 18, 1949; 8:47 a. m.]

[File No. 70-2133]

NATIONAL FUEL GAS CO. ET AL.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 12th day of May 1949.

In the matter of National Fuel Gas Company, United Natural Gas Company, Iroquois Gas Corporation, File No. 70-2133.

Notice is hereby given that a joint application-declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by National Fuel Gas Company ("National"), a registered holding company, and its gas utility subsidiaries, United Natural Gas Company ("United") and Iroquois Gas Corporation ("Iroquois"). Applicants-declarants designate sections 6, 7, 9 (a), 10, 12 (b) and 12 (f) of the act and Rule U-45 of the general rules and regulations promulgated thereunder as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than May 27, 1949, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest, and the issues of fact or law raised by said application-declaration, as filed or as subsequently amended, which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after May 27, 1949, said application-declaration, as filed or as amended, may be granted and permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transactions as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said joint application-declaration which is on file in the offices of this Commission for a statement of the transactions therein proposed which are summarized as follows:

(a) National has entered into a credit agreement with the Chase National Bank of the City of New York contemplating the issuance and sale to the bank, from time to time prior to December 31, 1950, of promissory notes in an aggregate amount not to exceed $10,000,000 at any one time. National proposes to issue and sell $5,000,000 of such notes prior to May 31, 1950; and the issuance and sale of the balance of such notes will be the subject of further applications to be filed with this Commission. All notes will mature within nine months of the date thereof but not later than July 1, 1951, and bear interest at the rate of 2% per annum until December 31, 1949 and after that date at 2¼% per annum, or ¼ of 1% above the loan rate of the Federal Reserve Bank of New York, whichever is greater: *Provided, however,* That such interest rate shall not exceed 2¾% per annum. National will pay a commitment fee of ⅜ of 1% on the average daily unused balance for the period commencing January 1, 1950 to December 31, 1950. National may cancel the credit agreement at any time upon 30 days' notice. National will use $4,353,600 of the proceeds of the notes for the stock purchases from, and advances to, Iroquois and United as set forth in paragraphs (b) and (c) below, and the balance of the proceeds will be used for advances to, or purchases of securities of, these companies respecting which further applications will be filed with this Commission.

(b) Iroquois proposes to issue and sell to National 24,786 shares of its common capital stock at the par value of $100 per share. United proposes to issue and sell to National 75,000 shares of its common capital stock at the stated value of $25 per share. Both Iroquois and United will use the proceeds from the sale of their common stock in connection with their respective construction and gas storage programs. The issuance and sale of common stock by Iroquois and United have been submitted to the Public Service Commission of the State of New York and the Pennsylvania Public Utility Commission, respectively, for their approval.

(c) Pending state commission approval of the issuance and sale of their common stock, if Iroquois or United require funds to carry forward their construction and gas storage programs, National will loan on open account at 2% interest until December 31, 1949 and thereafter at the rate equivalent to the interest rate payable by National to the bank on its notes, such sums as each company shall so require: *Provided,* That the aggregate amount loaned to each company at any time does not exceed the total purchase price of the shares of common stock proposed to be issued and sold by each of these companies.

National states that it will subsequently refund the bank loans by the issuance and sale of common stock and/or long-term debentures.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-3968; Filed, May 18, 1949; 8:47 a. m.]

[File No. 70-2140]

NASSAU & SUFFOLK LIGHTING CO.

NOTICE OF FILING

At a regular session of the Securities and Exchange Commission, held at its office in the city of Washington, D. C., on the 12th day of May 1949.

Notice is hereby given that a declaration has been filed with this Commission pursuant to the Public Utility Holding Company Act of 1935 by Nassau & Suffolk Lighting Company, an indirect subsidiary of Long Island Lighting Company, a registered holding company. Declarant has designated sections 6 (a) and 7 of the act as applicable to the proposed transactions.

Notice is further given that any interested person may, not later than May 26, 1949, at 5:30 p. m., e. d. s. t., request the Commission in writing that a hearing be held on such matter, stating the reasons for such request, the nature of his interest and the issues of fact or law raised by said declaration which he desires to controvert, or may request that he be notified if the Commission should order a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C. At any time after May 26, 1949, said declaration, as filed or as amended, may be permitted to become effective as provided in Rule U-23 of the rules and regulations promulgated under the act, or the Commission may exempt such transaction as provided in Rules U-20 (a) and U-100 thereof.

All interested persons are referred to said declaration which is on file in the offices of this Commission for a statement of the transaction therein proposed, which is summarized as follows:

Declarant proposes to issue and sell for cash at principal amount to four commercial banks an aggregate of $3,800,000 principal amount of unsecured notes which will bear interest at the rate of 2½% per annum and will mature on May 31, 1950. The proceeds of the sale of the notes are to be used (1) to redeem, at principal amount plus accrued interest, the company's presently outstanding first mortgage bonds due October 1, 1949, in the principal amount of $2,820,000, (2) to repay all of the company's presently outstanding bank loans due June 30, 1949, in the face amount of $700,000, and (3) to the extent of the balance of $280,000, for additions to the company's plant and property.

The declaration states that the company has pending before this Commission an application pursuant to section 11 (e) of the act (File No. 54-136) for approval of a plan for its consolidation with its parent companies, Long Island Lighting Company and Queens Borough Gas and Electric Company. The record in that proceeding is closed, briefs have been filed and the case has been argued before the Commission. The company considers it undesirable, because of the relatively large cost that would be involved, to refund its bonds which mature October 1, 1949, with proceeds of new bonds issued under a new mortgage, in the light of the short period such new bonds might be outstanding if the company should be consolidated with Long Island Lighting Company and Queens Borough Gas and Electric Company at an early date.

Declarant states that the transaction is not subject to the jurisdiction of any regulatory body other than this Commission.

By the Commission.

[SEAL] ORVAL L. DUBOIS, *Secretary.*

[F. R. Doc. 49-3969; Filed, May 18, 1949; 8:47 a. m.]

[File Nos. 54-48, 54-138, 59-70]

EASTERN MINNESOTA POWER CORP. ET AL

ORDER APPROVING PLAN

At a regular session of the Securities and Exchange Commission held at its office in the city of Washington, D. C. on the 13th day of May A. D. 1949.

In the matter of Eastern Minnesota Power Corporation, Wisconsin Hydro Electric Company, and Manufacturers Trust Company, (respondents), File No. 59-70; Eastern Minnesota Power Corporation, and Wisconsin Hydro Electric

Company, (applicants), File Nos. 54–138, 54–48.

Eastern Minnesota Power Corporation ("Eastern Minnesota"), a registered holding company, and its public utility subsidiary, Wisconsin Hydro Electric Company ("Wisconsin Hydro"), having filed applications with this Commission pursuant to section 11 (e) of the Public Utility Holding Company Act of 1935 ("act") for approval of the final transactions in a plan for the liquidation and dissolution of Eastern Minnesota in compliance with the requirements of section 11 (b) of the act; and

Said applications having proposed, among other things, the payment by Eastern Minnesota and Wisconsin Hydro of claims, fees and expenses incurred by such companies in connection with said plan, the distribution by Eastern Minnesota of its remaining assets on a pro rata basis to the holders of its preferred stock and the dissolution of Eastern Minnesota; and

Eastern Minnesota having requested that the order approving the final transactions in said plan contain recitals to conform to certain requirements of the Internal Revenue Code, as amended; and

The Commission, on May 26, 1947, and November 4, 1947, having issued separate orders approving preceding phases of said plan (see Holding Company Act Releases Nos. 7441 and 7822); and

Public hearings having been held in respect of said applications after appropriate notice, the Commission having considered the record and having made and filed its findings and opinion herein;

It is ordered, Pursuant to section 11 (e) of the act, that said plan, as amended by said applications herein, be, and hereby is, approved as necessary to effectuate the provisions of section 11 (b) of the act and as fair and equitable to the persons affected thereby.

It is further ordered, That Eastern Minnesota Power Corporation and Wisconsin Hydro Electric Company pay the fees and expenses as itemized in the findings and opinion of the Commission accompanying this order.

It is further ordered, That the jurisdiction of the Commission be reserved with respect to the payment by Eastern Minnesota Power Corporation of any additional fees and expenses incurred by it in substantial amounts in connection with the consummation of said plain.

It is further ordered and recited, That the distribution, transfer and assignment by Eastern Minnesota Power Corporation of shares of the Common Stock of Wisconsin Hydro Electric Company to the holders of the $6 Preferred Stock of Eastern Minnesota Power Corporation is necessary or appropriate to effectuate the provisions of section 11 (b) of the Public Utilitity Holding Company Act of 1935.

By the Commission.

[SEAL] ORVAL L. DUBOIS,
Secretary.

[F. R. Doc. 49-3970; Filed, May 18, 1949; 8:47 a.m.]

DEPARTMENT OF JUSTICE

Office of Alien Property

AUTHORITY: 40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, Cum. Supp., E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp., E. O. 9788, Oct. 14, 1946, 11 F. R. 11981.

[Vesting Order CE 469]

COSTS AND EXPENSES INCURRED IN CERTAIN ACTIONS OR PROCEEDINGS IN CERTAIN MISSOURI, CONNECTICUT AND NEW YORK COURTS

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it having been found:

1. That each of the persons named in Column 1 of Exhibit A, attached hereto and by reference made a part hereof, was a person within the designated enemy country or the enemy-occupied territory identified in Column 2 of said Exhibit A opposite such person's name;

2. That, it was in the interest of the United States to take measures in connection with representing each of said persons in the court or administrative action or proceeding identified in Column 3 of said Exhibit A opposite such person's name, and such measures having been taken;

3. That, in taking such measures in each of such actions or proceedings, costs and expenses were incurred in the amount stated in Column 4 of said Exhibit A opposite the action or proceeding identified in Column 3 of said Exhibit A;

4. That each amount stated in Column 4 of said Exhibit A has been paid from the property which each of said persons obtained or was determined to have as a result of the action or proceeding identified in Column 3 of said Exhibit A opposite such person's name and all of said amounts are presently in the possession of the Attorney General of the United States.

Now, therefore, there is hereby vested in the Attorney General of the United States, to be used or otherwise dealt with in the interest of and for the benefit of the United States, the amount stated in Column 4 of said Exhibit A.

The term "designated enemy country" as used herein shall have the meaning prescribed in section 10 of Executive Order 9193, as amended. The term "enemy-occupied territory" as used herein shall have the meaning prescribed in rules of procedure, Office of Alien Property, § 501.6 (8 CFR, Cum. Supp., 503.6).

Executed at Washington, D. C., on May 12, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

EXHIBIT A

Column 1 Name	Column 2 Country or territory	Column 3 Action or proceeding	Column 4 Sum vested
		Item 1	
Hedwig Knopp	Germany	Estate of Otto G. Knopp, deceased, in Probate Court of Jackson County, State of Missouri.	$75.00
		Item 2	
Arlene Knopp	do	Same	75.00
		Item 3	
Maggiorina Borri Valle and Elsio Ferrarone, Cesarino Pozzo, Eda Borri, Walter Biasetti, Eleonora Biasetti, Giannina Biasetti.	Italy	Trust under the will of Angelo Valle, deceased, in Probate Court, District of Hartford, State of Connecticut.	129.00
		Item 4	
Clementine Leposava Jovanovic	Jugoslavia	Estate of Richard J. Scholz, deceased, Surrogate's Court, Bronx County, State of New York. File No. 89 P-1944.	62.00

[F. R. Doc. 49-3942; Filed, May 17, 1949; 8:51 a. m.]

[Vesting Order 13219]

IDA HORMANN

In re: Estate of Ida Hormann, deceased. File No. D-28-8680; E. T. sec. 16081.

Under the authority of the Trading With the Enemy Act, as amended, Executive Order 9193, as amended, and Executive Order 9788, and pursuant to law, after investigation, it is hereby found:

1. That Kate Gruttemann and Elly Grutteman, whose last known address is Germany, are residents of Germany and nationals of a designated enemy country (Germany);

2. That all right, title, interest and claim of any kind or character whatsoever of the persons identified in subparagraph 1 hereof, and each of them, in and to the estate of Ida Hormann, deceased, is property payable or deliverable to, or claimed by, the aforesaid nationals of a designated enemy country (Germany);

3. That such property is in the process of administration by Anna Maria Metzner, 15 Carteret Street, Upper Montclair, New Jersey, as Executrix, acting under the judicial supervision of the Surrogate's Court, New York County, New York;

and it is hereby determined:

4. That to the extent that the persons named in subparagraph 1 hereof are not within a designated enemy country, the national interest of the United States requires that such persons be treated as nationals of a designated enemy country (Germany).

All determinations and all action required by law, including appropriate consultation and certification, having been made and taken, and, it being deemed necessary in the national interest,

There is hereby vested in the Attorney General of the United States the property described above, to be held, used, administered, liquidated, sold or otherwise dealt with in the interest of and for the benefit of the United States.

The terms "national" and "designated enemy country" as used herein shall have the meanings prescribed in section 10 of Executive Order 9193, as amended.

Executed at Washington, D. C., on May 3, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3981; Filed, May 18, 1949; 8:48 a. m.]

JOZO SUGIHARA

AMENDED NOTICE OF INTENTION TO RETURN VESTED PROPERTY

Pursuant to section 32 (f) of the Trading With the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Jozo Sugihara, 4715; 285 shares of Pacific Trading Company (California) $20.00 par value capital stock registered in the name of the Alien Property Custodian, Washington, D. C., presently in the custody of the safekeeping department of the Federal Reserve Bank of New York.

This amended notice supersedes the notice of April 15, 1949, referring to the same claim (14 F. R. 2040, April 23, 1949).

Executed at Washington, D. C., on May 11, 1949.

For the Attorney General.

[SEAL] HAROLD I. BAYNTON,
Deputy Director,
Office of Alien Property.

[F. R. Doc. 49-3943; Filed, May 17, 1949; 8:51 a. m.]

RICHARD C. NICKELSEN, JR.

NOTICE OF INTENTION TO RETURN VESTED

Pursuant to section 32 (f) of the Trading with the Enemy Act, as amended, notice is hereby given of intention to return, on or after 30 days from the date of the publication hereof, the following property, subject to any increase or decrease resulting from the administration thereof prior to return, and after adequate provision for taxes and conservatory expenses:

Claimant, Claim No., Property, and Location

Richard C. Nichelsen, Jr., Brooklyn, N. Y.; Claim No. 5892; A. Cash in the Treasury of the United States $22,213.26.

B. The following securities and insurance policies located in the Office of Alien Property, 120 Broadway, New York; (1) Certificate No. 1131 for 10 shares, Certificate No. 1172 for 2 shares and Certificate No. 1306 for 50/100 share of $33⅓ par value common capital stock of Flatbush National Bank of Brooklyn, New York; (2) Certificate No. 2080 for 25 shares of $10 par value capital stock of Bullet Proof and Non-shatterable Glass Corporation; (3) Certificate No. 0194304 for 15 shares of no par value capital stock of Durant Motors, Inc.; (4) United States Government Life Insurance Policy No. K21804, a 20-year endowment policy, face value of $10,000; (5) United States of America Adjustment Service Certificate No. 2662765 maturing June 1, 1945.

C. The following securities in the possession of the Safekeeping Department of the Federal Reserve Bank, New York: (1) Certificate No. G-21 for 20 Units Composite Fund Series A, Brooklyn Trust Company; (2) Certificate No. 37831 for 5 shares of $100 par value capital stock of Brooklyn Trust Company; (3) Certificate No. 137627 for 25 shares of $10 par value capital stock of Irving Trust Company of New York.

D. The following documents presently in the custody of the Office of Alien Property, Washington, D. C.: (1) Memorandum re: status of mortgage and taxes; (2) Receipted tax bill for year 1942-43; (3) Deed from William and Ida Kramer to Richard C. Nickelsen and Peter E. Jappen, dated October 31, 1929; (4) Deed from Peter E. Jappen and Theresa Jappen to Richard C. Nickelsen, dated November 11, 1929; (5) Lease between the Brooklyn Trust Company and Boy Ketelsen, dated May 11, 1942; (6) Photostatic copy of a mortgage, date July 17, 1931 from Richard C. Nickelsen and Jennie H. Nickelsen to the Brooklyn Trust Company.

Executed at Washington, D. C., on May 12, 1949.

For the Attorney General.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3944; Filed, May 17, 1949; 8:51 a. m.]

STATEMENT OF ORGANIZATION AND DELEGATION OF FINAL AUTHORITY

The statement of organization and delegations of final authority of the Office of Alien Property, Department of Justice, 13 F. R. 9605, is hereby amended by amendment of paragraph 1. (b) (3) (i), paragraph 1. (b) (5), paragraph 1. (b) (6), paragraph 1. (b) (9), paragraph 1. (d), paragraph 7, paragraph 11, paragraph 12, and paragraph 13, and by amendment of the heading of, and by addition of a paragraph to, paragraph 14:

1. (b) (3) (i) *Foreign Funds Section.* Administers controls with respect to property, over which jurisdiction has been transferred by Executive Order No. 9989, and with respect to transactions relating to such property. It is represented in the field by the New York Office.

* * * * *

1. (b) (5) *Litigation Branch.* The Chief, Litigation Branch, is in charge of litigation involving all matters in all courts, except litigation involving estates and trusts in courts of first instance.

1. (b) (6) *Legal Branch.* The Chief, Legal Branch, advises the Director with respect to legal aspects of office policy and operation. He also is in charge of legislation and supervises liquidation of banking, insurance, and other financial institutions under the control of the Office of Alien Property. In the absence of the Deputy Director, the Chief, Legal Branch, is the Acting Deputy Director.

* * * * *

1. (b) (9) *Comptroller's Branch.* The Chief, Comptroller's Branch, is responsible for the maintenance of all accounting records pertaining to vested property, the preparation of financial reports, the review of financial data relating to vested and supervised business enterprises, and certain functions related to the effectuation of vesting orders and the custody and receipt of vested property. He supervises the functions of the Disbursing Officer, who collects, receives and deposits currency, checks and drafts paid to or received by the Office of Alien Property in the New York Office, transfers the proceeds to the account of the Attorney General, and makes disbursements by the issuance of checks in payment of all expenses of and claims against the Office of Alien Property.

* * * * *

1. (d) *Requests and inquiries.* Requests and inquiries may be addressed to the Office of Alien Property, Department of Justice, Washington 25, D. C. Correspondence from the Office includes reference symbols, use of which expedites the handling of reply. Persons, who are located near the New York, San Francisco or Honolulu offices may address the manager of the field office most convenient to them.

* * * * *

7. *Delegation to Chief, Operations Branch, and others.* (a) The Chief, Operations Branch, the Chief, Estates and Trusts Branch, the Chief, Comptroller's Branch, the Manager, New York Office, and the Chief, Collection and Custody Section, are severally authorized:

(1) To issue any demand, direction, or instruction directed to any person, firm or corporation ,or take any other action necessary in order to effectuate any vesting order;

(2) To take custody of and to receipt for any property or interest therein, or to accept payment, conveyance, transfer, assignment or delivery made to or for the account of the Attorney General pursuant to the Trading With the Enemy Act, as amended;

(3) To direct the execution of transfers of vested property.

(b) The Disbursing Officer is authorized to collect, receive and deposit currency, checks and drafts for the Office of

Alien Property, to transfer the proceeds to the account of the Attorney General, and to make disbursements by the issuance of checks in payment of all necessary and proper expenses of and claims against the Office of Alien Property.

* * * * *

11. *Delegation to Chief, Foreign Funds Section, and others, concerning blocked assets.* The Manager, New York Office, the Chief, Foreign Funds Section, the Assistant Chief, Foreign Funds Section, the Chief, Licensing Unit, Foreign Funds Section, and the Federal Reserve Bank of New York are severally authorized to take action with respect to specific licensing matters, by granting or denying applications for specific licenses, and by amending, modifying, renewing or revoking existing specific licenses, with respect to the property over which jurisdiction has been transferred by Executive Order No. 9989. The delegation of authority to the Federal Reserve Bank of New York expires at midnight May 31, 1949.

12. *Delegation of authority to certify documents.* The Secretary and the Assistant Secretary for Records are severally authorized to exercise the power vested in the Director to authenticate, certify and attest copies of any books, records, papers or other documents in the official custody of the Office of Alien Property, to certify transcripts under section 34 (e) or (f) of the Trading With the Enemy Act, as amended, and to subscribe the Director's name to such certificates in his behalf.

13. *Delegation of authority to make records available.* Unless otherwise instructed by the Director, each Branch Chief of the Office of Alien Property, the Manager, New York Office, and the Manager, Hawaii Office, in the conduct of affairs of his Branch or Office, is authorized to make available or disclose official files, documents, records and information to applicants in accordance with Part 503 of the Regulations of the Office of Alien Property.

14. *Delegation to Chief, Operations Branch, Chief, Patent Section, and Chief, Patent Prosecution and Trade-Mark Unit.* * * *

(d) Authority with respect to applications for registration of trade-marks, trade-mark registrations, and renewals thereof in the United States Patent Office, and authority to sign all papers filed or to be filed for the Office of Alien Property in the United States Patent Office which are necessary for the proper conduct of business on behalf of the Office of Alien Property in matters relating to trade-mark registrations and applications therefor, is delegated to the Chief, Patent Prosecution and Trade-Mark Unit, Patent Section.

(40 Stat. 411, 55 Stat. 839, Pub. Laws 322, 671, 79th Cong., 60 Stat. 50, 925; 50 U. S. C. and Supp. App. 1, 616; E. O. 9193, July 6, 1942, 3 CFR, 1943 Cum. Supp.; E. O. 9567, June 8, 1945, 3 CFR, 1945 Supp.; E. O. 9788, Oct. 14, 1946, 3 CFR, 1946 Supp.; E. O. 9989, Aug. 20, 1948, 3 CFR, 1948 Supp.)

Executed at Washington, D. C. this 16th day of May 1949.

[SEAL] DAVID L. BAZELON,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 49-3966; Filed, May 18, 1949; 8:48 a. m.]