THE NATIONAL ARCHIVES OF THE UNITED STATES
LITTERA SCRIPTA MANET
1934

FEDERAL REGISTER

VOLUME 23 NUMBER 224

Washington, Saturday, November 15, 1958

TITLE 3—THE PRESIDENT

EXECUTIVE ORDER 10788

SUSPENSION OF COMPLIANCE WITH CERTAIN STATUTORY PROVISIONS RELATING TO EMPLOYMENT IN THE CANAL ZONE

By virtue of the authority vested in me by section 202 of the Department of Commerce and Related Agencies Appropriation Act, 1959 (72 Stat. 236), and section 607 of the Department of Defense Appropriation Act, 1959 (72 Stat. 724), relating to certain kinds of employment in the Canal Zone, and deeming such course to be in the public interest, I hereby suspend, from and including the effective dates of those acts, compliance with the provisions of the designated sections: *Provided*, that this suspension shall not be construed to affect the provisions of such sections relating to the amount of compensation that may be received by persons employed in skilled, technical, clerical, administrative, executive, or supervisory positions on the Canal Zone directly or indirectly by any branch of the United States Government or by any corporation or company the stock of which is owned wholly or in part by the United States Government.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
November 14, 1958.

[F. R. Doc. 58-9561; Filed, Nov. 14, 1958; 11:50 a. m.]

EXECUTIVE ORDER 10789

AUTHORIZING AGENCIES OF THE GOVERNMENT TO EXERCISE CERTAIN CONTRACTING AUTHORITY IN CONNECTION WITH NATIONAL-DEFENSE FUNCTIONS AND PRESCRIBING REGULATIONS GOVERNING THE EXERCISE OF SUCH AUTHORITY

By virtue of the authority vested in me by the act of August 28, 1958, 72 Stat. 972, hereinafter called the act, and as President of the United States, and in view of the existing national emergency declared by Proclamation No. 2914 of December 16, 1950, and deeming that such action will facilitate the national defense, it is hereby ordered as follows:

PART I—DEPARTMENT OF DEFENSE

Under such regulations, which shall be uniform to the extent practicable, as may be prescribed or approved by the Secretary of Defense:

1. The Department of Defense is authorized, within the limits of the amounts appropriated and the contract authorization provided therefor, to enter into contracts and into amendments or modifications of contracts heretofore or hereafter made, and to make advance payments thereon, without regard to the provisions of law relating to the making, performance, amendment, or modification of contracts, whenever, in the judgment of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, the national defense will be facilitated thereby.

2. The Secretaries of Defense, the Army, the Navy, and the Air Force, respectively, may exercise the authority herein conferred and, in their discretion and by their direction, may delegate such authority to any other military or civilian officers or officials of their respective departments, and may confer upon any such military or civilian officers or officials the power to make further delegations of such authority within their respective commands or organizations: *Provided*, that the authority herein conferred shall not be utilized to obligate the United States in an amount in excess of $50,000 without approval by an official at or above the level of an Assistant Secretary or his Deputy, or by a departmental Contract Adjustment Board.

3. The contracts hereby authorized to be made shall include agreements of all kinds (whether in the form of letters of intent, purchase orders, or otherwise) for all types and kinds of property or services necessary, appropriate, or convenient for the national defense, or for the invention, development, or production of, or research concerning, any such property or services, including, but not limited to, aircraft, missiles, buildings, vessels, arms, armament, equipment or supplies of any kind, or any portion thereof, including plans, spare parts and equipment therefor, materials, supplies, facilities, utilities, machinery, machine

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THE PRESIDENT

EXECUTIVE AGENCIES

FEDERAL REGISTER

Published daily, except Sundays, Mondays, and days following official Federal holidays, by the Federal Register Division, National Archives and Records Service, General Services Administration, pursuant to the authority contained in the Federal Register Act, approved July 26, 1935 (49 Stat. 500, as amended; 44 U. S. C., ch. 8B), under regulations prescribed by the Administrative Committee of the Federal Register, approved by the President. Distribution is made only by the Superintendent of Documents, Government Printing Office, Washington 25, D. C.

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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.

tools, and any other equipment without any restriction of any kind as to type, character, location, or form.

4. The Department of Defense may by agreement modify or amend or settle claims under contracts heretofore or hereafter made, may make advance payments upon such contracts of any portion of the contract price, and may enter into agreements with contractors or obligors modifying or releasing accrued obligations of any sort, including accrued liquidated damages or liability under surety or other bonds. Amendments or modifications of contracts may be with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished hereunder, irrespective of the time or circumstances of the making, or the form, of the contract amended or modified, or of the amending or modifying contract, and irrespective of rights which may have accrued under the contract or the amendments or modifications thereof.

5. Proper records of all actions taken under the authority of the act shall be maintained within the Department of Defense. The Secretaries of Defense, the Army, the Navy, and the Air Force shall make such records available for public inspection except to the extent that they, or their duly authorized representatives, may respectively deem the disclosure of information therein to be detrimental to the national security.

6. The Department of Defense shall, by March 15 of each year, report to the Congress all actions taken within that department under the authority of the act during the preceding calendar year. With respect to actions which involve actual or potential cost to the United States in excess of $50,000, the report shall (except as the disclosure of such information may be deemed to be detrimental to the national security)—

(a) name the contractor;

(b) state the actual cost or estimated potential cost involved;

(c) describe the property or services involved; and

(d) state further the circumstances justifying the action taken.

7. There shall be no discrimination in any act performed hereunder against any person on the ground of race, religion, color, or national origin, and all contracts entered into, amended, or modified hereunder shall contain such nondiscrimination provision as otherwise may be required by statute or Executive order.

8. No claim against the United States arising under any purchase or contract made under the authority of the act and this order shall be assigned except in accordance with the Assignment of Claims Act of 1940 (54 Stat. 1029), as amended.

9. Advance payments shall be made hereunder only upon obtaining adequate security.

10. Every contract entered into, amended, or modified pursuant to this order shall contain a warranty by the contractor in substantially the following terms:

"The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except bona-fide employees or bona-fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee."

11. All contracts entered into, amended, or modified pursuant to authority of this order shall include a clause to the effect that the Comptroller General of the United States or any of his duly authorized representatives shall, until the expiration of three years after final payment, have access to and the right to examine any directly pertinent books, documents, papers, and records of the contractor or any of his subcontractors engaged in the performance of, and involving transactions related to, such contracts or subcontracts.

12. Nothing herein contained shall be construed to constitute authorization hereunder for—

(a) the use of the cost-plus-a-percentage-of-cost system of contracting;

(b) any contract in violation of existing law relating to limitation of profits or fees;

(c) the negotiation of purchases of or contracts for property or services required by law to be procured by formal advertising and competitive bidding;

(d) the waiver of any bid, payment, performance, or other bond required by law;

(e) the amendment of a contract negotiated under section 2304 (a) (15) of title 10 of the United States Code to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder; or

(f) the formalization of an informal commitment, unless the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, or the duly authorized representative of any such Secretary, finds that at the time the commitment was made it was impracticable to use normal procurement procedures.

13. The provisions of the Walsh-Healey Act (49 Stat. 2036), as amended, the Davis-Bacon Act (49 Stat. 1011), as amended, the Copeland Act (48 Stat. 948), as amended, and the Eight Hour Law (37 Stat. 137), as amended, if otherwise applicable, shall apply to contracts made and performed under the authority of this order.

14. Nothing herein contained shall prejudice anything heretofore done under Executive Order No. 9001 of December 27, 1941, or Executive Order No. 10210 of February 2, 1951, or any amendments or extensions thereof, or the continuance in force of an action heretofore taken under those orders or any amendments or extensions thereof.

15. Nothing herein contained shall prejudice any other authority which the Department of Defense may have to enter into, amend, or modify contracts, and to make advance payments.

PART II—EXTENSION OF PROVISIONS OF PARAGRAPHS 1–14

21. Subject to the limitations and regulations contained in paragraphs 1 to 14, inclusive, hereof, and under any regulations prescribed by him in pursuance of the provisions of paragraph 22 hereof, the head of each of the following-named agencies is authorized to perform or exercise as to his agency, independently of any Secretary referred to in the said paragraphs 1 to 14, all the functions and authority vested by those paragraphs in the Secretaries mentioned therein:

Department of the Treasury
Department of the Interior
Department of Agriculture
Department of Commerce
Atomic Energy Commission
General Services Administration
Office of Civil and Defense Mobilization
National Aeronautics and Space Administration
Federal Aviation Agency
Tennessee Valley Authority
Government Printing Office

22. The head of each agency named in paragraph 21 hereof is authorized to prescribe regulations governing the carrying out of the functions and authority vested with respect to his agency by the provisions of paragraph 21 hereof. Such regulations shall, to the extent practicable, be uniform with the regulations prescribed or approved by the Secretary of Defense under the provisions of Part I of this order.

23. Nothing contained herein shall prejudice any other authority which any agency named in paragraph 21 hereof may have to enter into, amend, or modify contracts and to make advance payments.

24. Nothing contained in this Part shall constitute authorization thereunder for the amendment of a contract negotiated under section 302 (c) (14) of the Federal Property and Administrative Services Act of 1949 (63 Stat. 394), as amended by section 2 (b) of the act of August 28, 1958, 72 Stat. 966, to increase the contract price to an amount higher than the lowest rejected bid of any responsible bidder.

DWIGHT D. EISENHOWER

THE WHITE HOUSE,
November 14, 1958.

[F. R. Doc. 58-9562; Filed, Nov. 14, 1958; 11:50 a. m.]

RULES AND REGULATIONS

TITLE 5—ADMINISTRATIVE PERSONNEL

Chapter I—Civil Service Commission

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Effective upon publication in the FEDERAL REGISTER, subparagraph (13) of § 6.314 (a) is amended to read as set out below.

§ 6.314 *Department of Health, Education, and Welfare*—(a) *Office of the Secretary.* * * *

(13) One Confidential Assistant to the Under Secretary.

(R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 58-9485; Filed, Nov. 14, 1958; 8:46 a. m.]

PART 6—EXCEPTIONS FROM THE COMPETITIVE SERVICE

GENERAL SERVICES ADMINISTRATION

Effective upon publication in the FEDERAL REGISTER, subparagraph (3) of § 6.333 (a) is revoked.

(R. S. 1753, sec. 2, 22 Stat. 403, as amended; 5 U. S. C. 631, 633)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 58-9489; Filed, Nov. 14, 1958; 8:47 a. m.]

PART 29—RETIREMENT

REEMPLOYMENT OF ANNUITANTS

Section 29.18 (c) is amended as set out below.

§ 29.18 *Reemployment of annuitants.*

* * *

(c) This paragraph shall apply to each annuitant (1) who retired for disability and is found before reaching age 60 to be recovered or restored to earning capacity, or (2) whose annuity is based on involuntary separation for reasons other than age or misconduct or delinquency. If such annuitant becomes employed on or after October 1, 1956 in an appointive or elective position wherein he is not excluded from retirement coverage by statute or by § 29.2, (i) his annuity shall be terminated at the end of the month preceding the month in which he becomes employed, (ii) retirement deductions shall be made from his salary, and (iii) his future annuity rights shall be determined under the law in effect at the date of his subsequent separation. If such annuitant becomes employed on or after October 1, 1956, and before November 15, 1958, in an appointive or elective position wherein he is excluded from retirement coverage by statute or by § 29.2 (*a*) his annuity shall be suspended from the first day of the month in which he becomes employed, (*b*) no retirement deductions shall be made from his salary, and (*c*) his annuity shall be resumed at the same rate from the first day of the month after the month in which his subsequent separation occurs. If such annuitant becomes employed on or after November 15, 1958, in an appointive or elective position wherein he is excluded from retirement coverage by statute or by § 29.2, (*1*) his annuity shall not be suspended, (*2*) no retirement deductions shall be made from his salary, and (*3*) there shall be deducted from his salary, except for lump-sum leave purposes, an amount equal to the annuity allocable to the period of actual employment.

(Sec. 16, 70 Stat. 758; 5 U. S. C. 2266)

UNITED STATES CIVIL SERVICE COMMISSION,
[SEAL] WM. C. HULL,
Executive Assistant.

[F. R. Doc. 58-9526; Filed, Nov. 14, 1958; 9:11 a. m.]

TITLE 7—AGRICULTURE

Chapter IX—Agricultural Marketing Service (Marketing Agreements and Orders), Department of Agriculture

[Navel Orange Reg. 142]

PART 914—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

LIMITATION OF HANDLING

§ 914.442 *Navel Orange Regulation 142*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914), regulating the handling of navel oranges grown in Arizona and designated part of California, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Navel Orange Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such navel oranges as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for navel oranges and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such navel oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 13, 1958.

(b) *Order.* (1) The respective quantities of navel oranges grown in Arizona and designated part of California which may be handled during the period beginning at 12:01 a. m., P. s. t., November 16, 1958, and ending at 12:01 a. m., P. s. t., November 23, 1958, are hereby fixed as follows:

(i) District 1: 739,200 cartons;
(ii) District 2: Unlimited movement;
(iii) District 3: Unlimited movement;
(iv) District 4: Unlimited movement.

(2) All navel oranges handled during the period specified in this section are subject also to all applicable size restrictions which are in effect pursuant to this part during such period.

(3) As used in this section, "handled," "District 1," "District 2," "District 3," "District 4," and "carton" have the same meaning as when used in said amended marketing agreement and order.

(Sec. 5, 49 Stat. 853, as amended; 7 U. S. C. 608c)

Dated: November 14, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-9560; Filed, Nov. 14, 1958; 11:39 a. m.]

[Orange Reg. 348]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.929 *Orange Regulation 348*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of oranges, except Temple oranges, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for prepara-

tion for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of oranges, except Temple oranges, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 11, 1958, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such oranges; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of oranges, except Temple oranges, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title; 22 F. R. 6676).

(2) During the period beginning at 12:01 a. m., e. s. t., November 17, 1958, and ending at 12:01 a. m., e. s. t., December 1, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any oranges, except Temple oranges, grown in the production area, which do not grade at least U. S. No. 1 Bronze; or

(ii) Any oranges, except Temple oranges, grown in the production area, which are of a size smaller than 2$^{2}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of oranges smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title): *Provided*, That in determining the percentage of oranges in any lot which are smaller than 2$^{2}/_{16}$ inches in diameter, such percentage shall be based only on those oranges in such lot which are of a size 2$^{1}/_{16}$ inches in diameter and smaller.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 12, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-9518; Filed, Nov. 14, 1958; 9:10 a. m.]

[Grapefruit Reg. 296]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.930 *Grapefruit Regulation 296*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of grapefruit, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of all grapefruit, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 11, 1958, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such grapefruit; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of grapefruit, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); and the term "mature" shall have the same meaning as set forth in section 601.16 Florida Statutes, Chapters 26492 and 28090, known as the Florida Citrus Code of 1949, as supplemented by section 601.17 (Chapters 25149 and 28090) and also by section 601.18, as amended June 2, 1955 (Chapter 29760).

(2) During the period beginning at 12:01 a. m., e. s. t., November 17, 1958, and ending at 12:01 a. m., e. s. t., December 1, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any grapefruit, grown in the production area, which are not mature and do not grade at least U. S. No. 1 Bronze;

(ii) Any seeded grapefruit, grown in the production area, which are of a size smaller than 3$^{15}/_{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seeded grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in the revised United States Standards for Florida Grapefruit (§§ 51.750 to 51.790 of this title); or

(iii) Any seedless grapefruit, grown in the production area, which are smaller than 3$^{9}/_{16}$ inches in diameter, measured midway at a right angle to a straight line running from the stem to the blossom end of the fruit, except that a tolerance of 10 percent, by count, of seedless grapefruit smaller than such minimum size shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances, specified in said revised United States Standards for Florida Grapefruit.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 12, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-9519; Filed, Nov. 14, 1958; 9:10 a. m.]

[Tangerine Reg. 202]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.931 *Tangerine Regulation 202*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangerines, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangerines, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 11, 1958, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangerines; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangerines, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, and standard pack, as used herein, shall have the same meaning as is given to the respective term in the United States Standards for Florida Tangerines (§§ 51.1810 to 51.1836 of this title).

(2) During the period beginning at 12:01 a. m., e. s. t., November 17, 1958, and ending at 12:01 a. m., e. s. t., December 1, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangerines, grown in the production area, that do not grade at least U. S. No. 1; or

(ii) Any tangerines, grown in the production area, that are of a size smaller than 2$^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangerines smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Tangerines (§§ 51.1810 to 51.1836 of this title).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 12, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-9520; Filed, Nov. 14, 1958; 9:10 a. m.]

[Tangelo Reg. 8]

PART 933—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

LIMITATION OF SHIPMENTS

§ 933.932 *Tangelo Regulation 8*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 33, as amended (7 CFR Part 933), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.), and upon the basis of the recommendations of the committees established under the aforesaid amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of shipments of tangelos, as hereinafter provided, will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication thereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based became available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient; a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. Shipments of tangelos, grown in the production area, are presently subject to regulation by grades and sizes, pursuant to the amended marketing agreement and order; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after an open meeting of the Growers Administrative Committee on November 11, 1958, such meeting was held to consider recommendations for regulation, after giving due notice of such meeting, and interested persons were afforded an opportunity to submit their views at this meeting; the provisions of this section, including the effective time hereof, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such tangelos; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period hereinafter set forth so as to provide for the continued regulation of the handling of tangelos, and compliance with this section will not require any special preparation on the part of the persons subject thereto which cannot be completed by the effective time hereof.

(b) *Order.* (1) Terms used in the amended marketing agreement and order shall, when used herein, have the same meaning as is given to the respective term in said amended marketing agreement and order; and terms relating to grade, diameter, standard pack, and standard box, as used herein, shall have the same meaning as is given to the respective term in the amended United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title; 22 F. R. 6676).

(2) During the period beginning at 12:01 a. m., e. s. t., November 17, 1958, and ending at 12:01 a. m., e. s. t., December 1, 1958, no handler shall ship between the production area and any point outside thereof in the continental United States, Canada, or Mexico:

(i) Any tangelos, grown in the production area, which do not grade at least U. S. No. 1 Bronze; or

(ii) Any tangelos, grown in the production area, which are of a size smaller than 2$^{5}/_{16}$ inches in diameter, except that a tolerance of 10 percent, by count, of tangelos smaller than such minimum diameter shall be permitted, which tolerance shall be applied in accordance with the provisions for the application of tolerances specified in the United States Standards for Florida Oranges and Tangelos (§§ 51.1140 to 51.1186 of this title).

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 12, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-9521; Filed, Nov. 14, 1958; 9:10 a. m.]

[Lemon Reg. 765]

PART 953—LEMONS GROWN IN CALIFORNIA AND ARIZONA

LIMITATION OF HANDLING

§ 953.872 *Lemon Regulation 765*—(a) *Findings.* (1) Pursuant to the marketing agreement, as amended, and Order No. 53, as amended (7 CFR Part 953), regulating the handling of lemons grown in California and Arizona, effective under the applicable provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and upon the basis of the recommendation and information submitted by the Lemon Administrative Committee, established under the said amended marketing agreement and order, and upon other available information, it is hereby found that the limitation of handling of such lemons as hereinafter provided will tend to effectuate the declared policy of the act.

(2) It is hereby further found that it is impracticable and contrary to the public interest to give preliminary notice, engage in public rule-making procedure, and postpone the effective date of this section until 30 days after publication hereof in the FEDERAL REGISTER (60 Stat. 237; 5 U. S. C. 1001 et seq.) because the time intervening between the date when information upon which this section is based become available and the time when this section must become effective in order to effectuate the declared policy of the act is insufficient, and a reasonable time is permitted, under the circumstances, for preparation for such effective time; and good cause exists for making the provisions hereof effective as hereinafter set forth. The Committee held an open meeting during the current week, after giving due notice thereof, to consider supply and market conditions for lemons and the need for regulation; interested persons were afforded an opportunity to submit information and views at this meeting; the recommendation and supporting information for regulation during the period specified herein were promptly submitted to the Department after such meeting was held; the provisions of this section, including its effective time, are identical with the aforesaid recommendation of the committee, and information concerning such provisions and effective time has been disseminated among handlers of such lemons; it is necessary, in order to effectuate the declared policy of the act, to make this section effective during the period herein specified; and compliance with this section will not require any special preparation on the part of persons subject hereto which cannot be completed on or before the effective date hereof. Such committee meeting was held on November 12, 1958.

(b) *Order.* (1) The respective quantities of lemons grown in California and Arizona which may be handled during the period beginning at 12:01 a. m., P. s. t., November 16, 1958, and ending at 12:01 a. m., P. s. t., November 23, 1958, are hereby fixed as follows:

(i) District 1: 9,300 cartons;

(ii) District 2: 148,800 cartons;

(iii) District 3: 27,900 cartons.

(2) As used in this section, "handled," "District 1," "District 2," "District 3," and "carton" have the same meaning as when used in the said amended marketing agreement and order.

(Sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c)

Dated: November 13, 1958.

[SEAL] S. R. SMITH,
Director, Fruit and Vegetable Division, Agricultural Marketing Service.

[F. R. Doc. 58-9531; Filed, Nov. 14, 1958; 9:11 a. m.]

TITLE 15—COMMERCE AND FOREIGN TRADE

Chapter III—Bureau of Foreign Commerce, Department of Commerce

Subchapter B—Export Regulations

[9th Gen. Rev. of Export Regs. Amdt. 5 [1]]

PART 370—SCOPE OF EXPORT CONTROL BY DEPARTMENT OF COMMERCE

PART 371—GENERAL LICENSES

MISCELLANEOUS AMENDMENTS

1. Section 370.6 *In-transit shipments without unloading* is amended by deleting the note at the end thereof.

2. Section 370.7 *Shipments entering foreign trade zones* is amended to read as follows:

§ 370.7 *Shipments entering foreign trade zones*—(a) *General provisions.* Shipments of commodities wholly of foreign origin for which no customs entry has been made and which enter a United States foreign trade zone may be exported from the foreign trade zone without an export license except as described in paragraphs (b), (c), (d), and (e) of this section.

(b) *Hong Kong, Macao, Poland (including Danzig), and Subgroup A destinations.* Shipments to Hong Kong, Macao, Poland (including Danzig), and Subgroup A destinations require a validated license if a shipment of similar goods of United States origin could not be made from the United States to such a destination under the provisions of a general license.

(c) *Shipments covered by United States import certificates.* Commodities shipped to the United States under a United States Import Certificate (Form FC–826), in accordance with the procedure described in § 368.1 (b) of this chapter, require a validated license.

(d) *Shipments of foreign excess property.* Commodities disposed of by United States Government agencies under foreign excess property disposal programs require a validated license.

(e) *Shipments originating in Canada.* Shipments of commodities originating in Canada require a validated license only:

(1) If the shipment does not meet the conditions set forth in § 371.9 (b) (1) of this chapter; or,

(2) If the shipment is exported to an ultimate destination to which the same commodities could not be exported directly from the United States under General License GO.

3. Section 371.9 *General License GIT; in-transit shipments* is amended in the following particulars:

a. The note following paragraph (a) (2) is amended to read as follows:

NOTE: 1. A commodity is not considered as "moving in transit" within the meaning of General License GIT if it is covered by a warehouse entry and withdrawn from warehouse under a withdrawal-for-exportation customs entry or if its transit is broken by a warehousing or processing operation under another type of customs entry.

2. As used in § 371.9 (b), commodities or shipments of commodities which originate in any foreign country means commodities exported from that country whether or not grown, produced, or manufactured there.

3. General License GIT is not applicable to exportations of commodities licensed by agencies of the United States Government other than the Department of Commerce.

4. See § 370.6 of this chapter regarding shipments moving in transit via the United States without unloading from the carrier.

b. Paragraph (c) *Commodities excepted from the provisions of General License GIT* is amended to read as follows:

(c) *Types of shipments excepted from the provisions of General License GIT.* (1) Commodities shipped to the United States under the provisions of a United States Import Certificate (Form FC–826) may not be reexported to any destination under this general license.

(2) Commodities disposed of by United States Government agencies under foreign excess property disposal programs may not be reexported to any destination under this general license.

The note at the end thereof remains unchanged.

4. Section 371.18 *General License GLR; return of certain commodities imported into the United States,* paragraph (f) *Exportation of commodities imported under bond for a temporary period* is amended to read as follows:

(f) *Exportation of commodities imported under bond for a temporary period.* Collectors of Customs are authorized, within their discretion, to clear for export under this general license commodities imported for a temporary period into the United States under bond in compliance with the provisions of the Tariff Act of 1930, as amended (section 308 and section 201, paragraphs 1607, 1747, and 1809); provided:

(1) The exportation is not destined to Hong Kong, Macao, or a Subgroup A destination;

(2) The exportation does not include commodities excluded under paragraph (a) (2) of this section; and

(3) The exporter submits a written statement signed in person by the exporter or his authorized agent, and such other evidence as may be required by the Collector to show that all commodities included in such exportation were imported into the United States and utilized for authorized purposes only in compliance with the terms of the bond

[1] This amendment was published in Current Export Bulletin 806, dated November 10, 1958.

and in accordance with the provisions of the Tariff Act of 1930.

This amendment shall become effective as of November 10, 1958.

(Sec. 3, 63 Stat. 7; 50 U. S. C. App. 2023. E. O. 9630, 10 F. R. 12245, 3 CFR, 1945 Supp., E. O. 9919, 13 F. R. 59, 3 CFR, 1948 Supp.)

LORING K. MACY,
Director,
Bureau of Foreign Commerce.

[F. R. Doc. 58-9488; Filed, Nov. 14, 1958; 8:47 a. m.]

TITLE 9—ANIMALS AND ANIMAL PRODUCTS

Chapter I—Agricultural Research Service, Department of Agriculture

Subchapter C—Interstate Transportation of Animals and Poultry

[B. A. I. Order 384, Admt. 10]

PART 79—SCRAPIE IN SHEEP

AREAS QUARANTINED

Pursuant to the provisions of sections 1 and 3 of the Act of March 3, 1905, 33 Stat. 1264, as amended, sections 4 and 5 of the Act of May 29, 1884, 23 Stat. 32, as amended, and sections 1 and 2 of the Act of February 2, 1903, 32 Stat. 791, as amended (21 U. S. C. 111–113, 120, 121, 123, 125), § 79.2, Part 79, Title 9, Code of Federal Regulations, 1957 Supp., as amended, containing a notice of the existence in certain areas of the disease of sheep known as scrapie and establishing a quarantine because of said disease, is hereby amended to read as follows:

§ 79.2 *Notice and quarantine.* Notice is hereby given that sheep in Illinois and Ohio are affected with scrapie, a contagious, infectious, and communicable disease, and the following areas in said States are hereby quarantined because of said disease:

(a) *Illinois.* (1) La Salle County: SW 120 acres of the SW quarter (¼) of Section 13, Township 34 N, Range 5 E;

(2) Warren County: SW quarter (¼) of Section 15, Township 8 N, Range 3 W;

(b) *Ohio.* (1) Pickaway County: That part of Walnut Township, Range 21, Section 22 (known as the J. Wright Noecker Farm), bounded on the south by the Ashville Fairfield Road beginning at a point 2,350 feet east of the junction of said road and the Circleville Winchester Road, continuing east along the former Road for a distance of 1,400 feet; bounded on the east by a line running from that point northward a distance of 2,750 feet; bounded on the north by a line beginning at that point and running westward parallel to the Ashville Fairfield Road for a distance of 1,050 feet, then running south for a distance of 850 feet, then running west for a distance of 350 feet; and bounded on the west by a line running from that point southward for a distance of 1,880 feet to its intersection with the Ashville Fairfield Road.

(2) Crawford County: That part of Holmes Township (known as the Pearson L. Linn Farm) consisting of a rectangular area extending 160 rods from east to west and 1.2 miles from south to north, bounded on the south by Holmes Center Road No. 36 and bounded on the east by Temple Road; and a rectangular area extending 160 rods from west to east and 1.5 miles from south to north, bounded on the south by Holmes Center Road No. 36 and bounded on the west by Temple Road. (These two areas are separated from south to north by Temple Road.)

Effective date. The foregoing amendment shall become effective upon issuance.

The amendment quarantines certain areas in Crawford and Pickaway Counties in Ohio, and La Salle and Warren Counties in Illinois because of scrapie. Hereafter, the restrictions pertaining to the interstate movement of sheep from quarantined areas, contained in 9 CFR, 1957 Supp., Part 79, as amended, will apply to such areas.

The amendment removes the quarantine from areas in Green and Warren Counties in Ohio, previously quarantined because of scrapie (23 F. R. 2176). Hereafter, the restrictions pertaining to the interstate movement of sheep from quarantined areas, contained in 9 CFR, 1957 Supp., Part 79, as amended, will not apply to such areas.

The amendment imposes restrictions necessary to prevent the spread of scrapie, and relieves certain restrictions presently imposed. It must be made effective immediately to accomplish its purpose in the public interest and to be of maximum benefit to persons subject to the restrictions which are relieved. Accordingly, under section 4 of the Administrative Procedure Act (5 U. S. C. 1003), it is found upon good cause that notice and other public procedure with respect to the amendment are impracticable and contrary to the public interest, and good cause is found for making the amendment effective less than 30 days after publication in the FEDERAL REGISTER.

(Secs. 4, 5, 23 Stat. 32, as amended, secs. 1, 2, 32 Stat. 791, as amended, secs. 1, 3, 33 Stat. 1264, as amended; 21 U. S. C. 111–113, 120, 121, 123, 125. Interprets or applies secs. 6, 7, 23 Stat. 32, as amended, secs. 2, 4, 33 Stat. 1264, as amended; 21 U. S. C. 115, 117, 124, 126)

Done at Washington, D. C., this 12th day of November 1958.

[SEAL] M. R. CLARKSON,
Acting Administrator,
Agricultural Research Service.

[F. R. Doc. 58-9495; Filed, Nov. 14, 1958; 8:47 a. m.]

TITLE 26—INTERNAL REVENUE

Chapter I—Internal Revenue Service, Department of the Treasury

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

SUPERSEDURE OF PART

CROSS REFERENCE: For supersedure of this part, see Title 26 (1954), Chapter I, Part 25, § 25.01, *infra*.

TITLE 26—INTERNAL REVENUE, 1954

Chapter I—Internal Revenue Service, Department of the Treasury

Subchapter B—Estate and Gift Taxes

[T. D. 6334]

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

On January 3, 1957, notice of proposed rule making regarding the Gift Tax Regulations (26 CFR Part 25) under chapter 12 of subtitle B of the Internal Revenue Code of 1954 and under certain sections of subtitle F of the Internal Revenue Code of 1954 was published in the FEDERAL REGISTER (22 F. R. 53). After consideration of all such relevant matter as was presented by interested persons regarding the rules proposed, the following regulations are hereby adopted. The regulations are applicable to gifts made during the calendar year 1955 and subsequent calendar years:

GIFT TAX

Sec.
25.0–1 Introduction.
25.2501 Statutory provisions; imposition of tax.

DETERMINATION OF TAX LIABILITY

25.2501–1 Imposition of tax.
25.2502 Statutory provisions; rate of tax.
25.2502–1 Rate of tax.
25.2502–2 Donor primarily liable for tax.
25.2503 Statutory provisions; taxable gifts.
25.2503–1 General definition of "taxable gifts" and of "total amount of gifts."
25.2503–2 Exclusions from gifts.
25.2503–3 Future interests in property.
25.2503–4 Transfer for the benefit of a minor.
25.2504 Statutory provisions; taxable gifts for preceding years.
25.2504–1 Taxable gifts for preceding years.
25.2504–2 Valuation of certain gifts for preceding calendar years.

TRANSFERS

25.2511 Statutory provisions; transfers in general.
25.2511–1 Transfers in general.
25.2511–2 Cessation of donor's dominion and control.
25.2511–3 Transfers by nonresidents not citizens.
25.2512 Statutory provisions; valuation of gifts.
25.2512–1 Valuation of property; in general.
25.2512–2 Stocks and bonds.
25.2512–3 Valuation of interests in businesses.
25.2512–4 Valuation of notes.
25.2512–5 Valuation of anpuities, life estates, terms for years, remainders and reversions.
25.2512–6 Valuation of certain life insurance and annuity contracts.
25.2512–7 Effect of excise tax.
25.2512–8 Transfers for insufficient consideration.
25.2513 Statutory provisions; gift by husband or wife to third party; considered as made one-half by each.
25.2513–1 Gifts by husband or wife to third party considered as made one-half by each.
25.2513–2 Manner and time of signifying consent.
25.2513–3 Revocation of consent.
25.2513–4 Joint and several liability for tax.
25.2514 Statutory provisions; powers of appointment.

AUTHORITY: §§ 25.0-1 to 25.7101-1 issued under sec. 7805, I. R. C. 1954; 68A Stat. 917; 26 U. S. C. 7805.

GIFT TAX

§ 25.01 *Introduction*—(a) *In general.* The regulations in this part are designated "Gift Tax Regulations". The regulations in this part pertain to (1) the gift tax imposed by chapter 12 of subtitle B of the Internal Revenue Code on the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and (2) certain related administrative provisions of subtitle F of the Code. It should be noted that the application of some of the provisions of the regulations in this part may be affected by the provisions of an applicable gift tax convention with a foreign country. Unless otherwise indicated, references in the regulations in this part to the "Internal Revenue Code" or the "Code" are references to the Internal Revenue Code of 1954, as amended, and references to a section or other provision of law are references to a section or other provision of the Internal Revenue Code of 1954, as amended. The Gift Tax Regulations are applicable to the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years, and supersede the regulations contained in Part 86, Subchapter B, Chapter I, Title 26, Code of Federal Regulations (1939) (Regulations 108, Gift Tax), as prescribed and made applicable to the Internal Revenue Code of 1954 by Treasury Decision 6091, signed August 16, 1954 (19 F. R. 5167, Aug. 17, 1954).

(b) *Nature of tax.* The gift tax is not a property tax. It is a tax imposed upon the transfer of property by individuals. It is not applicable to transfers by corporations or persons other than individuals. However, see paragraph (h) (1) of § 25.2511-1 with respect to the extent to which a transfer by or to a corporation is considered a transfer by or to its shareholders.

(c) *Scope of regulations*—(1) *Determination of tax liability.* Subchapter A of chapter 12 of the Code pertains to the determination of tax liability. The regulations pursuant to subchapter A are set forth in §§ 25.2501-1 through 25.2504-2.

(2) *Transfer.* Subchapter B of chapter 12 of the Code pertains to the transfers which constitute the making of gifts. The regulations pursuant to subchapter B are set forth in §§ 25.2511-1 through 25.2516-2.

(3) *Deductions.* Subchapter C of chapter 12 of the Code pertains to the deductions which are allowed in determining the amount of taxable gifts. The regulations pursuant to subchapter C are set forth in §§ 25.2521-1 through 25.2524-1.

(4) *Procedure and administration provisions.* Subtitle F of the Internal Revenue Code contains some sections which are applicable to the gift tax. The regulations pursuant to those sections are set forth in §§ 25.6001-1 through 25.7101-1. Such regulations do not purport to be all the regulations on procedure and administration which are pertinent to gift tax matters. For the remainder of the regulations on procedure and administration which are pertinent to gift tax matters, see Part 301 of this chapter (Regulations on Procedure and Administration).

(d) *Arrangement and numbering.* Each section of the Gift Tax Regulations (except this section) is preceded by the section or subsection of the Internal Revenue Code which it interprets. The sections of the regulations can readily be distinguished from sections of the Code since—

(1) The sections of the regulations are printed in larger type;

(2) The sections of the regulations are preceded by a section symbol and the part number, arabic number 25 followed by a decimal point (§ 25.); and

(3) The sections of the Code are preceded by "Sec.".

Each section of the regulations setting forth law or regulations is designated by a number composed of the part number followed by a decimal point (25.) and the number of the corresponding section of the Internal Revenue Code. In the case of a section setting forth regulations, this designation is followed by a hyphen (-) and a number identifying such section. By use of these designations one can ascertain the sections of the regulations relating to a provision of the Code. Thus, the section of the regulations setting forth section 2521

of the Internal Revenue Code is designated § 25.2521 and the regulations pertaining to section 2521 are designated § 25.2521–1.

DETERMINATION OF TAX LIABILITY

§ 25.2501 *Statutory provisions; imposition of tax.*

SEC. 2501. *Imposition of tax*—(a) *General rule.* For the calendar year 1955 and each calendar year thereafter a tax, computed as provided in section 2502, is hereby imposed on the transfer of property by gift during such calendar year by any individual, resident or nonresident, except transfers of intangible property by a nonresident who is not a citizen of the United States and who was not engaged in business in the United States during such calendar year.

(b) *Cross reference.* For exclusion of transfers of property outside the United States by a nonresident who is not a citizen of the United States, see section 2511 (a).

§ 25.2501–1 *Imposition of tax*—(a) *In general.* The tax applies to all transfers by gift of property, wherever situated, by an individual who is a citizen or resident of the United States, to the extent the value of the transfers exceeds the amount of the exclusions authorized by section 2503 and the deductions authorized by sections 2521, 2522, and 2523. The tax does not apply to a transfer of intangible property by a nonresident who is not a citizen of the United States and who was not engaged in business in the United States during the calendar year in which the transfer was made. For additional rules relating to the application of the tax to transfers by nonresidents not citizens of the United States, see section 2511 and § 25.2511–3.

(b) *Resident.* A resident is an individual who has his domicile in the United States at the time of the gift. For this purpose the United States includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia. See section 7701 (a) (9). All other individuals are nonresidents. A person acquires a domicile in a place by living there, for even a brief period of time, with no definite present intention of moving therefrom. Residence without the requisite intention to remain indefinitely will not constitute domicile, nor will intention to change domicile effect such a change unless accompanied by actual removal.

§ 25.2502 *Statutory provisions; rate of tax.*

SEC. 2502. *Rate of tax*—(a) *Computation of tax.* The tax imposed by section 2501 for each calendar year shall be an amount equal to the excess of—

(1) A tax, computed in accordance with the rate schedule set forth in this subsection, on the aggregate sum of the taxable gifts for such calendar year and for each of the preceding calendar years, over

(2) A tax, computed in accordance with such rate schedule, on the aggregate sum of the taxable gifts for each of the preceding calendar years.

RATE SCHEDULE

If the taxable gifts are:	The tax shall be:
Not over $5,000	2¼% of the taxable gifts.
Over $5,000 but not over $10,000	$112.50, plus 5¼% of excess over $5,000.
Over $10,000 but not over $20,000	$375, plus 8¼% of excess over $10,000.
Over $20,000 but not over $30,000	$1,200, plus 10½% of excess over $20,000.
Over $30,000 but not over $40,000	$2,250, plus 13½% of excess over $30,000.
Over $40,000 but not over $50,000	$3,600, plus 16½% of excess over $40,000.
Over $50,000 but not over $60,000	$5,250, plus 18¾% of excess over $50,000.
Over $60,000 but not over $100,000	$7,125, plus 21% of excess over $60,000.
Over $100,000 but not over $250,000	$15,525, plus 22½% of excess over $100,000.
Over $250,000 but not over $500,000	$49,275, plus 24% of excess over $250,000.
Over $500,000 but not over $750,000	$109,275, plus 26¼% of excess over $500,000.
Over $750,000 but not over $1,000,000	$174,900, plus 27¾% of excess over $750,000.
Over $1,000,000 but not over $1,250,000	$244,275, plus 29¼% of excess over $1,000,000.
Over $1,250,000 but not over $1,500,000	$317,400, plus 31½% of excess over $1,250,000.
Over $1,500,000 but not over $2,000,000	$396,150, plus 33¾% of excess over $1,500,000.
Over $2,000,000 but not over $2,500,000	$564,900, plus 36¾% of excess over $2,000,000.
Over $2,500,000 but not over $3,000,000	$748,650, plus 39¾% of excess over $2,500,000.
Over $3,000,000 but not over $3,500,000	$947,400, plus 42% of excess over $3,000,000.
Over $3,500,000 but not over $4,000,000	$1,157,400, plus 44¼% of excess over $3,500,000.
Over $4,000,000 but not over $5,000,000	$1,378,650, plus 47¼% of excess over $4,000,000.
Over $5,000,000 but not over $6,000,000	$1,851,150, plus 50¼% of excess over $5,000,000.
Over $6,000,000 but not over $7,000,000	$2,353,650, plus 52½% of excess over $6,000,000.
Over $7,000,000 but not over $8,000,000	$2,878,650, plus 54¾% of excess over $7,000,000.
Over $8,000,000 but not over $10,000,000	$3,426,150, plus 57% of excess over $8,000,000.
Over $10,000,000	$4,566,150, plus 57¾% of excess over $10,000,000.

(b) *Calendar year.* The term "calendar year" includes only the calendar year 1932 and succeeding calendar years, and, in the case of the calendar year 1932, includes only the portion of such year after June 6, 1932.

(c) *Preceding calendar years.* The term "preceding calendar years" means the calendar year 1932 and all calendar years intervening between the calendar year 1932 and the calendar year for which the tax is being computed.

(d) *Tax to be paid by donor.* The tax imposed by section 2501 shall be paid by the donor.

§ 25.2502–1 *Rate of tax*—(a) *Computation of tax.* While the gift tax is imposed separately for each calendar year on the total taxable gifts made by a donor during such a year, the rate of tax is determined by the total of all gifts made by the donor during such a year and in all previous years since June 6, 1932. The following subparagraphs set forth the six steps to be followed in computing the tax:

(1) *First step.* Ascertain the amount of the "taxable gifts" for the calendar year for which the return is being prepared. For the meaning of this term see § 25.2503–1.

(2) *Second step.* Ascertain "the aggregate sum of the taxable gifts for each of the preceding calendar years," considering only those gifts made after June 6, 1932. For the meaning of this term see § 25.2504–1.

(3) *Third step.* Ascertain the total amount of the taxable gifts, which is the sum of the amounts determined in the first and second steps.

(4) *Fourth step.* Compute the tax on the total amount of taxable gifts (as determined in the third step) using the rate schedule set forth in paragraph (b) of this section.

(5) *Fifth step.* Compute the tax on "the aggregate sum of the taxable gifts for each of the preceding calendar years" (as determined in the second step), using the rate schedule set forth in paragraph (b) of this section.

(6) *Sixth step.* Subtract the amount determined in the fifth step from the amount determined in the fourth step. The amount remaining is the gift tax for the calendar year for which the return is being prepared.

(b) *Rate of tax.* The tax is computed in accordance with the following table:

TABLE FOR COMPUTING GIFT TAX

(A) Amount of taxable gifts equal to or more than—	(B) Amount of taxable gifts less than—	(C) Tax on amount in column (A)	(D) Rate of tax on excess over amount in column (A)
			Percent
	$5,000		2¼
$5,000	10,000	$112.50	5¼
10,000	20,000	375.00	8¼
20,000	30,000	1,200.00	10½
30,000	40,000	2,250.00	13½
40,000	50,000	3,600.00	16½
50,000	60,000	5,250.00	18¾
60,000	100,000	7,125.00	21
100,000	250,000	15,525.00	22½
250,000	500,000	49,275.00	24
500,000	750,000	109,275.00	26¼
750,000	1,000,000	174,900.00	27¾
1,000,000	1,250,000	244,275.00	29¼
1,250,000	1,500,000	317,400.00	31½
1,500,000	2,000,000	396,150.00	33¾
2,000,000	2,500,000	564,900.00	36¾
2,500,000	3,000,000	748,650.00	39¾
3,000,000	3,500,000	947,400.00	42
3,500,000	4,000,000	1,157,400.00	44¼
4,000,000	5,000,000	1,378,650.00	47¼
5,000,000	6,000,000	1,851,150.00	50¼
6,000,000	7,000,000	2,353,650.00	52½
7,000,000	8,000,000	2,878,650.00	54¾
8,000,000	10,000,000	3,426,150.00	57
10,000,000		4,566,150.00	57¾

(c) *Examples.* The following examples illustrate the application of this section with respect to gifts made by citizens or residents of the United States:

Example (1). Assume that the donor made taxable gifts, as ascertained under the first step (paragraph (a) (1) of this section), of $62,500 and that there were no taxable gifts for prior years, with the result that the amount ascertained under the third step is $62,500. Under the fourth step a tax is computed on this amount. Reference to the table discloses that the specified amount in column (A) nearest to and less than $62,500 is $60,000. The tax on this amount, as shown in column (C), is $7,125. The amount by which the taxable gifts exceeds the specified amount is $2,500 and the tax on such excess amount, computed at the rate of 21 percent as shown in column (D), is $525. The tax on taxable gifts of $62,500 is the sum of $7,125 and $525, or $7,650.

Example (2). A donor makes gifts (other than gifts of future interests in property) during the calendar year 1955 of $30,000 to A and $33,000 to B. Two exclusions of $3,000 each are allowable, in accordance with the provisions of section 2503 (b), which results in included gifts for 1955 of $57,000. Specific

exemption was claimed and allowed in a total amount of $50,000 in the donor's gift tax returns for the calendar years 1934 and 1935 so there remains no specific exemption available for the donor to claim for 1955. The total amount of gifts made by the donor during preceding years, after excluding $5,000 for each donee for each calendar year in accordance with the provisions of section 1003 (b) (1) of the 1939 Code, is computed as follows:

Calendar year 1934	$120,000
Calendar year 1935	25,000
Total amount of included gifts for preceding calendar years	145,000

The aggregate sum of the taxable gifts for preceding calendar years is $115,000, which is determined by deducting a specific exemption of $30,000 from $145,000, the total amount of included gifts for preceding calendar years. The deduction from the 1934 and 1935 gifts for the specific exemption cannot exceed $30,000 for purposes of computing the tax on the 1955 gifts even though a specific exemption in a total amount of $50,000 was allowed in computing the donor's gift tax liability for 1934 and 1935. (See paragraph (b) of § 25.2504–1.) The computation of the tax for the calendar year 1955 (following the steps set forth in paragraph (a) of this section) is shown below:

(1) Amount of taxable gifts for year	$57,000
(2) Total amount of taxable gifts for preceding years	115,000
(3) Total taxable gifts	172,000
(4) Tax computed on item 3 (in accordance with rate schedule in paragraph (b))	31,725
(5) Tax computed on item 2 (using same rate schedule)	18,900
(6) Tax for year 1955 (item 4 minus item 5)	12,825

Example (3)—(i) *Facts.* During the calendar year 1955, H makes the following gifts of present interests:

To his daughter	$40,000
To his son	5,000
To W, his wife	5,000
To a charitable organization	10,000

The gifts to W qualify for the marital deduction, and, pursuant to the provisions of section 2513 (see § 25.2513–1), H and W consent to treat the gifts to third parties as having been made one-half by each spouse. The amount of H's taxable gifts for preceding years is $50,000. Only $25,000 of H's specific exemption was claimed and allowed in preceding years. H's remaining specific exemption of $5,000 is claimed for the calendar year 1955. See § 25.2521–1. W made no gifts during the calendar year 1955 nor during any preceding calendar year. W claims sufficient specific exemption on her return to eliminate tax liability.

(ii) *Computation of H's tax for the calendar year 1955—(a) H's taxable gifts for year.*

Total gifts of H	$60,000
Less: Portion of items to be reported by spouse (one-half of total gifts to daughter, son and charity)	27,500
Balance	32,500
Less: Exclusions (three of $3,000 each for daughter, wife and charity and one of $2,500 for son)	11,500
Total included amount of gifts for year	21,000
Less: Deductions:	
Charity	$2,000
Marital	2,000
Specific exemption	5,000
Total deductions	$9,000
Amount of taxable gifts for year	12,000

(b) *Computation of tax.* The steps set forth in paragraph (a) of this section are followed.

(1) Amount of taxable gifts for year	$12,000
(2) Total taxable gifts for preceding years	50,000
(3) Total taxable gifts (item (1) plus item (2))	62,000
(4) Tax computed on item (3) (using rate schedule in paragraph (b) of this section)	7,545
(5) Tax computed in item (2) (using rate schedule in paragraph (b) of this section)	5,250
(6) Tax for the calendar year (item (4) minus item (5))	2,295

(iii) *Computation of W's tax for calendar year 1955—(a) W's taxable gifts for year.*

Total gifts of W	$0
Less: Portion of items to be reported by spouse	0
Balance	0
Gifts of spouse to be included	27,500
Total gifts for year	27,500
Less: Exclusions (two of $3,000 each for daughter and charity and one of $2,500 for son)	8,500
Balance	19,000
Less—Deductions:	
Charity	$2,000
Marital	0
Specific exemption	17,000
Total deductions	19,000
Amount of taxable gifts for year	0

(b) *Computation of tax.* Since W had no "taxable gifts" during the year, there is no tax.

Example (4)—(i) *Facts.* The facts are the same as in example (3) except that W made outright gifts of $10,000 to her niece and $20,000 to H at various times during the year. The amount of taxable gifts made by W in preceding calendar years is $75,000, and only $20,000 of her specific exemption was claimed and allowed for preceding years. See § 25.2521–1. The remaining specific exemption of $10,000 is claimed for the calendar year 1955.

(ii) *Computation of H's tax for the calendar year 1955—(a) H's taxable gifts for year.*

Total gifts of H	$60,000
Less: Portion of items to be reported by spouse	27,500
Balance	32,500
Gifts of spouse to be included	5,000
Total gifts for year	37,500
Less: Exclusions ($11,500 as shown in example (3) plus $3,000 exclusion for gift to niece)	14,500
Total included amount of gifts for year	23,000
Deductions:	
Charity	$2,000
Marital	2,000
Specific exemption	5,000
Total deductions	$9,000
Amount of taxable gifts for year	14,000

(b) *Computation of tax.*

(1) Amount of taxable gifts for year	$14,000
(2) Total taxable gifts for preceding years	50,000
(3) Total taxable gifts (item (1) plus item (2))	64,000
(4) Tax computed on item (3)	7,965
(5) Tax computed on item (2)	5,250
(6) Tax for year (item (4) minus item (5))	2,715

(iii) *Computation of W's tax for the calendar year 1955—(a) W's taxable gifts for year.*

Total gifts of W	$30,000
Less: portion of items to be reported by spouse (one-half of gift to niece)	5,000
Balance	25,000
Gifts of spouse to be included	27,500
Total gifts for year	52,500
Less: exclusions (four of $3,000 each for daughter, husband, niece and charity, and one of $2,500 for son)	14,500
Total included amount of gifts for year	38,000
Deductions:	
Charity	$2,000
Marital	10,000
Specific exemption	10,000
Total deductions	22,000
Amount of taxable gifts for year	16,000

(b) *Computation of tax.*

(1) Amount of taxable gifts for year	$16,000
(2) Total taxable gifts for preceding years	75,000
(3) Total taxable gifts	91,000
(4) Tax computed on item (3)	13,635
(5) Tax computed on item (2)	10,275
(6) Tax for year (item (4) minus item (5))	3,360

§ 25.2502–2 *Donor primarily liable for tax.* Section 2502 (d) provides that the donor shall pay the tax. If the donor dies before the tax is paid the amount of the tax is a debt due the United States from the decedent's estate and his executor or administrator is responsible for its payment out of the estate. (See § 25.6151–1 for the time and place for paying the tax.) If there is no duly qualified executor or administrator, the heirs, legatees, devisees and distributees are liable for and required to pay the tax to the extent of the value of their inheritances, bequests, devises or distributive shares of the donor's estate. If a husband and wife effectively signify consent, under section 2513, to have gifts made to a third party during any calen-

dar year considered as made one-half by each, the liability with respect to the gift tax of each spouse for that calendar year is joint and several (see § 25.2513–4). As to the personal liability of the donee, see paragraph (b) of § 301.6324–1 of part 301 of this chapter (Regulations on Procedure and Administration). As to the personal liability of the executor or administrator, see section 3467 of the Revised Statutes (31 U. S. C. 192), which reads as follows:

> Every executor, administrator, or assignee, or other person, who pays, in whole or in part, any debt due by the person or estate for whom or for which he acts before he satisfies and pays the debts due to the United States from such person or estate, shall become answerable in his own person and estate to the extent of such payments for the debts so due to the United States, or for so much thereof as may remain due and unpaid.

As used in such section 3467, the word "debt" includes a beneficiary's distributive share of an estate. Thus if an executor pays a debt due by the estate which is being administered by him or distributes any portion of the estate before there is paid all of the gift tax which he has a duty to pay, the executor is personally liable, to the extent of the payment or distribution, for so much of the gift tax as remains due and unpaid.

§ 25.2503 *Statutory provisions; taxable gifts.*

> Sec. 2503. *Taxable gifts*—(a) *General definition.* The term "taxable gifts" means the total amount of gifts made during the calendar year, less the deductions provided in subchapter C (sec. 2521 and following).
>
> (b) *Exclusions from gifts.* In the case of gifts (other than gifts of future interests in property) made to any person by the donor during the calendar year 1955 and subsequent calendar years, the first $3,000 of such gifts to such person shall not, for purposes of subsection (a), be included in the total amount of gifts made during such year. Where there has been a transfer to any person of a present interest in property, the possibility that such interest may be diminished by the exercise of a power shall be disregarded in applying this subsection, if no part of such interest will at any time pass to any other person.
>
> (c) *Transfer for the benefit of minor.* No part of a gift to an individual who has not attained the age of 21 years on the date of such transfer shall be considered a gift of a future interest in property for purposes of subsection (b) if the property and the income therefrom—
>
> (1) May be expended by, or for the benefit of, the donee before his attaining the age of 21 years, and
>
> (2) Will to the extent not so expended—
>
> (A) Pass to the donee on his attaining the age of 21 years, and
>
> (B) In the event the donee dies before attaining the age of 21 years, be payable to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514 (c).

§ 25.2503–1 *General definition of "taxable gifts" and of "total amount of gifts."* The term "taxable gifts" means the "total amount of gifts" made by the donor during the calendar year less the deductions provided for in sections 2521, 2522, and 2523 (specific exemption, charitable, etc., gifts and the marital deduction, respectively). The "total amount of gifts" means the sum of the values of the gifts made during the calendar year less the amounts excludable under section 2503 (b). See § 25.2503–2.

§ 25.2503–2 *Exclusions from gifts.* Section 2503 (b) provides that the first $3,000 of gifts made to any one donee during the calendar year 1955 or any calendar year thereafter, except gifts of future interests in property as defined in §§ 25.2503–3 and 25.2503–4, is excluded in determining the total amount of gifts for the calendar year. In the case of a gift in trust the beneficiary of the trust is the donee. The entire value of any gift of a future interest in property must be included in the total amount of gifts for the calendar year in which the gift is made.

§ 25.2503–3 *Future interests in property.* (a) No part of the value of a gift of a future interest may be excluded in determining the total amount of gifts made during the calendar year. "Future interests" is a legal term, and includes reversions, remainders, and other interests or estates, whether vested or contingent, and whether or not supported by a particular interest or estate, which are limited to commence in use, possession or enjoyment at some future date or time. The term has no reference to such contractual rights as exist in a bond, note (though bearing no interest until maturity), or in a policy of life insurance, the obligations of which are to be discharged by payments in the future. But a future interest or interests in such contractual obligations may be created by the limitations contained in a trust or other instrument of transfer used in effecting a gift.

(b) An unrestricted right to the immediate use, possession, or enjoyment of property or the income from property (such as a life estate or term certain) is a present interest in property. An exclusion is allowable with respect to a gift of such an interest (but not in excess of the value of the interest). If a donee has received a present interest in property, the possibility that such interest may be diminished by the transfer of a greater interest in the same property to the donee through the exercise of a power is disregarded in computing the value of the present interest, to the extent that no part of such interest will at any time pass to any other person (see example (4) of paragraph (c) of this section). For an exception to the rule disallowing an exclusion for gifts of future interests in the case of certain gifts to minors, see § 25.2503–4.

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

Example (1). Under the terms of a trust created by A the trustee is directed to pay the net income to B, so long as B shall live. The trustee is authorized in his discretion to withhold payments of income during any period he deems advisable and add such income to the trust corpus. Since B's right to receive the income payments is subject to the trustee's discretion, it is not a present interest and no exclusion is allowable with respect to the transfer in trust.

Example (2). C transfers certain insurance policies on his own life to a trust created for the benefit of D. Upon C's death the proceeds of the policies are to be invested and the net income therefrom paid to D during his lifetime. Since the income payments to D will not begin until after C's death the transfer in trust represents a gift of a future interest in property against which no exclusion is allowable.

Example (3). Under the terms of a trust created by E the net income is to be distributed to E's three children in such shares as the trustee, in his uncontrolled discretion, deems advisable. While the terms of the trust provide that all of the net income is to be distributed, the amount of income any one of the three beneficiaries will receive rests entirely within the trustee's discretion and cannot be presently ascertained. Accordingly, no exclusions are allowable with respect to the transfers to the trust.

Example (4). Under the terms of a trust the net income is to be paid to F for life, with the remainder payable to G on F's death. The trustee has the uncontrolled power to pay over the corpus to F at any time. Although F's present right to receive the income may be terminated, no other person has the right to such income interest. Accordingly, the power in the trustee is disregarded in determining the value of F's present interest. The power would not be disregarded to the extent that the trustee during F's life could distribute corpus to persons other than F.

Example (5). The corpus of a trust created by J consists of certain real property, subject to a mortgage. The terms of the trust provide that the net income from the property is to be used to pay the mortgage. After the mortgage is paid in full the net income is to be paid to K during his lifetime. Since K's right to receive the income payments will not begin until after the mortgage is paid in full the transfer in trust represents a gift of a future interest in property against which no exclusion is allowable.

Example (6). L pays premiums on a policy of insurance on his life, all the incidents of ownership in the policy (including the right to surrender the policy) are vested in M. The payment of premiums by L constitutes a gift of a present interest in property.

§ 25.2503–4 *Transfer for the benefit of a minor.* (a) Section 2503 (c) provides that no part of a transfer for the benefit of a donee who has not attained the age of 21 years on the date of the gift will be considered a gift of a future interest in property if the terms of the transfer satisfy all of the following conditions:

(1) Both the property itself and its income may be expended by or for the benefit of the donee before he attains the age of 21 years;

(2) Any portion of the property and its income not disposed of under subparagraph (1) of this paragraph will pass to the donee when he attains the age of 21 years; and

(3) Any portion of the property and its income not disposed of under subparagraph (1) of this paragraph will be payable either to the estate of the donee or as he may appoint under a general power of appointment as defined in section 2514 (c) if he dies before attaining the age of 21 years.

(b) Either a power of appointment exercisable by the donee by will or a power of appointment exercisable by the donee during his lifetime will satisfy the conditions set forth in paragraph (a) (3) of this section. However, if the transfer is to qualify for the exclusion under this section, there must be no restrictions of substance (as distinguished from formal restrictions of the type described in paragraph (g) (4) of § 25.2523 (e)–1) by the terms of the instrument of transfer on the exercise of the power by the donee. However, if the minor is given a power of appointment exercis-

able during lifetime or is given a power of appointment exercisable by will, the fact that under the local law a minor is under a disability to exercise an inter-vivos power or to execute a will does not cause the transfer to fail to satisfy the conditions of section 2503 (c). Further, a transfer does not fail to satisfy the conditions of section 2503 (c) by reason of the mere fact that—

(1) There is left to the discretion of a trustee the determination of the amounts, if any, of the income or property to be expended for the benefit of the minor and the purpose for which the expenditure is to be made, provided there are no substantial restrictions under the terms of the trust instrument on the exercise of such discretion;

(2) The donee, upon reaching age 21, has the right to extend the term of the trust; or

(3) The governing instrument contains a disposition of the property or income not expended during the donee's minority to persons other than the donee's estate in the event of the default of appointment by the donee.

(c) A gift to a minor which does not satisfy the requirements of section 2503 (c) may be either a present or a future interest under the general rules of § 25.2503–3. Thus, for example, a transfer of property in trust with income required to be paid annually to a minor beneficiary and corpus to be distributed to him upon his attaining the age of 25 is a gift of a present interest with respect to the right to income but is a gift of a future interest with respect to the right to corpus.

§ 25.2504 *Statutory provisions; taxable gifts for preceding years.*

SEC. 2504. *Taxable gifts for preceding years*—(a) *In general.* In computing taxable gifts for the calendar year 1954 and preceding calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter, there shall be treated as gifts such transfers as were considered to be gifts under the gift tax laws applicable to the years in which the transfers were made and there shall be allowed such deductions as were provided for under such laws, except that specific exemption in the amount, if any, allowable under section 2521 shall be applied in all computations in respect of the calendar year 1954 and previous calendar years for the purpose of computing the tax for the calendar year 1955 or any calendar year thereafter.

(b) *Exclusions from gifts for preceding years.* In the case of gifts made to any person by the donor during the calendar year 1954 and preceding calendar years, the amount excluded, if any, by the provisions of gift tax laws applicable to the years in which the gifts were made shall not, for purposes of subsection (a), be included in the total amount of the gifts made during such year.

(c) *Valuation of certain gifts for preceding calendar years.* If the time has expired within which a tax may be assessed under this chapter or under corresponding provisions of prior laws, on the transfer of property by gift made during a preceding calendar year, as defined in section 2502 (c), and if a tax under this chapter or under corresponding provisions of prior laws has been assessed or paid for such preceding calendar year, the value of such gift made in such preceding calendar year shall, for purposes of computing the tax under this chapter for the calendar year 1955 and subsequent calendar years, be the value of such gift which was used in computing the tax for the last preceding calendar year, for which a tax under this chapter or under corresponding provisions of prior laws was assessed or paid.

(d) *Net gifts.* For years before the calendar year 1955, the term "net gifts" as used in corresponding provisions of prior laws shall be read as "taxable gifts" for purposes of this chapter.

§ 25.2504–1 *Taxable gifts for preceding years.* (a) In order to determine the correct gift tax liability for the calendar year 1955 or any calendar year thereafter it is necessary to ascertain the correct amount, if any, of the aggregate sum of the taxable gifts for each of the preceding calendar years. See paragraph (a) (2) of § 25.2502–1. The words "aggregate sum of the taxable gifts for each of the preceding calendar years" means the correct aggregate of such gifts, not necessarily that returned for those years and in respect of which tax was paid. All transfers which constituted gifts in prior calendar years under the laws, including the provisions of law relating to exclusions from gifts, in effect at the time the transfers were made are included in determining the amount of taxable gifts for preceding years. The deductions other than for the specific exemption (see paragraph (b) of this section) allowed by the laws in effect at the time the transfers were made also are taken into account in determining the aggregate sum of the taxable gifts for preceding years. (The allowable exclusion from a gift was $5,000 for years before 1939, $4,000 for the calendar years 1939 through 1942, and $3,000 thereafter.)

(b) In determining the aggregate sum of the taxable gifts for preceding years, the total of the amounts allowed as deductions, for the specific exemption, under section 2521 and the corresponding provisions of prior laws, shall not exceed $30,000. Thus, if the only preceding years during which the donor made gifts were 1940 and 1941 (at which time the specific exemption allowable was $40,000), and if in his returns for those years the donor claimed deductions totaling $40,000 for the specific exemption and reported taxable gifts totaling $110,000, then in determining the aggregate sum of the taxable gifts for preceding years, the deductions for the specific exemption cannot exceed $30,000, and the aggregate sum of the donor's taxable gifts for preceding years will be $120,000, (instead of the $110,000 reported on his returns for preceding years). (The allowable deduction for the specific exemption was $50,000 for calendar years before 1936, $40,000 for calendar years 1936 through 1942, and $30,000 thereafter.)

(c) If, during any preceding calendar year, the donor and his spouse consented to have gifts made to third parties considered as made one-half by each spouse, pursuant to the provisions of section 2513 or section 1000 (f) of the Internal Revenue Code of 1939 (which corresponds to section 2513), these provisions shall be taken into account in determining the aggregate sum of the taxable gifts for that preceding calendar year.

(d) If interpretations of the gift tax law in prior calendar years resulted in the erroneous inclusion of property for gift tax purposes which should have been excluded, or the erroneous exclusion of property which should have been included, adjustments must be made in order to arrive at the correct aggregate of taxable gifts for preceding years. However, see section 1000 (e) and (g) of the 1939 Code relating to certain discretionary trusts and reciprocal trusts.

§ 25.2504–2 *Valuation of certain gifts for preceding calendar years.* Section 2504 (c) provides that if the valuation of a transfer for gift tax purposes with respect to a gift made in a preceding calendar year is at issue, and if the statutory period within which an assessment may be made with respect to the gift has expired and a tax has been actually assessed or paid for such prior calendar year, then the value of the gift for purposes of arriving at the correct amount of the taxable gifts for preceding years is the value which was used in computing the tax for the last preceding calendar year for which a tax was assessed or paid under chapter 12 of the Internal Revenue Code of 1954 or the corresponding provisions of prior laws. However, this rule will not prevent an adjustment in value where no tax was paid or assessed for the prior year. Furthermore, this rule does not apply to adjustments involving issues other than valuation. See paragraph (d) of § 25.2504–1.

TRANSFERS

§ 25.2511 *Statutory provisions; transfers in general.*

SEC. 2511. *Transfers in general*—(a) *Scope.* Subject to the limitations contained in this chapter, the tax imposed by section 2501 shall apply whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible; but in the case of a nonresident not a citizen of the United States, shall apply to a transfer only if the property is situated within the United States.

(b) *Stock in corporation.* Shares of stock owned and held by a nonresident not a citizen of the United States shall be deemed property within the United States only if issued by a domestic corporation.

§ 25.2511–1 *Transfers in general.* (a) The gift tax applies to a transfer by way of gift whether the transfer is in trust or otherwise, whether the gift is direct or indirect, and whether the property is real or personal, tangible or intangible. For example, a taxable transfer may be effected by the creation of a trust, the forgiving of a debt, the assignment of a judgment, the assignment of the benefits of an insurance policy, or the transfer of cash, certificates of deposit, or Federal, State or municipal bonds. Statutory provisions which exempt bonds, notes, bills and certificates of indebtedness of the Federal Government or its agencies and the interest thereon from taxation are not applicable to the gift tax, since the gift tax is an excise tax on the transfer, and is not a tax on the subject of the gift.

(b) In the case of a nonresident alien who was not engaged in business in the United States (see § 25.2501–1) during

the calendar year, the tax is imposed only if the gift consisted of real estate or tangible personal property situated within the United States at the time of transfer. See §§ 25.2501–1 and 25–2511–3.

(c) The gift tax also applies to gifts indirectly made. Thus, all transactions whereby property or property rights or interests are gratuitously passed or conferred upon another, regardless of the means or device employed, constitute gifts subject to tax. See further § 25.2512–8. Where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right to completely and unqualifiedly refuse to accept ownership of property transferred from a decedent (whether the transfer is effected by the decedent's will or by the law of descent and distribution of intestate property), a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocable and effective under the local law. There can be no refusal of ownership of property after its acceptance. Where the local law does not permit such a refusal, any disposition by the beneficiary, heir, or next-of-kin whereby ownership is transferred gratuitously to another constitutes the making of a gift by the beneficiary, heir, or next-of-kin. In any case where a refusal is purported to relate to only a part of the property, the determination of whether or not there has been a complete and unqualified refusal to accept ownership will depend on all of the facts and circumstances in each particular case, taking into account the recognition and effectiveness of such a purported refusal under the local law. In the absence of facts to the contrary, if a person fails to refuse to accept a transfer to him of ownership of a decedent's property within a reasonable time after learning of the existence of the transfer, he will be presumed to have accepted the property. In illustration, if Blackacre was devised to A under the decedent's will (which also provided that all lapsed legacies and devises shall go to B, the residuary beneficiary), and under the local law A could refuse to accept ownership in which case title would be considered as never having passed to A, A's refusal to accept Blackacre within a reasonable time of learning of the devise will not constitute the making of a gift by A to B. However, if a decedent who owned Greenacre died intestate with C and D as his only heirs, and under local law the heir of an intestate cannot, by refusal to accept, prevent himself from becoming an owner of intestate property, any gratuitous disposition by C (by whatever term it is known) whereby he gives up his ownership of a portion of Greenacre and D acquires the whole thereof constitutes the making of a gift by C to D.

(d) If a joint income tax return is filed by a husband and wife for a taxable year, the payment by one spouse of all or part of the income tax liability for such year is not treated as resulting in a transfer 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 a husband and wife who have consented to have the gifts made considered as made half by each of them in accordance with the provisions of section 2513.

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

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

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

(2) If a trustee has a beneficial interest in trust property, a transfer of the property by the trustee is not a taxable transfer if it is made pursuant to a fiduciary power the exercise or nonexercise of which is limited by a reasonably fixed or ascertainable standard which is set forth in the trust instrument. A clearly measurable standard under which the holder of a power is legally accountable is such a standard for this purpose. For instance, a power to distribute corpus for the education, support, maintenance, or health of the beneficiary; for his reasonable support and comfort; to enable him to maintain his accustomed standard of living; or to meet an emergency, would be such a standard. However, a power to distribute corpus for the pleasure, desire, or happiness of a beneficiary is not such a standard. The entire context of a provision of a trust instrument granting a power must be considered in determining whether the power is limited by a reasonably definite standard. For example, if a trust instrument provides that the determination of the trustee shall be conclusive with respect to the exercise or nonexercise of a power, the power is not limited by a reasonably definite standard. However, the fact that the governing instrument is phrased in discretionary terms is not in itself an indication that no such standard exists.

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

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

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

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

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

(5) If A with his own funds purchases property and has the title conveyed to himself and B as joint owners, with rights of survivorship (other than a joint ownership described in example (4)) but which rights may be defeated by either party severing his interest, there is a gift to B in the amount of half the value of the property. However, see § 25.2515–1 relative to the creation of a joint tenancy (or tenancy by the entirety) between

husband and wife in real property with rights of survivorship which, unless the donor elects otherwise is not considered as a transfer includible for Federal gift tax purposes at the time of the creation of the joint tenancy. See § 25.2515–2 with respect to determining the extent to which the creation of a tenancy by the entirety constitutes a taxable gift if the donor elects to have the creation of the tenancy so treated. See also § 25.2523 (d)–1 with respect to the marital deduction allowed in the case of the creation of a joint tenancy or a tenancy by the entirety.

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

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

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

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

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

§ 25.2511–2 *Cessation of donor's dominion and control.* (a) The gift tax is not imposed upon the receipt of the property by the donee, nor is it necessarily determined by the measure of enrichment resulting to the donee from the transfer, nor is it conditioned upon ability to identify the donee at the time of the transfer. On the contrary, the tax is a primary and personal liability of the donor, is an excise upon his act of making the transfer, is measured by the value of the property passing from the donor, and attaches regardless of the fact that the identity of the donee may not then be known or ascertainable.

(b) As to any property, or part thereof or interest therein, of which the donor has so parted with dominion and control as to leave in him no power to change its disposition, whether for his own benefit or for the benefit of another, the gift is complete. But if upon a transfer of property (whether in trust or otherwise) the donor reserves any power over its disposition, the gift may be wholly incomplete, or may be partially complete and partially incomplete, depending upon all the facts in the particular case. Accordingly, in every case of a transfer of property subject to a reserved power, the terms of the power must be examined and its scope determined. For example, if a donor transfers property to another in trust to pay the income to the donor or accumulate it in the discretion of the trustee, and the donor retains a testamentary power to appoint the remainder among his descendants, no portion of the transfer is a completed gift. On the other hand, if the donor had not retained the testamentary power of appointment, but instead provided that the remainder should go to X or his heirs, the entire transfer would be a completed gift. However, if the exercise of the trustee's power in favor of the grantor is limited by a fixed or ascertainable standard (see paragraph (g) (2) of § 25.2511–1), enforceable by or on behalf of the grantor, then the gift is incomplete to the extent of the ascertainable value of any rights thus retained by the grantor.

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

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

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

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

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

(h) If a donor delivers a properly indorsed stock certificate to the donee or

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

(j) If the donor contends that a power is of such nature as to render the gift incomplete, and hence not subject to the tax as of the calendar year of the initial transfer, the transaction shall be disclosed in the return and evidence showing all relevant facts, including a copy of the instrument of transfer, should be submitted.

§ 25.2511–3 *Transfers by nonresidents not citizens*—(a) *In general.* Sections 2511 and 2501 contain provisions relating to the taxation of transfers by nonresident alien donors. (See paragraph (b) of § 25.2501–1 for definition of the term "resident.") As combined these rules are—

(1) If the nonresident alien donor was not engaged in business in the United States during the calendar year in which the gift was made, the tax applies only to the transfer of real property and tangible personal property situated in the United States.

(2) If the nonresident alien donor was engaged in business in the United States during the calendar year in which the gift was made, the tax applies to the transfer of all property (whether real or personal, tangible or intangible) situated in the United States.

(b) *Situs of property.* (1) Real property, tangible personal property, and, except as otherwise provided in subparagraph (2) of this paragraph (relating to shares of stock), the written evidence of intangible personal property which is treated as being the property itself are within the United States if physically situated therein. For example, a bond for the payment of money is not within the United States unless physically situated therein. Intangible personal property the written evidence of which is not treated as being the property itself constitutes property within the United States if consisting of a property right issuing from or enforceable against a resident of the United States or a domestic corporation (public or private) irrespective of where such written evidence is physically located.

(2) Shares of stock owned and held by a nonresident alien donor constitute property within the United States if issued by a domestic corporation, irrespective of where the certificates are physically located. However, since a share of stock is intangible property, the transfer by a nonresident alien donor of a share of stock issued by a domestic corporation would, under the provisions of paragraph (a) of this section, be subject to the tax only if the donor was engaged in business in the United States during the calendar year in which the gift was made.

(3) Shares of stock owned and held by a nonresident alien donor do not constitute property within the United States if issued by a corporation which is not a domestic corporation, irrespective of where the certificates are physically located. Therefore, the tax will not under any circumstances apply to the transfer of a share of such stock by a nonresident alien donor.

§ 25.2512 *Statutory provisions; valuation of gifts.*

SEC. 2512. *Valuation of gifts.* (a) If the gift is made in property, the value thereof at the date of the gift shall be considered the amount of the gift.

(b) Where property is transferred for less than an adequate and full consideration in money or money's worth, then the amount by which the value of the property exceeded the value of the consideration shall be deemed a gift, and shall be included in computing the amount of gifts made during the calendar year.

§ 25.2512–1 *Valuation of property; in general.* Section 2512 provides that if a gift is made in property, its value at the date of the gift shall be considered the amount of the gift. The value of the property is the price at which such property would change hands between a willing buyer and a willing seller, neither being under any compulsion to buy or to sell, and both having reasonable knowledge of relevant facts. The value of a particular kind of property is not the price that a forced sale of the property would produce. The value is generally to be determined by ascertaining as a basis the fair market value at the time of the gift of each unit of the property. For example, in the case of shares of stocks or bonds, such unit of property is generally a share or a bond. Property shall not be returned at the value at which it is assessed for local tax purposes unless that value represents the fair market value thereof on the date of the gift. All relevant facts and elements of value as of the time of the gift shall be considered. See §§ 25.2512–2 through 25.2512–6 for further information concerning the valuation of particular kinds of property.

§ 25.2512–2 *Stocks and bonds*—(a) *In general.* The value of stocks and bonds is the fair market value per share or bond on the date of the gift.

(b) *Based on selling prices.* If there is a market for stocks or bonds, on a stock exchange, in an over-the-counter market, or otherwise, the mean between the highest and lowest quoted selling prices on the date of the gift is the fair market value per share or bond. If there were no sales on the date of the gift, but there were sales on dates within a reasonable period both before and after the date of the gift, the fair market value is determined by taking a weighted average of the means between the highest and lowest sales on the nearest date before and the nearest date after the date of the gift. The average is to be weighted inversely by the respective numbers of trading days between the selling dates and the date of the gift. For example, assume that sales of stock nearest the date of the gift (Friday, June 15) occurred two trading days before (Wednesday, June 13) and three trading days after (Wednesday, June 20) and that on these days the mean sale prices per share were $10 and $15, respectively. The price of $12 is taken as representing the fair market value of a share of the stock as of the date of the gift $\left(\frac{(3\times10)+(2\times15)}{5}\right)$. If, instead, the mean sale prices per share on June 13 and June 20 were $15 and $10, respectively, the price of $13 is taken as representing the fair market value $\left(\frac{(3\times15)+(2\times10)}{5}\right)$. If stocks or bonds are listed on more than one exchange, the records of the exchange where the stocks or bonds are principally dealt in should be employed. In valuing listed securities, the donor should be careful to consult accurate records to obtain values as of the date of the gift. If quotations of unlisted securities are obtained from brokers, or evidence as to their sale is obtained from officers of the issuing companies, copies of letters furnishing such quotations or evidence of sale should be attached to the return.

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

(d) *Where selling prices and bid and asked prices are not available for dates both before and after the date of gift.* If the provisions of paragraphs (b) and (c) of this section are inapplicable because no actual sale prices or quoted bona fide bid and asked prices are available on a date within a reasonable period before the date of the gift, but such prices are available on a date within a reasonable period after the date of the gift, or vice versa, then the mean between the highest and lowest available sale prices or bid and asked prices may be taken as the value.

(e) *Where selling prices or bid and asked prices do not represent fair market value.* In cases in which it is established that the value per bond or share of any security determined on the basis of the selling or bid and asked prices as provided under paragraphs (b), (c), and (d) of this section does not represent the fair market value thereof, then some reasonable modification of the value determined on that basis or other relevant facts and elements of value shall be considered in determining fair market value. Where sales at or near the date of the gift are few or of a sporadic nature, such sales alone may not indicate fair market value. In certain exceptional cases, the size of the block of securities made the subject of each separate gift in relation to the number of shares changing hands in sales may be relevant in determining whether selling prices reflect the fair market value of the

block of stock to be valued. If the donor can show that the block of stock to be valued, with reference to each separate gift, is so large in relation to the actual sales on the existing market that it could not be liquidated in a reasonable time without depressing the market, the price at which the block could be sold as such outside the usual market, as through an underwriter, may be a more accurate indication of value than market quotations. Complete data in support of any allowance claimed due to the size of the block of stock being valued should be submitted with the return. On the other hand, if the block of stock to be valued represents a controlling interest, either actual or effective, in a going business, the price at which other lots change hands may have little relation to its true value.

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

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

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

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

§ 25.2512–3 *Valuation of interests in businesses.* (a) Care should be taken to arrive at an accurate valuation of any interest in a business which the donor transfers without an adequate and full consideration in money or money's worth. The fair market value of any interest in a business, whether a partnership or a proprietorship, is the net amount which a willing purchaser, whether an individual or a corporation, would pay for the interest to a willing seller, neither being under any compulsion to buy or to sell and both having reasonable knowledge of the relevant facts. The net value is determined on the basis of all relevant factors including—

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

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

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

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

§ 25.2512–4 *Valuation of notes.* The fair market value of notes, secured or unsecured, is presumed to be the amount of unpaid principal, plus accrued interest to the date of the gift, unless the donor establishes a lower value. Unless returned at face value, plus accrued interest, it must be shown by satisfactory evidence that the note is worth less than the unpaid amount (because of the interest rate, or date of maturity, or other cause), or that the note is uncollectible in part (by reason of the insolvency of the party or parties liable, or for other cause), and that the property, if any, pledged or mortgaged as security is insufficient to satisfy it.

§ 25.2512–5 *Valuation of annuities, life estates, terms for years, remainders and reversions*—(a) *In general.* (1) The fair market value of annuities, life estates, terms for years, remainders and reversions is their present value, determined under this section, except in the case of annuities and life insurance under contracts issued by companies regularly engaged in their sale. The valuation of such commercial annuity contracts and insurance policies is determined under § 25.2512–6. Where the donor transfers property in trust or otherwise and retains an interest therein, the value of the gift is the value of the property transferred less the value of the donor's retained interest. If the donor assigns or relinquishes an annuity, life estate, remainder or reversion which he holds by virtue of a transfer previously made by himself or another, the value of the gift is the value of the interest transferred.

(2) The present value of an annuity, life estate, remainder or reversion determined under this section which is dependent on the continuation or termination of the life of one person is computed by the use of Table I in paragraph (f) of this section. The present value of an annuity, term for years, remainder or reversion dependent on a term certain is computed by the use of Table II in paragraph (f). If the interest to be valued is dependent upon more than one life or there is a term certain concurrent with one or more lives, see paragraph (e) of this section. For purposes of the computations described in this section, the age of a person is to be taken as the age of that person at his nearest birthday.

(b) *Annuities*—(1) *Payable annually at end of year.* If an annuity is payable annually at the end of each year during the life of an individual (as for example if the first payment is due one year after the date of the gift), the amount payable annually is multiplied by the figure in column 2 of Table I opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity. If the annuity is payable annually at the end of each year for a definite number of years, the amount payable annually is multiplied by the figure in column 2 of Table II opposite the number of years in column 1 representing the duration of the annuity. The application of this subparagraph may be illustrated by the following examples:

Example (1). The donor assigns an annuity of $10,000 a year payable annually during his life immediately after an annual payment has been made. The age of the donor on the date of assignment is 40 years and 8 months. By reference to Table I, it is found that the figure in column 2 opposite 41 years is 17.6853. The value of the gift is, therefore, $176,853 ($10,000 multiplied by 17.6853).

Example (2). The donor was entitled to receive an annuity of $10,000 a year payable annually at the end of annual periods throughout a term of 20 years; the donor, when 15 years have elapsed, makes a gift thereof to his son. By reference to Table II, it is found that the figure in column 2 opposite 5 years, the unexpired portion of the 20-year period is 4.5151. The present value of the annuity is, therefore, $45,151 ($10,000 multiplied by 4.5151).

(2) *Payable at the end of semiannual, quarterly, monthly, or weekly periods.* If an annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods during the life of an individual (as for example if the first payment is due one month after the date of the gift), the aggregate amount to be paid within a year is first multiplied by the figure in column 2 of Table I opposite the number of years in column 1 nearest the age of the individual whose life measures the duration of the annuity. The product so obtained is then multiplied by whichever of the following factors is appropriate:

1.0087 for semiannual payments,
1.0130 for quarterly payments,
1.0159 for monthly payments,
1.0171 for weekly payments.

If the annuity is payable at the end of semiannual, quarterly, monthly, or weekly periods for a definite number of years the aggregate amount to be paid within a year is first multiplied by the figure in column 2 of Table II opposite the number of years in column 1 representing the duration of the annuity. The product so obtained is then multiplied by whichever of the above factors is appropriate. The application of this subparagraph may be illustrated by the following example:

Example. The facts are the same as those contained in example (1) set forth in subparagraph (1) above, except that the annuity is payable semiannually. The aggregate annual amount, $10,000, is multiplied by the factor 17.6853, and the product multiplied by 1.0087. The value of the gift is, therefore, $178,391.62 ($10,000 × 17.6853 × 1.0087).

(3) *Payable at the beginning of annual, semiannual, quarterly, monthly, or weekly periods.* (i) If the first payment of an annuity for the life of an individual is due at the beginning of the annual or other payment period rather than at the end (as for example if the first payment is to be made immediately after the date of the gift), the value of the annuity is the sum of (*a*) the first payment plus (*b*) the present value of a similar annuity, the first payment of which is not to be made until the end of the payment period, determined as provided in subparagraph (1) or (2) of this paragraph. The application of this subdivision may be illustrated by the following example:

Example. The donee is made the beneficiary for life of an annuity of $50 a month from the income of a trust, subject to the right reserved by the donor to cause the annuity to be paid for his own benefit or for the benefit of another. On the day a payment is due, the donor relinquishes his reserved power. The donee is then 50 years of age. The value of the gift is $50 plus the product of $50×12×14.8486 (see Table I) ×1.0159, or $9,100.82.

(ii) If the first payment of an annuity for a definite number of years is due at the beginning of the annual or other payment period, the applicable factor is the product of the factor shown in Table II multiplied by whichever of the following factors is appropriate:

1.0350 for annual payments,
1.0262 for semiannual payments,
1.0218 for quarterly payments,
1.0189 for monthly payments, or
1.0177 for weekly payments.

The application of this subdivision may be illustrated by the following example:

Example. The donee is the beneficiary of an annuity of $50 a month, subject to a reserved right in the donor to cause the annuity or the cash value thereof to be paid for his own benefit or the benefit of another. On the day a payment is due, the donor relinquishes the power. There are 300 payments to be made covering a period of 25 years, including the payment due. The value of the gift is the product of $50×12×16.4815 (factor for 25 years, Table II) ×1.0189, or $10,075.80.

(c) *Life estates and terms for years.* If the interest to be valued is the right of a person for his life, or for the life of another person, to receive the income of certain property or to use nonincome-producing property, the value of the interest is the value of the property multiplied by the figure in column 3 of Table I opposite the number of years nearest to the actual age of the measuring life. If the interest to be valued is the right to receive income of property or to use nonincome-producing property for a term of years, column 3 of Table II is used. The application of this paragraph may be illustrated by the following example:

Example. The donor, who during his life is entitled to receive the income from property worth $50,000, makes a gift of such interest. The donor is 31 years old on the date of the gift. The value of the gift is $35,534 ($50,000×0.71068).

(d) *Remainders or reversionary interests.* If the interest to be valued is a remainder or reversionary interest subject to a life estate, the value of the interest should be obtained by multiplying the value of the property at the date of the gift by the figure in column 4 of Table I opposite the number of years nearest the age of the life tenant. If the remainder or reversion is to take effect at the end of a term of years, column 4 of Table II should be used. The application of this paragraph may be illustrated by the following example:

Example. The donor transfers by gift property worth $50,000 which he is entitled to receive upon the death of his brother, to whom the income for life has been bequeathed. The brother at the date of the gift is 31 years of age. By reference to Table I, it is found that the figure in column 4 opposite age 31 is 0.28932. The value of the gift is, therefore, $14,466 ($50,000×0.28932).

(e) *Actuarial computations by the Internal Revenue Service.* If the interest to be valued is dependent upon the continuation, or termination of more than one life, or there is a term certain concurrent with one or more lives, or if the retained interest of the donor is conditioned upon survivorship, a special factor is necessary. The factor is to be computed upon the basis of the Makehamized mortality table appearing as Table 38 of United States Life Table and Actuarial Tables 1939–41, published by the United States Department of Commerce, Bureau of the Census, and interest at the rate of 3½ percent a year, compounded annually. Many such factors may be found in, or readily computed with the use of the tables contained in, a pamphlet entitled "Actuarial Values for Estate and Gift Tax." This pamphlet may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington 25, D. C. However, if a special factor is required in the case of an actual gift, the Commissioner will furnish the factor to the donor upon request. The request must be accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the interest, and by copies of the relevant instruments.

(f) The following tables shall be used in the application of the provisions of this section:

TABLE I

(Table, single life, 3½ percent, showing the present worth of an annuity, of a life interest, and of a remainder interest)

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
0	23.9085	0.83890	0.16110
1	24.9035	.87162	.12838
2	24.8020	.87122	.12878
3	24.8246	.86886	.13114
4	24.7378	.86582	.13418
5	24.6392	.86237	.13763
6	24.5326	.85864	.14136
7	24.4188	.85466	.14534
8	24.2982	.85044	.14956
9	24.1713	0.84600	0.15400
10	24.0387	.84135	.15865
11	23.9008	.83653	.16347
12	23.7600	.83160	.16840
13	23.6161	.82656	.17344
14	23.4693	.82143	.17857
15	23.3194	.81618	.18382
16	23.1665	.81083	.18917
17	23.0103	.80536	.19464
18	22.8511	.79979	.20021
19	22.6870	.79404	.20596
20	22.5179	.78813	.21187
21	22.3438	.78203	.21797
22	22.1646	.77576	.22424
23	21.9801	.76930	.23070
24	21.7902	.76266	.23734
25	21.5950	.75582	.24418
26	21.3942	.74880	.25120
27	21.1878	.74157	.25843
28	20.9759	.73416	.26584
29	20.7581	.72653	.27347
30	20.5345	.71871	.28129
31	20.3052	.71068	.28932
32	20.0699	.70245	.29755
33	19.8288	.69401	.30599
34	19.5816	.68536	.31464
35	19.3285	.67650	.32350
36	19.0695	.66743	.33257
37	18.8044	.65815	.34185
38	18.5334	.64867	.35133
39	18.2566	.63898	.36102
40	17.9738	.62908	.37092
41	17.6853	.61899	.38101
42	17.3911	.60869	.39131
43	17.0913	.59820	.40180
44	16.7860	.58751	.41249
45	16.4754	.57664	.42336
46	16.1596	.56559	.43441
47	15.8388	.55436	.44564
48	15.5133	.54297	.45703
49	15.1831	.53141	.46859
50	14.8486	.51970	.48030
51	14.5101	.50785	.49215
52	14.1678	.49587	.50413
53	13.8221	.48377	.51623
54	13.4734	.47157	.52843
55	13.1218	.45926	.54074
56	12.7679	.44688	.55312
57	12.4120	.43442	.56558
58	12.0546	.42191	.57809
59	11.6960	.40936	.59064
60	11.3369	.39679	.60321
61	10.9776	.38422	.61578
62	10.6186	.37165	.62835
63	10.2604	.35911	.64089
64	9.9036	.34663	.65337
65	9.5486	.33420	.66580
66	9.1960	.32186	.67814
67	8.8464	.30962	.69038
68	8.5001	.29750	.70250
69	8.1578	.28552	.71448
70	7.8200	.27370	.72630
71	7.4871	.26205	.73795
72	7.1597	.25059	.74941
73	6.8382	.23934	.76066
74	6.5231	.22831	.77169
75	6.2148	.21752	.78248
76	5.9137	.20698	.79302
77	5.6201	.19670	.80330
78	5.3345	.18671	.81329
79	5.0572	.17700	.82300
80	4.7884	.16759	.83241
81	4.5283	.15849	.84151
82	4.2771	.14970	.85030
83	4.0351	.14123	.85877
84	3.8023	.13308	.86692
85	3.5789	.12526	.87474
86	3.3648	.11777	.88223
87	3.1601	.11060	.88940
88	2.9648	.10377	.89623
89	2.7788	.09726	.90274
90	2.6019	.09107	.90893
91	2.4342	.08520	.91480
92	2.2754	.07964	.92036
93	2.1254	.07439	.92561
94	1.9839	.06944	.93056
95	1.8507	.06477	.93523
96	1.7256	.06040	.93960
97	1.6082	.05629	.94371
98	1.4982	.05244	.94756
99	1.3949	.04882	.95118
100	1.2973	.04541	.95459
101	1.2033	.04212	.95788
102	1.1078	.03877	.96123
103	.9973	.03491	.96509
104	.8318	.02911	.97089
105	.4831	.01691	.98309

TABLE I—Continued

(Table, single life, 3½ percent, showing the present worth of an annuity, of a life interest, and of a remainder interest)

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
9	24.1713	0.84600	0.15400
10	24.0387	.84135	.15865
11	23.9008	.83653	.16347
12	23.7600	.83160	.16840
13	23.6161	.82656	.17344
14	23.4693	.82143	.17857
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16	23.1665	.81083	.18917
17	23.0103	.80536	.19464
18	22.8511	.79979	.20021
19	22.6870	.79404	.20596
20	22.5179	.78813	.21187
21	22.3438	.78203	.21797
22	22.1646	.77576	.22424
23	21.9801	.76930	.23070
24	21.7902	.76266	.23734
25	21.5950	.75582	.24418
26	21.3942	.74880	.25120
27	21.1878	.74157	.25843
28	20.9759	.73416	.26584
29	20.7581	.72653	.27347
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31	20.3052	.71068	.28932
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35	19.3285	.67650	.32350
36	19.0695	.66743	.33257
37	18.8044	.65815	.34185
38	18.5334	.64867	.35133
39	18.2566	.63898	.36102
40	17.9738	.62908	.37092
41	17.6853	.61899	.38101
42	17.3911	.60869	.39131
43	17.0913	.59820	.40180
44	16.7860	.58751	.41249
45	16.4754	.57664	.42336
46	16.1596	.56559	.43441
47	15.8388	.55436	.44564
48	15.5133	.54297	.45703
49	15.1831	.53141	.46859
50	14.8486	.51970	.48030
51	14.5101	.50785	.49215
52	14.1678	.49587	.50413
53	13.8221	.48377	.51623
54	13.4734	.47157	.52843
55	13.1218	.45926	.54074
56	12.7679	.44688	.55312
57	12.4120	.43442	.56558
58	12.0546	.42191	.57809
59	11.6960	.40936	.59064
60	11.3369	.39679	.60321
61	10.9776	.38422	.61578
62	10.6186	.37165	.62835
63	10.2604	.35911	.64089
64	9.9036	.34663	.65337
65	9.5486	.33420	.66580
66	9.1960	.32186	.67814
67	8.8464	.30962	.69038
68	8.5001	.29750	.70250
69	8.1578	.28552	.71448
70	7.8200	.27370	.72630
71	7.4871	.26205	.73795
72	7.1597	.25059	.74941
73	6.8382	.23934	.76066
74	6.5231	.22831	.77169
75	6.2148	.21752	.78248
76	5.9137	.20698	.79302
77	5.6201	.19670	.80330
78	5.3345	.18671	.81329
79	5.0572	.17700	.82300
80	4.7884	.16759	.83241
81	4.5283	.15849	.84151
82	4.2771	.14970	.85030
83	4.0351	.14123	.85877
84	3.8023	.13308	.86692
85	3.5789	.12526	.87474
86	3.3648	.11777	.88223
87	3.1601	.11060	.88940
88	2.9648	.10377	.89623
89	2.7788	.09726	.90274
90	2.6019	.09107	.90893
91	2.4342	.08520	.91480
92	2.2754	.07964	.92036
93	2.1254	.07439	.92561
94	1.9839	.06944	.93056
95	1.8507	.06477	.93523
96	1.7256	.06040	.93960
97	1.6082	.05629	.94371
98	1.4982	.05244	.94756
99	1.3949	.04882	.95118
100	1.2973	.04541	.95459
101	1.2033	.04212	.95788
102	1.1078	.03877	.96123
103	.9973	.03491	.96509
104	.8318	.02911	.97089
105	.4831	.01691	.98309

TABLE II

(Table showing the present worth at 3½ percent of an annuity for a term certain, of an income interest for a term certain, and of a remainder interest postponed for a term certain)

(1) Number of years	(2) Annuity	(3) Term certain	(4) Remainder
1	0.9662	0.033816	0.966184
2	1.8997	.066489	.933511
3	2.8016	.098057	.901943
4	3.6731	.128558	.871442
5	4.5151	.158027	.841973
6	5.3286	.186499	.813501
7	6.1145	.214009	.785991
8	6.8740	.240588	.759412
9	7.6077	.266269	.733731
10	8.3165	.291081	.708919
11	9.0016	.315054	.684946
12	9.6633	.338217	.661783
13	10.3027	.360596	.639404
14	10.9205	.382218	.617782
15	11.5174	.403109	.596891
16	12.0941	.423294	.576706
17	12.6513	.442796	.557204
18	13.1897	.461639	.538361
19	13.7098	.479844	.520156
20	14.2124	.497434	.502566
21	14.6980	.514429	.485571
22	15.1671	.530849	.469151
23	15.6204	.546714	.453286
24	16.0584	.562043	.437957
25	16.4815	.576853	.423147
26	16.8904	.591162	.408838
27	17.2854	.604988	.395012
28	17.6670	.618346	.381654
29	18.0358	.631252	.368748
30	18.3920	.643722	.356278

§ 25.2512–6 *Valuation of certain life insurance and annuity contracts.* The value of a life insurance contract or of a contract for the payment of an annuity issued by a company regularly engaged in the selling of contracts of that character is established through the sale of the particular contract by the company, or through the sale by the company of comparable contracts. As valuation of an insurance policy through sale of comparable contracts is not readily ascertainable when the gift is of a contract which has been in force for some time and on which further premium payments are to be made, the value may be approximated by adding to the interpolated terminal reserve at the date of the gift the proportionate part of the gross premium last paid before the date of the gift which covers the period extending beyond that date. If, however, because of the unusual nature of the contract such approximation is not reasonably close to the full value, this method may not be used. The following examples, so far as relating to life insurance contracts, are of gifts of such contracts on which there are no accrued dividends or outstanding indebtedness.

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

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

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

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

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

§ 25.2512–7 *Effect of excise tax.* If jewelry, furs or other property, the purchase of which is subject to an excise tax, is purchased at retail by a taxpayer and made the subject of gifts within a reasonable time after purchase, the purchase price, including the excise tax, is considered to be the fair market value of the property on the date of the gift, in the absence of evidence that the market price of similar articles has increased or decreased in the meantime. Under other circumstances, the excise tax is taken into account in determining the fair market value of property to the extent, and only to the extent, that it affects the price at which the property would change hands beween a willing buyer and a willing seller, as provided in § 25.2512–1.

§ 25.2512–8 *Transfers for insufficient consideration.* Transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a value in money or money's worth, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift. Similarly, a relinquishment or promised relinquishment of dower or curtesy, or of a statutory estate created in lieu of dower or curtesy, or of other marital rights in the spouse's property or estate, shall not be considered to any extent a consideration "in money or money's worth." See, however, section 2516 and the regulations thereunder with respect to certain transfers incident to a divorce.

§ 25.2513 *Statutory provisions; gift by husband or wife to third party; considered as made one-half by each.*

SEC. 2513. *Gift by husband or wife to third party*—(a) *Considered as made one-half by each*—(1) *In general.* A gift made 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 paragraph shall not apply with respect to a gift by a spouse of an interest in property if he creates in his spouse a general power of appointment, as defined in section 2514 (c), over such interest. For purposes of this section, 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.

(2) *Consent of both spouses.* Paragraph (1) shall apply only if both spouses have signified (under the regulations provided for in subsection (b)) their consent to the application of paragraph (1) in the case of all such gifts made during the calendar year by either while married to the other.

(b) *Manner and time of signifying consent*—(1) *Manner.* A consent under this section shall be signified in such manner as is provided under regulations prescribed by the Secretary or his delegate.

(2) *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—

(A) The consent may not be signified after the 15th day of April 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;

(B) 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 6212 (a).

(c) *Revocation of consent.* Revocation of a consent previously signified shall be made in such manner as is provided under regulations prescribed by the Secretary or his delegate, but the right to revoke a consent previously signified with respect to a calendar year—

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

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

(d) *Joint and several liability for tax.* If the consent required by subsection (a) (2) 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.

§ 25.2513–1 *Gifts by husband or wife to third party considered as made one-half by each.* (a) A gift made by one spouse to a person other than his (or her) spouse may, for the purpose of the gift tax, be considered as made one-half by 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 purposes of this section, an individual is to be considered as the spouse of another individual only if he

was married to such individual at the time of the gift and does not remarry during the remainder of the calendar year.

(b) The provisions of this section will apply to gifts made during a particular calendar year only if both spouses signify their consent to treat all gifts made to third parties during that calendar year by both spouses while married to each other as having been made one-half by each spouse. As to the manner and time for signifying consent, see § 25.2513–2. Such consent, if signified with respect to any calendar 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 gifts made during such portion of the calendar year. Where the consent is signified by an executor or administrator of a deceased spouse, the consent is not effective with respect to gifts made by the surviving spouse during the portion of the calendar year that his spouse was deceased.

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

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

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

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

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

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

(1) A husband made gifts valued at $7,000 during the year to a third party and his wife made no gifts. Each spouse is required to file a return.

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

(3) A husband made gifts valued at $5,000 to a third party, and the wife made gifts valued at $2,000 to the same third party during the year. Each spouse is required to file a return.

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

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

§ 25.2513–2 *Manner and time of signifying consent.* (a) Consent to the application of the provisions of section 2513 with respect to a calendar year shall, in order to be effective, be signified by both spouses. If both spouses file gift tax returns within the time for signifying consent, it is sufficient if—

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

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

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

If only one spouse files a gift tax return within the time provided for signifying consent, the consent of both spouses shall be signified on that return. However, wherever possible, the notice of the consent is to be shown on both returns and it is preferred that the notice be executed in the manner described in subparagraph (1) of this paragraph. The consent may be revoked only as provided in § 25.2513–3. If one spouse files more than one gift tax return for a calendar year on or before the 15th day of April following the close of the calendar year, the last return so filed will, for the purpose of determining whether a consent has been signified, be considered as the return.

(b) The consent may be signified at any time following the close of the calendar year, subject to the following limitations:

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

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

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

(d) If the donor and spouse consent to the application of section 2513, the return or returns for the calendar year must set forth, to the extent provided thereon, information relative to the transfers made by each spouse.

§ 25.2513–3 *Revocation of consent.* If the consent to the application of the provisions of section 2513 for a calendar year was effectively signified on or before the 15th day of April following the close of the calendar year, either spouse may revoke the consent by filing in duplicate with the district director of internal revenue a signed statement of revocation, but only if the statement is filed on or before such 15th day of April. Therefore, a consent which was not effectively signified until after the 15th day of April following the close of the calendar year to which it applies may not be revoked.

§ 25.2513–4 *Joint and several liability for tax.* If consent to the application of the provisions of section 2513 is signified as provided in § 25.2513–2, and not revoked as provided in § 25.2513–3, the liability with respect to the entire gift tax of each spouse for such calendar year is joint and several. See paragraph (d) of § 25.2511–1.

§ 25.2514 *Statutory provisions; powers of appointment.*

SEC. 2514. *Powers of appointment.*—(a) *Powers created on or before October 21, 1942.* An exercise of a general power of appointment created on or before October 21, 1942, shall be deemed a transfer of property by the individual possessing such power; but the failure to exercise such a power or the complete release of such a power shall not be deemed an exercise thereof. If a general power of appointment created on or before October 21, 1942, has been partially released so that it is no longer a general power of appointment, the subsequent exercise of such power shall not be deemed to be the exercise of a general power of appointment if—

(1) Such partial release occurred before November 1, 1951, or

(2) The donee of such power was under a legal disability to release such power on October 21, 1942, and such partial release occurred not later than six months after the termination of such legal disability.

(b) *Powers created after October 21, 1942.* The exercise or release of a general power of appointment created after October 21, 1942, shall be deemed a transfer of property by the individual possessing such power. A disclaimer or renunciation of such a power of

appointment shall not be deemed a release of such power.

(c) *Definition of general power of appointment.* For purposes of this section, the term "general power of appointment" means a power which is exercisable in favor of the individual possessing the power (hereafter in this subsection referred to as the "possessor"), his estate, his creditors, or the creditors of his estate; except that—

(1) A power to consume, invade, or appropriate property for the benefit of the possessor which is limited by an ascertainable standard relating to the health, education, support, or maintenance of the possessor shall not be deemed a general power of appointment.

(2) A power of appointment created on or before October 21, 1942, which is exercisable by the possessor only in conjunction with another person shall not be deemed a general power of appointment.

(3) In the case of a power of appointment created after October 21, 1942, which is exercisable by the possessor only in conjunction with another person—

(A) If the power is not exercisable by the possessor except in conjunction with the creator of the power—such power shall not be deemed a general power of appointment;

(B) If the power is not exercisable by the possessor except in conjunction with a person having a substantial interest, in the property subject to the power, which is adverse to exercise of the power in favor of the possessor—such power shall not be deemed a general power of appointment. For the purposes of this subparagraph a person who, after the death of the possessor, may be possessed of a power of appointment (with respect to the property subject to the possessor's power) which he may exercise in his own favor shall be deemed as having an interest in the property and such interest shall be deemed adverse to such exercise of the possessor's power;

(C) If (after the application of subparagraphs (A) and (B)) the power is a general power of appointment and is exercisable in favor of such other person—such power shall be deemed a general power of appointment only in respect of a fractional part of the property subject to such power, such part to be determined by dividing the value of such property by the number of such persons (including the possessor) in favor of whom such power is exercisable.

For purposes of subparagraphs (B) and (C), a power shall be deemed to be exercisable in favor of a person if it is exercisable in favor of such person, his estate, his creditors, or the creditors of his estate.

(d) *Creation of another power in certain cases.* If a power of appointment created after October 21, 1942, is exercised by creating another power of appointment which, under the applicable local law, can be validly exercised so as to postpone the vesting of any estate or interest in the property which was subject to the first power, or suspend the absolute ownership or power of alienation of such property, for a period ascertainable without regard to the date of the creation of the first power, such exercise of the first power shall, to the extent of the property subject to the second power, be deemed a transfer of property by the individual possessing such power.

(e) *Lapse of power.* The lapse of a power of appointment created after October 21, 1942, during the life of the individual possessing the power shall be considered a release of such power. The rule of the preceding sentence shall apply with respect to the lapse of powers during any calendar year only to the extent that the property which could have been appointed by exercise of such lapsed powers exceeds in value the greater of the following amounts:

(1) $5,000, or

(2) 5 percent of the aggregate value of the assets out of which, or the proceeds of which, the exercise of the lapsed powers could be satisfied.

(f) *Date of creation of power.* For purposes of this section a power of appointment created by a will executed on or before October 21, 1942, shall be considered a power created on or before such date if the person executing such will dies before July 1, 1949, without having republished such will, by codicil or otherwise, after October 21, 1942.

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

(b) *Definition of "power of appointment"*—(1) *In general.* The term "power of appointment" includes all powers which are in substance and effect powers of appointment received by the donee of the power from another person, regardless of the nomenclature used in creating the power and regardless of local property law connotations. For example, if a trust instrument provides that the beneficiary may appropriate or consume the principal of the trust, the power to consume or appropriate is a power of appointment. Similarly, a power given to a donee to affect the beneficial enjoyment of a trust property or its income by altering, amending or revoking the trust instrument or terminating the trust is a power of appointment. A power in a donee to remove or discharge a trustee and appoint himself may be a power of appointment. For example, if under the terms of a trust instrument, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and A, another person, has the unrestricted power to remove or discharge the trustee at any time and appoint any other person, including himself, A is considered as having a power of appointment. However, he would not be considered to have a power of appointment if he only had the power to appoint a successor, including himself, under limited conditions which did not exist at the time of exercise, release or lapse of the trustee's power, without an accompanying unrestricted power of removal. Similarly, a power to amend only the administrative provisions of a trust instrument, which cannot substantially affect the beneficial enjoyment of the trust property or income, is not a power of appointment. The mere power of management, investment, custody of assets, or the power to allocate receipts and disbursements as between income and principal, exercisable in a fiduciary capacity, whereby the holder has no power to enlarge or shift any of the beneficial interests therein except as an incidental consequence of the discharge of such fiduciary duties is not a power of appointment. Further, the right in a beneficiary of a trust to assent to a periodic accounting, thereby relieving the trustee from further accountability, is not a power of appointment if the right of assent does not consist of any power or right to enlarge or shift the beneficial interest of any beneficiary therein.

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

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

(c) *Definition of "general power of appointment"*—(1) *In general.* The term "general power of appointment" as defined in section 2514 (c) means any power of appointment exercisable in favor of the person possessing the power (referred to as the "possessor"), his estate, his creditors, or the creditors of his estate, except (i) joint powers, to the extent provided in §§ 25.2514–2 and 25.2514–3 and (ii) certain powers limited by an ascertainable standard, to the extent provided in subparagraph (2) of this paragraph. A power of appointment exercisable to meet the estate tax, or any other taxes, debts, or charges which are enforceable against the pos-

sessor or his estate, is included within the meaning of a power of appointment exercisable in favor of the possessor, his estate, his creditors, or the creditors of his estate. A power of appointment exercisable for the purpose of discharging a legal obligation of the possessor or for his pecuniary benefit is considered a power of appointment exercisable in favor of the possessor or his creditors. However, for purposes of §§ 25.2514–1 through 25.2514–3, a power of appointment not otherwise considered to be a general power of appointment is not treated as a general power of appointment merely by reason of the fact that an appointee may, in fact, be a creditor of the possessor or his estate. A power of appointment is not a general power if by its terms it is either—

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

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

A beneficiary may have two powers under the same instrument, one of which is a general power of appointment and the other of which is not. For example, a beneficiary may have a general power to withdraw a limited portion of trust corpus during his life, and a further power exercisable during his lifetime to appoint the corpus among his children. The latter power is not a general power of appointment (but its exercise may cause a release of the former power; see example in paragraph (b) (2) of this section).

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

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

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

(e) *Time of creation of power.* A power of appointment created by will is in general considered as created on the date of the testator's death. However, section 2514 (f) provides that a power of appointment created by a will executed on or before October 21, 1942, is considered a power created on or before that date if the testator dies before July 1, 1949, without having republished the will, by codicil or otherwise, after October 21, 1942. Whether or not a power of appointment created by an inter vivos instrument executed on or before October 21, 1942, is considered a power created on or before that date depends upon the facts and circumstances of the particular case. For example, assume that A created a revocable trust before October 21, 1942, providing for payment of income to B for life with remainder as B shall appoint by will. If A dies after October 21, 1942, without having exercised his power of revocation, B's power of appointment is considered a power created after October 21, 1942. On the other hand, assume that C created an irrevocable inter vivos trust before October 21, 1942, naming T as trustee and providing for payment of income to D for life with remainder to E. Assume further that T was given the power to pay corpus to D and the power to appoint a successor trustee. If T resigns after October 21, 1942, and appoints D as successor trustee, D is considered to have a power of appointment created before October 21, 1942. As another example assume that F created an irrevocable inter vivos trust before October 21, 1942, providing for payment of income to G for life with remainder as G shall appoint by will, but in default of appointment income to H for life with remainder as H shall appoint by will. If G dies after October 21, 1942, without having exercised his power of appointment, H's power of appointment is considered a power created before October 21, 1942, even though it was only a contingent interest until G's death. If, in this last example, G had exercised his power of appointment by creating a similar power in I, I's power of appointment would be considered a power created after October 21, 1942. A power is not considered as created after October, 21, 1942, merely because the power is not exercisable or the identity of its holders is not ascertained until after that date.

§ 25.2514–2 *Powers of appointment created on or before October 21, 1942—*(a) *In general.* The exercise of a general power of appointment created on or before October 21, 1942, is deemed to be a transfer of property by the individual possessing the power.

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

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

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

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

(1) November 1, 1951; or

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

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

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

§ 25.2514–3 *Powers of appointment created after October 21, 1942*—(a) *In general.* The exercise, release, or lapse (except as provided in paragraph (c) of this section) of a general power of appointment created after October 21, 1942, is deemed to be a transfer of property by the individual possessing the power. The exercise of a power of appointment that is not a general power is considered to be a transfer if it is exercised to create a further power under certain circumstances (see paragraph (d) of this section). See paragraph (c) of § 25.2514–1 for the definition of various terms used in this section. See paragraph (b) of this section for the rules applicable to determine the extent to which joint powers created after October 21, 1942, are to be treated as general powers of appointment.

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

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

(2) Such power is not considered as a general power of appointment if it is not exercisable by the possessor except with the consent or joinder of a person having a substantial interest in the property subject to the power which is adverse to the exercise of the power in favor of the possessor, his estate, his creditors, or the creditors of his estate. An interest adverse to the exercise of a power is considered as substantial if its value in relation to the total value of the property subject to the power is not insignificant. For this purpose, the interest is to be valued in accordance with the actuarial principles set forth in § 25.2512–5 or, if it is not susceptible to valuation under those provisions, in accordance with the general principles set forth in § 25.2512–1. A taker in default of appointment under a power has an interest which is adverse to an exercise of the power. A coholder of the power has no adverse interest merely because of his joint possession of the power nor merely because he is a permissible appointee under a power. However, a coholder of a power is considered as having an adverse interest where he may possess the power after the possessor's death and may exercise it at that time in favor of himself, his estate, his creditors, or the creditors of his estate. Thus, for example, if X, Y, and Z held a power jointly to appoint among a group of persons which includes themselves and if on the death of X the power will pass to Y and Z jointly, then Y and Z are considered to have interests adverse to the exercise of the power in favor of X. Similarly, if on Y's death the power will pass to Z, Z is considered to have an interest adverse to the exercise of the power in favor of Y. The application of this subparagraph may be further illustrated by the following examples in each of which it is assumed that the value of the interest in question is substantial:

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

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

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

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

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

(2) If a general power of appointment created after October 21, 1942, was partially released prior to June 1, 1951, so that it no longer represented a general power of appointment, as defined in paragraph (c) of § 25.2514–1, the subsequent exercise, release, or lapse of the partially released power at any time

thereafter will not constitute the exercise or release of a general power of appointment. For example, assume that A created a trust in 1943 under which B possessed a general power of appointment. By an instrument executed in 1948 such general power of appointment was reduced in scope by B to an excepted power. The inter vivos exercise in 1955, or in any calendar year thereafter, of such excepted power is not considered an exercise or release of a general power of appointment for purposes of the gift tax.

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

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

(5) A disclaimer or renunciation of a general power of appointment is not considered to be a release of the power. The disclaimer or renunciation must be unequivocal and effective under local law. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. There can be no disclaimer or renunciation of a power after its acceptance. In any case where a power is purported to be disclaimed or renounced as to only a portion of the property subject to the power, the determination as to whether or not there has been a complete and unqualified refusal to accept the rights to which one is entitled will depend on all the facts and circumstances of the particular case, taking into account the recognition and effectiveness of such a disclaimer under local law. Such rights refer to the incidents of the power and not to other interests of the possessor of the power in the property. If effective under local law, the power may be disclaimed or renounced without disclaiming or renouncing such other interests. In the absence of facts to the contrary, the failure to renounce or disclaim within a reasonable time after learning of its existence will be presumed to constitute an acceptance of the power.

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

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

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

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

Example (3). The income is to be paid to L for life. L has a power, exercisable at any time, to cause the corpus to be distributed to himself. L has a general power of appointment over the remainder interest, the release of which constitutes a transfer for gift tax purposes of the remainder interest. If in this example L had a power to cause the corpus to be distributed only to X, L would have a power of appointment which is not a general power of appointment, the exercise or release of which would not constitute a transfer of property for purposes of the gift tax.

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

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

§ 25.2515 *Statutory provisions; tenancies by the entirety.*

SEC. 2515. *Tenancies by the entirety.*—(a) *Creation.* The creation of a tenancy by the entirety in real property, either by one spouse alone or by both spouses, and additions to the value thereof in the form of improvements, reductions in the indebtedness thereon, or otherwise, shall not be deemed transfers of property for purposes of this chapter, regardless of the proportion of the consideration furnished by each spouse, unless the donor elects to have such creation of a tenancy by the entirety treated as a transfer, as provided in subsection (c).

(b) *Termination.* In the case of the termination of a tenancy by the entirety, other than by reason of the death of a spouse, the creation of which, or additions to which, were not deemed to be transfers by reason of subsection (a), a spouse shall be deemed to have made a gift to the extent that the proportion of the total consideration furnished by such spouse multiplied by the proceeds of such termination (whether in form of cash, property, or interests in property) exceeds the value of such proceeds of termination received by such spouse.

(c) *Exercise of election.* The election provided by subsection (a) shall be exercised by

including such creation of a tenancy by the entirety or additions made to the value thereof as a transfer by gift, to the extent such transfer constitutes a gift, determined without regard to this section, in the gift tax return of the donor for the calendar year in which such tenancy by the entirety was created or additions made to the value thereof, filed within the time prescribed by law, irrespective of whether or not the gift exceeds the exclusion provided by section 2503 (b).

(d) *Certain joint tenancies included.* For purposes of this section, the term "tenancy by the entirety" includes a joint tenancy between husband and wife with right of survivorship.

§ 25.2515–1 *Tenancies by the entirety; in general—*(a) *Nature of.* An estate by the entirety in real property is essentially a joint tenancy between husband and wife with the right of survivorship. As used in this section and §§ 25.2515–2 through 25.2515–4, the term "tenancy by the entirety" includes a joint tenancy between husband and wife in real property with right of survivorship, or a tenancy which accords to the spouses rights equivalent thereto regardless of the term by which such a tenancy is described in local property law.

(b) *Gift upon creation of tenancy by the entirety; in general.* During calendar years prior to 1955 the contribution made by a husband or wife in the creation of a tenancy by the entirety constituted a gift to the extent that the consideration furnished by either spouse exceeded the value of the rights retained by that spouse. The contribution made by either or both spouses in the creation of such a tenancy during the calendar year 1955, or any calendar year thereafter, is not deemed a gift by either spouse, regardless of the proportion of the total consideration furnished by either spouse, unless the donor spouse elects (see § 25.2515–2) under section 2515 (c) to treat such transaction as a gift in the calendar year in which the transaction is effected. However, there is a gift upon the termination of such a tenancy, other than by the death of a spouse, if the proceeds received by one spouse on termination of the tenancy are larger than the proceeds allocable to the consideration furnished by that spouse to the tenancy. The creation of a tenancy by the entirety takes place if (1) a husband or his wife purchases property and causes the title thereto to be conveyed to themselves as tenants by the entirety, (2) both join in such a purchase, or (3) either or both cause to be created such a tenancy in property already owned by either or both of them. The rule prescribed herein with respect to the creation of a tenancy by the entirety applies also to contributions made in the making of additions to the value of such a tenancy (in the form of improvements, reductions in the indebtedness, or otherwise), regardless of the proportion of the consideration furnished by each spouse. See § 25.2516–1 for transfers made pursuant to a property settlement agreement incident to divorce.

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

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

(iii) Where a tenancy is terminated in part (e. g., where a portion of the property subject to the tenancy is sold to a third party, or where the original property is disposed of and in its place there is substituted other property of lesser value acquired through reinvestment under circumstances which satisfy the requirements of paragraph (d) (2) (ii) of this section), the proportionate contribution of each person to the remaining tenancy is in general the same as his proportionate contribution to the original tenancy, and the character of his contribution remains the same. These proportions are applied to the cost of the remaining or substituted property. Thus, if the total contribution to the cost of the property was $20,000 and a fourth of the property was sold, the contribution to the remaining portion of the tenancy is normally $15,000. However, if it is shown that at the time of the contribution more or less than one-fourth thereof was attributable to the portion sold, the contribution is divided between the portion sold and the portion retained in the proper proportion. If the portion sold was acquired as a separate tract, it is treated as a separate tenancy. As another example of the application of this subdivision, assume that in 1950 X (a third party) gave to H and W (H's wife), as tenants by the entirety, real property then having a value of $15,000. In 1955, H spent $5,000 thereon in improvements and under section 2515 (c) elected to treat his contribution as a gift. In 1956, W spent $10,000 in improving the property but did not elect to treat her contribution as a gift. Between 1957 and 1960 the property appreciated in value by $30,000. In 1960, the property was sold for $60,000, and $45,000 of the proceeds of the sale were, under circumstances that satisfy the requirements of paragraph (d) (2) (ii) of this section, reinvested in other real property. Since X contributed one-half of the total consideration for the original property and the additions to its value, he is considered as having furnished $22,500 (one-half of $45,000) toward the creation of the remaining portion of the tenancy and the making of additions to the value thereof. Similarly, H is considered as having furnished $7,500 (one-sixth of $45,000) which was treated as a gift in the year furnished, and W is considered as having furnished $15,000 (one-third of $45,000) which was not treated as a gift in the year furnished.

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

class as the prior consideration to which it relates. The application of this subparagraph may be illustrated by the following examples:

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

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

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

(d) *Gift upon termination of tenancy by the entirety*—(1) *In general.* Upon the termination of the tenancy, whether created before, during, or subsequent to the calendar year 1955, a gift may result, depending upon the disposition made of the proceeds of the termination (whether the proceeds be in the form of cash, property, or interests in property). A gift may result notwithstanding the fact that the contribution of either spouse to the tenancy was treated as a gift. See § 25.2515-3 for the method of determining the amount of any gift which may result from the termination of the tenancy in those cases in which no portion of the consideration contributed was treated as a gift by the spouses in the year in which furnished. See § 25.2515-4 for the method of determining the amount of any gift which may result from the termination of the tenancy in those cases in which all or a portion of the consideration contributed was treated as constituting a gift by the spouses in the year in which furnished. See § 25.2515-2 for the procedure to be followed by a donor who elects under section 2515 (c) to treat the creation of a tenancy by the entirety (or the making of additions to its value) as a transfer subject to the gift tax in the year in which the transfer is made, and for the method of determining the amount of the gift.

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

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

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

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

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

To the extent that all three of the conditions set forth in this subdivision are not met (whether by reason of the death of one of the spouses or for any other reason), the provisions of the preceding sentence shall not apply, and the sale, exchange or other disposition of the property will constitute a termination of the tenancy. As used in subdivision (c) the expression "a reasonable time" means the time which, under the particular facts in each case, is needed for those matters which are incident to the acquisition of the other property (i. e., perfecting of title, arranging for financing, construction, etc.). The fact that proceeds of a sale are deposited in the name of one tenant or of both tenants separately or jointly as a convenience does not constitute a division within the meaning of subdivision (*a*) if the other requirements of this subdivision are met. The proceeds of a sale, exchange, or other disposition of property held as tenants by the entirety will be deemed to have been used for the purchase of other real property if applied to the purchase or construction of improvements which themselves constitute real property and which are additions to other real property held by the spouses in a tenancy identical to that in which they held the property which was sold, exchanged, or otherwise disposed of.

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

1956, when the property has a fair market value of $60,000, they give it to their son; and that on their gift tax returns for the calendar year 1956, H reports himself as having made a gift to the son of $36,000 and W reports herself as having made a gift to the son of $24,000. Under these circumstances, H is considered as having received proceeds of termination valued at $36,000, and W is considered as having received proceeds of termination valued at $24,000.

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

§ 25.2515–2 *Tenancies by the entirety; transfers treated as gifts; manner of election and valuation.* (a) The election to treat the creation of a tenancy by the entirety in real property, or additions made to its value, as constituting a gift in the year in which effected, shall be exercised by including the value of such gifts in the gift tax return of the donor for the calendar year in which the tenancy was created, or the additions in value were made to the property. See section 6019 and the regulations thereunder. The election may be exercised only in a return filed within the time prescribed by law, or before the expiration of any extention of time granted pursuant to law for the filing of the return. See section 6075 for the time for filing the gift tax return, and section 6081 for extensions of time for filing the return, together with the regulations thereunder. In order to make the election, a gift tax return must be filed for the calendar year in which the tenancy was created, or additions in value thereto made, even though the value of the gift involved does not exceed the amount of the exclusion provided by section 2503 (b).

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

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

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

(c) Factors representing the respective interests of the spouses, under a tenancy by the entirety, at their attained ages at the time of the transaction may be found in, or readily computed with the use of the tables contained in, the actuarial pamphlet referred to in paragraph (e) of § 25.2512–5. State law may provide that the husband only is entitled to all of the income or other enjoyment of the real property held as tenants by the entirety, and the wife's interest consists only of the right of survivorship with no right of severance. In such a case, a special factor may be needed to determine the value of the interests of the respective spouses. See paragraph (e) of § 25.2512–5 for the procedure for obtaining special factors from the Commissioner in cases requiring their use.

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

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

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

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

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

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

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

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

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

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

$$\frac{\$30,000\ \text{(consideration furnished by husband)}}{\$40,000\ \text{(total consideration furnished by both spouses)}} \times \$60,000\ \text{(proceeds of termination)} = \$45,000$$

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

Example (2). In 1950 the husband purchased shares of X Company for $10,000. In 1955 when those shares had a fair market value of $30,000, he and his wife purchased real property from A and had it conveyed to them as tenants by the entirety. In payment for the real property, the husband transferred his shares of X Company to A and the wife paid A the sum of $10,000. They later sold the real property for $60,000, divided $24,000 (each taking $12,000) and reinvested the remaining $36,000 in other real property under circumstances that satisfied the conditions set forth in paragraph (d) (2) (ii) of § 25.2515–1. The tenancy was terminated only with respect to the $24,000 divided between them. This termination of the tenancy resulted in a gift of $6,000 by the husband to the wife, computed as follows:

$$\frac{\$30,000\ \text{(consideration furnished by husband)}}{\$40,000\ \text{(total consideration furnished by both spouses)}} \times \$24,000\ \text{(proceeds of termination)} = \$18,000$$

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

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

$$\frac{\$30,000\ \text{(consideration furnished by husband before sale)}}{\$40,000\ \text{(total consideration furnished by both spouses before sale)}} \times \$36,000\ \text{(consideration for reduced tenancy)} = \$27,000$$

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

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§ 25.2515–4 *Termination of tenancy by entirety; cases in which none, or a portion only, of value of gift is determined under section 2515 (b)*—(a) *In general.* The rules provided in section 2515 (b) (see § 25.2515–3) are not applied in determining whether a gift has been made at the termination of a tenancy to the extent that the consideration furnished for the creation of the tenancy was treated as a gift or if the consideration for the creation of the tenancy was furnished by a third party. Consideration furnished for the creation of the tenancy was treated as a gift if it was furnished either (1) during calendar years prior to 1955, or (2) during the calendar year 1955 and subsequent years and the donor spouse exercised the election to treat the furnishing of consideration as a gift. See paragraph (b) of this section for the manner of computing the value of gifts resulting from the termination of the tenancy under these circumstances. See paragraph (c) of this section for the rules to be applied where part of the total consideration for the creation of the tenancy and additions to the value thereof was not treated as a gift and part either was treated as a gift or was furnished by a third party.

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

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

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

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

(3) By subtracting the proceeds of termination received by the donor from the total of the amounts which under the principles referred to in subparagraphs (1) and (2) of this paragraph are to be compared with the proceeds of termination received by a spouse in determining whether a gift was made by that spouse.

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

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

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

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

$$\frac{\$50{,}000 \text{ (consideration not treated as gift in year furnished)}}{\$150{,}000 \text{ (total consideration furnished)}} \times \$300{,}000 \text{ (proceeds of termination)}$$

=$100,000 (Proceeds of termination to which principles set forth in § 25.2515–3 apply)

$$\frac{\$40{,}000 \text{ (consideration furnished by H and not treated as gift)}}{\$50{,}000 \text{ (total consideration not treated as gift)}} \times \$100{,}000 = \$80{,}000$$

Amount determined under principles set forth in paragraph (b) of this section:

$300,000 (total proceeds of termination) −$100,000 (proceeds to which principles set forth in § 25.2515–3 apply) =$200,000 (proceeds to which principles set forth in paragraph (b) apply)

0.44971 (factor for Y's interest) ×$200,000 =$89,942

Amount of gift:

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

§ 25.2516 *Statutory provisions; certain property settlements.*

SEC. 2516. *Certain property settlements.* Where husband and wife enter into a written agreement relative to their marital and property rights and divorce occurs within 2 years thereafter (whether or not such agreement is approved by the divorce decree), any transfers of property or interests in property made pursuant to such agreement—

(1) To either spouse in settlement of his or her marital or property rights, or

(2) To provide a reasonable allowance for the support of issue of the marriage during minority,

shall be deemed to be transfers made for a full and adequate consideration in money or money's worth.

§ 25.2516–1 *Certain property settlements.* (a) Section 2516 provides that transfers of property or interests in property made under the terms of a written agreement between spouses in settlement of their marital or property rights are deemed to be for an adequate and full consideration in money or money's worth and, therefore, exempt from the gift tax (whether or not such agreement is approved by a divorce decree), if the spouses obtain a final decree of divorce from each other within two years after entering into the agreement.

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

§ 25.2516–2 *Transfers in settlement of support obligations.* Transfers to provide a reasonable allowance for the support of children (including legally adopted children) of a marriage during minority are not subject to the gift tax if made pursuant to an agreement which satisfies the requirements of section 2516.

DEDUCTIONS

§ 25.2521 *Statutory provisions; specific exemption.*

SEC. 2521. *Specific exemption.* In computing taxable gifts for the calendar year, there shall be allowed a deduction in the case of a citizen or resident an exemption of $30,000, less the aggregate of the amounts claimed and allowed as specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years intervening between that calendar year and the calendar year for which the tax is being computed under the laws applicable to such years.

§ 25.2521–1 *Specific exemption.* (a) In determining the amount of taxable gifts for the calendar year there may be deducted, if the donor was a resident or citizen of the United States at the time the gifts were made, a specific exemption of $30,000, less the sum of the amounts claimed and allowed as an exemption in prior calendar years. The exemption, at the option of the donor, may be taken in the full amount of $30,000 in a single calendar year, or be spread over a period of years in such amounts as the donor sees fit, but after the limit has been reached no further exemption is allowable. Except as otherwise provided in a tax convention between the United States and another country, a donor who was a nonresident not a citizen of the United States at the time the gift or gifts were made is not entitled to this exemption.

(b) No part of a donor's lifetime specific exemption of $30,000 may be deducted from the value of a gift attributable to his spouse where a husband and wife consent, under the provisions of section 2513, to have the gifts made during a calendar year considered as made one-half by each of them. "The gift-splitting" provisions of section 2513 do not authorize the filing of a joint gift tax return nor permit a donor to claim any of his spouse's specific exemption. For example, if a husband has no specific exemption remaining available, but his wife does, and the husband makes a gift to which his wife consents under the provisions of section 2513, the specific exemption remaining available may be claimed only on the return of the wife with respect to one-half of the gift. The husband may not claim any specific exemption since he has none available.

(c) The amount by which the specific exemption claimed and allowed in gift tax returns for prior calendar years exceeds $30,000 is includible in determining the aggregate sum of the taxable gifts for preceding calendar years. See paragraph (b) of § 25.2504–1.

§ 25.2522 (a) *Statutory provisions; charitable and similar gifts; citizens or residents.*

SEC. 2522. *Charitable and similar gifts—*(a) *Citizens or residents.* In computing taxable gifts for the calendar year, there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of—

(1) The United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) A corporation, or trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) A fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(4) Posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

§ 25.2522 (a)–1 *Charitable and similar gifts; citizens or residents.* (a) In determining the amount of taxable gifts for the calendar year there may be deducted, in the case of a donor who was a citizen or resident of the United States at the time the gifts were made, all gifts included in the "total amount of gifts" made by the donor during the taxable year (see section 2503 and the regulations thereunder) and made to or for the use of:

(1) The United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes.

(2) Any corporation, trust, community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, if no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, and no substantial part of its activities is carrying on propaganda, or otherwise attempting, to influence legislation.

(3) A fraternal society, order, or association, operating under the lodge system, provided the gifts are to be used by the society, order or association exclusively for one or more of the purposes set forth in subparagraph (2) of this paragraph.

(4) Any post or organization of war veterans or auxiliary unit or society thereof, if organized in the United States or any of its possessions, and if no part of its net earnings inures to the benefit of any private shareholder or individual.

The deduction is not limited to gifts for use within the United States, or to gifts

to or for the use of domestic corporations, trusts, community chests, funds or foundations, or fraternal societies, orders or associations operating under the lodge system. For the deductions for charitable and similar gifts made by a nonresident who was not a citizen of the United States at the time the gifts were made, see § 25.2522 (b)–1.

(b) The deduction under section 2522 is not allowed for a transfer to a corporation, trust, community chest, fund, or foundation unless the organization or trust meets the following three tests:

(1) It must be organized and operated exclusively for one or more of the specified purposes.

(2) It must not by a substantial part of its activities attempt to influence legislation by propaganda or otherwise.

(3) Its net earnings must not inure in whole or in part to the benefit of private shareholders or individuals other than as legitimate objects of the exempt purposes.

For further limitations see § 25.2522 (c)–1, relating to gifts to trusts and organizations which have engaged in a prohibited transaction described in section 681 (b) (2) or section 503 (c).

(c) In order to prove the right to the charitable, etc., deduction provided by section 2522 the donor must submit such data as may be requested by the district director. As to the extent the deductions provided by this section are allowable, see section 2524.

§ 25.2522 (a)–2 *Transfers not exclusively for charitable, etc., purposes*—(a) *Remainders and similar interests.* If a trust is created or property is transferred for both a charitable and a private purpose, deduction may be taken of the value of the charitable beneficial interest only insofar as that interest is presently ascertainable, and hence severable from the noncharitable interest. The present value of a remainder or other deferred payment to be made for a charitable purpose is to be determined in accordance with the rules stated in § 25.2512–5. Thus, if money or property is placed in trust to pay the income to an individual during his life, or for a term of years, and then to pay the principal to a charitable organization, the present value of the remainder is deductible. To determine the present value of such remainder use the appropriate factor from column 4 of Table I or II of § 25.2512–5, whichever is applicable. If the interest involved is such that its value is to be determined by a special computation (see paragraph (e) of § 25.2512–5), 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 by the donor to the Commissioner, who may, if conditions permit, 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 value made in accordance with the principles set forth in the applicable paragraph of § 25.2512–5.

(b) *Transfers subject to a condition or a power.* If, as of the date of the gift, a transfer for charitable purposes is dependent upon the performance of some act or the happening of a precedent event in order that it might become effective, no deduction is allowable unless the possibility that the charitable transfer will not become effective is so remote as to be negligible. If an estate or interest passes to or is vested in charity on the date of the gift and the estate or interest would be defeated by the performance of some act or the happening of some event, the occurrence of which appeared to have been highly improbable on the date of the gift, the deduction is allowable. If the donee or trustee is empowered to divert the property or fund, in whole or in part, to a use or purpose which would have rendered it, to the extent that it is subject to such power, not deductible had it been directly so given by the donor, the deduction will be limited to that portion of the property or fund which is exempt from the exercise of the power. The deduction is not allowed in the case of a transfer in trust conveying to charity a present interest in income if by reason of all the conditions and circumstances surrounding the transfer it appears that the charity may not receive the beneficial enjoyment of the interest. For example, assume that assets placed in trust by the donor consist of stock in a corporation, the fiscal policies of which are controlled by the donor and his family, that the trustees and remaindermen are likewise members of the donor's family, and that the governing instrument contains no adequate guarantee of the requisite income to the charitable organization. Under such circumstances, no deduction will be allowed. Similarly, if the trustees are not members of the donor's family but have no power to sell or otherwise dispose of closely held stock, or otherwise insure the requisite enjoyment of income to the charitable organization, no deduction will be allowed.

§ 25.2522 (b) *Statutory provisions; charitable and similar gifts; nonresidents.*

SEC. 2522. *Charitable and similar gifts.*

* * *

(b) *Nonresidents.* In the case of a nonresident not a citizen of the United States, there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of—

(1) The United States, any State, Territory, or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

(2) A domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation;

(3) A trust, or community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; but only if such gifts are to be used within the United States exclusively for such purposes;

(4) A fraternal society, order, or association, operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

(5) Posts or organizations of war veterans, or auxiliary units or societies of any such posts or organizations, if such posts, organizations, units, or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

§ 25.2522 (b)–1 *Charitable and similar gifts; nonresidents not citizens.* (a) The deduction for charitable and similar gifts, in the case of a nonresident who was not a citizen of the United States at the time he made the gifts, is governed by the same rules as those applying to gifts by citizens or residents, subject, however, to the following exceptions:

(1) If the gifts are made to or for the use of a corporation, the corporation must be one created or organized under the laws of the United States or of any State or Territory thereof.

(2) If the gifts are made to or for the use of a trust, community chest, fund or foundation, or a fraternal society, order or association operating under the lodge system, the gifts must be for use within the United States exclusively for religious, charitable, scientific, literary or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals.

§ 25.2522 (c) *Statutory provisions; charitable and similar gifts; disallowance of deductions in certain cases.*

SEC. 2522. *Charitable and similar gifts.*

* * * * *

(c) *Disallowance of deductions in certain cases.* For disallowance of certain charitable, etc., deductions otherwise allowable under this section, see sections 504 and 681.

§ 25.2522 (c)–1 *Disallowance of charitable, etc., deductions because of prohibited transactions.* (a) Sections 503 (e) and 681 (b) (5) provide that no deduction which would otherwise be allowable under section 2522 for a gift for religious, charitable, scientific, literary or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, is allowed if—

(1) The gift is made in trust and, for income tax purposes for the taxable year of the trust in which the gift is made, the deduction otherwise allowable to the trust under section 642 (c) is limited by section 681 (b) (1) by reason of the trust having engaged in a prohibited transaction described in section 681 (b) (2); or

(2) The gift is made to any corporation, community chest, fund or foundation which, for its taxable year in which the gift is made is not exempt from income tax under section 501 (a) by reason of having engaged in a prohibited transaction described in section 503 (c).

(b) For purposes of section 503 (e) and section 681 (b) (5) the term "gift" includes any gift, contribution, or transfer without adequate consideration.

(c) Regulations relating to the income tax contain the rules for the determination of the taxable year of the trust for which the deduction under section 642 (c) is limited by section 681 (b), and for the determination of the taxable year of the organization for which an exemption is denied under section 503 (a). Generally, such taxable year is a taxable year subsequent to the taxable year during which the trust or organization has been notified by the Internal Revenue Service that it has engaged in a prohibited transaction. However, if the trust or organization during or prior to the taxable year entered into the prohibited transaction for the purpose of diverting its corpus or income from the charitable or other purposes by reason of which it is entitled to a deduction or exemption, and the transaction involves a substantial part of such income or corpus, then the deduction of the trust under section 642 (c) for such taxable year is limited by section 681 (b), or the exemption of the organization for such taxable year is denied under section 503 (a), whether or not the organization has previously received notification by the Internal Revenue Service that it has engaged in a prohibited transaction. In certain cases, the limitation of section 503 or 681 may be removed or the exemption may be reinstated for certain subsequent taxable years under the rules set forth in the income tax regulations under sections 503 and 681.

(d) In cases in which prior notification by the Internal Revenue Service is not required in order to limit the deduction of the trust under section 681 (b), or to deny exemption of the organization under section 503, the deduction otherwise allowable under § 25.2522 (a)–1 is not disallowed with respect to gifts made during the same taxable year of the trust or organization in which a prohibited transaction occurred, or in a prior taxable year, unless the donor or a member of his family was a party to the prohibited transaction. For purposes of the preceding sentence, the members of the donor's family include only his brothers and sisters (whether by whole or half blood), spouse, ancestors, and lineal descendants.

§ 25.2522 (d) *Statutory provisions; charitable and similar gifts; other cross references.*

SEC. 2522. *Charitable and similar gifts.* • • •

(d) *Other cross references.* (1) For exemption of gifts to or for benefit of Library of Congress, see section 5 of the Act of March 3, 1925, as amended (56 Stat. 765; 2 U. S. C. 161).

(2) For construction of gifts for benefit of Library of Post Office Department as gifts to or for the use of the United States, see section 2 of the Act of August 8, 1946 (60 Stat. 924; 5 U. S. C. 393).

(3) For exemption of gifts for benefit of Office of Naval Records and Library, Navy Department, see section 2 of the Act of March 4, 1937 (50 Stat. 25; 5 U. S. C. 419b).

(4) For exemption of gifts to or for benefit of National Park Service, see section 5 of the Act of July 10, 1935 (49 Stat. 478; 16 U. S. C. 19c).

(5) For construction of gifts accepted by the Secretary of State under the Foreign Service Act of 1946 as gifts to or for the use of the United States, see section 1021 (e) of that Act (60 Stat. 1032; 22 U. S. C. 809).

(6) For construction of gifts or bequests of money accepted by the Attorney General for credit to "Commissary Funds, Federal Prisons" as gifts or bequests to or for the use of the United States, see section 2 of the Act of May 15, 1952, 66 Stat. 73, as amended by the Act of July 9, 1952, 66 Stat. 479 (31 U. S. C. 725s–4).

(7) For payment of tax on gifts of United States obligations to the United States, see section 24 of the Second Liberty Bond Act, as amended (59 Stat. 48, § 4; 31 U. S. C. 757e).

(8) For construction of gifts for benefit of or use in connection with Naval Academy as gifts to or for the use of the United States, see section 3 of the Act of March 31, 1944 (58 Stat. 135; 34 U. S. C. 1115b).

(9) For exemption of gifts for benefit of Naval Academy Museum, see section 4 of the Act of March 26, 1938 (52 Stat. 119; 34 U. S. C. 1119).

(10) For exemption of gifts received by National Archives Trust Fund Board, see section 7 of the National Archives Trust Fund Board Act (55 Stat. 582; 44 U. S. C. 300gg).

§ 25.2523 (a) *Statutory provisions; gift to spouse; in general.*

SEC. 2523. *Gift to spouse*—(a) *In general.* Where a donor who is a citizen or resident transfers during the calendar year by gift an interest in property to a donee who at the time of the gift is the donor's spouse, there shall be allowed as a deduction in computing taxable gifts for the calendar year an amount with respect to such interest equal to one-half of its value.

§ 25.2523 (a)–1 *Gift to spouse; in general*—(a) *In general.* In determining the amount of taxable gifts for the calendar year 1955 or 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 in paragraph (b) of this section) transferred by gift to a donee who at the time of the gift was the donor's spouse. This deduction is referred to as the "marital deduction." No marital deduction is authorized with respect to a gift if the donor, at the time of the gift, was a nonresident not a citizen of the United States. However, if the donor was a citizen or resident of the United States at the time the gift was made, 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. The donor must submit such proof as is necessary to establish the right to the marital deduction, including any evidence requested by the district director.

(b) *"Deductible interests" and "nondeductible interests."* The property interests transferred by a donor to his spouse fall within two general categories: (1) Those with respect to which the marital deduction is authorized, and (2) those with respect to which the deduction is not authorized. These categories are referred to in this section and §§ 25.2523 (b)–1 through 25.2523 (f)–1 as "deductible interests" and "nondeductible interests," respectively (see subdivision (ii) of this subparagraph). Subject to the limitations set forth in §§ 25.2523 (f)–1 (relating to gifts of community property) and 25.2524–1 (relating to cases in which the total value of the gifts made to the donee spouse in any one year is less than $6,000), the marital deduction is equal to one-half of the aggregate value of the "deductible interests." A property interest transferred by a donor to his spouse is a "deductible interest" if it does not fall within one of the two following classes of "nondeductible interests":

(i) A property interest transferred by a donor to his spouse which is a "terminable interest," as defined in § 25.2523 (b)–1, is a "nondeductible interest" to the extent specified in that section.

(ii) Any property interest transferred by a donor to his spouse is a "nondeductible interest" to the extent that it is not included in the total amount of gifts made during the calendar year. See §§ 25.2515–1 (relating to tenancies by the entirety) and 25.2516–1 (relating to property settlements, followed by divorce) for some, but not necessarily all, of the situations in which property is transferred by a donor to his spouse and not included in the total amount of gifts made during the calendar year. If the total gifts made by a donor to his spouse during a calendar year have a value of $6,000 or more the amount of the marital deduction is determined without regard to the amount of the exclusion, if any, allowable. For example, assume that in 1955 a donor made a cash gift of $10,000 to his wife. No other gifts were made by the donor in 1955. The amount of the marital deduction is one-half of $10,000, or $5,000; the amount of the exclusion is $3,000; and the total amount of included gifts is $2,000. See § 25.2524–1 with respect to the amount of the marital deduction allowable where the total gifts made in a calendar year by a donor to his spouse have a value of less than $6,000.

(c) *Valuation.* If 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. The present value of the remainder (that is, its value as of the date of gift) is to be determined in accordance with the rules stated in § 25.2512–5. For example, if the donor's spouse is to receive $50,000 upon the death of a person 31 years of age, the present value of the remainder is $14,466. See the example in paragraph (d) of § 25.2512–5. If the remainder is such that its value is to be determined by a special computation (see § 25.2512–5), a request for a specific factor, accompanied by a statement of the dates 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 by the donor to the Commissioner who, if conditions permit, may supply the factor requested. If the Commissioner does not furnish the factor, the claim for de-

duction must be supported by a full statement of the computation of the present value, made in accordance with the principles set forth in § 25.2512–5.

§ 25.2523 (b) *Statutory provisions; gift to spouse; life estate or other terminable interest.*

SEC. 2523. *Gift to spouse.* * * *

(b) *Life estate or other terminable interest.* Where, on the lapse of time, on the occurrence of an event or contingency, or on 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—

(1) 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

(2) 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 purposes of this paragraph, 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 on the failure of an event or contengency 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 purposes of paragraph (1), be considered as a transfer by him. Except as provided in subsection (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 purposes of paragraph (1), be considered as transferred to a person other than the donee spouse.

§ 25.2523 (b)–1 *Life estate or other terminable interest*—(a) *In general.* (1) The provisions of section 2523 (b) generally prevent the allowance of the marital deduction with respect to certain property interests (referred to generally as "terminable interests," defined in subparagraph (3) of this paragraph), transferred to the donee spouse under the circumstances described in subparagraph (2) of this paragraph, unless the transfer comes within one of the exceptions set forth in § 25.2523 (d)–1, relating to certain joint interests, or § 25.2523 (e)–1, relating to certain life estates with powers of appointment.

(2) If a donor transfers a terminable interest in property to the donee spouse, the marital deduction is disallowed with respect to the transfer if the donor spouse also—

(i) Transferred an interest in the same property to another donee (see paragraph (b) of this section), or

(ii) Retained an interest in the same property in himself (see paragraph (c) of this section), or

(iii) Retained a power to appoint an interest in the same property (see paragraph (d) of this section).

Notwithstanding the preceding sentence, the marital deduction is disallowed under these circumstances only if the other donee, the donor, or the possible appointee, may, by reason of the transfer or retention, possess or enjoy any part of the property after the termination or failure of the interest therein transferred to the donee spouse.

(3) For purposes of this section, a distinction is to be drawn between "property," as such term is used in section 2523, 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." A "terminable interest" in property is an interest which will terminate or fail on the lapse of time or on the occurrence or failure to occur of some contingency. Life estates, terms for years, annuities, patents, and copyrights are therefore terminable interests. However, a bond, note, or similar contractual obligation, the discharge of which would not have the effect of an annuity or term for years, is not a terminable interest.

(b) *Interest in property which another donee may possess or enjoy.* (1) Section 2523 (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—

(i) 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

(ii) 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.

(2) In determining whether the donor transferred an interest in property to any person other than the donee spouse, it is immaterial 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.

(3) Except as provided in § 25.2523 (e)–1, if 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 is considered as transferred to a person other than the donee spouse for the purpose of section 2523 (b). This rule is particularly applicable in the case of the transfer of a property interest by the donor subject to a reserved power. See § 25.2511–2. 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 2523 (b), considered as transferred to a "person other than the donee spouse." The following examples illustrate the application of the provisions of this subparagraph:

(i) If a donor transferred property in trust naming his wife as the irrevocable income beneficiary for 10 years, and providing that, upon the expiration of that term, the corpus should be distributed among his wife and children in such proportions as the trustee should determine, the right to the corpus, for the purpose of the marital deduction, is considered as transferred to a "person other than the donee spouse."

(ii) If, in the above example, the donor had provided that, upon the expiration of the 10-year term, the corpus was to be paid to his wife, but also reserved the power to revest such corpus in himself, the right to corpus, for the purpose of the marital deduction, is considered as transferred to a "person other than the donee spouse."

(4) 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 § 25.2523 (e)–1. In such a case, the term "person other than the donee spouse" refers to the possible appointees and takers in default (other than the spouse) of such property interest.

(5) 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 is considered as a transfer by him in determining, for the purpose of section 2523 (b), whether he transferred an interest in such property to a person other than the donee spouse.

(6) The following examples illustrate the application of this paragraph. In each example it is assumed that the property interest which the donor transferred to a person other than the donee spouse was not transferred 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 property for the benefit of W and A. The income was payable to W for life and upon her death the principal was to be distributed to A or his issue. However, if A should die without issue, leaving W surviving, the principal 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.

(iii) 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 W's 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.

(iv) 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.

(v) 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 W. No marital deduction may be taken with respect to the 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.

(vi) 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 2523 (b) do not disallow the marital deduction with respect to the interest.

(c) *Interest in property which the donor may possess or enjoy.* (1) Section 2523 (b) provides that no marital deduction is allowed with respect to the transfer to the donee spouse of a "terminable interest" in property, if—

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

(ii) By reason of such retention, the donor (or his heirs or assigns) may possess or enjoy any part of the property after the termination or failure of the interest transferred to the donee spouse. However, as to a transfer to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, see § 25.2523 (d)–1.

(2) 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. The application of this paragraph may be further illustrated by the following example:

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 resulting from 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 transferred to the wife.

(d) *Interest in property over which the donor retained a power to appoint.* (1) Section 2523 (b) provides that no marital deduction is allowed with respect to the transfer to the donee spouse of a "terminable interest" in property if—

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

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

(2) For the purposes of section 2523 (b), the donor is to be considered as having, immediately after the transfer to the donee spouse, such a power to appoint even though the 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 2514.

(3) The principles illustrated by the examples under paragraph (b) of this section are generally 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. The application of this paragraph may be further illustrated by the following example:

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

§ 25.2523 (c) *Statutory provisions; gift to spouse; interest in unidentified assets.*

SEC. 2523. *Gift to spouse.* * * *

(c) *Interest in unidentified assets.* 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 purposes of subsection (a), be reduced by the aggregate value of such particular assets.

§ 25.2523 (c)–1 *Interest in unidentified assets.* (a) Section 2523 (c) provides that if an interest passing to a donee spouse may be satisfied out of a group of assets (or their proceeds) which include a particular asset that would be a nondeductible interest if it passed from the donor to his spouse, the value of the interest passing to the spouse is reduced, for the purpose of the marital deduction, by the value of the particular asset.

(b) In order for this section 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. Therefore, section 2523 (c) is not applicable merely because a group of assets includes a terminable interest, but would only be applicable if the terminable interest were nondeductible under the provisions of § 25.2523 (b)–1.

(c) If the circumstances in the preceding paragraph 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. The application of this section may be illustrated by the following example:

Example. H was absolute owner of a rental property and on July 1, 1950, transferred it to A by gift, reserving the income for a period of 20 years. On July 1, 1955, he created a trust to last for a period of 10 years. H was to receive the income from the trust and at the termination of the trust the trustee is to turn over to H's wife, W, property having a value of $100,000. The trustee has absolute discretion in deciding which properties in the corpus he shall turn over to W in satisfaction of the gift to her. The trustee received two items of property from H. Item (1) consisted of shares of corporate stock. Item (2) consisted of the right to receive the income from the rental property during the unexpired portion of the 20-year term. Assume that at the termination of the trust on July 1, 1965, the value of the right to the rental income for the then unexpired term of 5 years (item (2)) will be $30,000. Since item (2) is a nondeductible interest and the trustee can turn it over to W in partial satisfaction of her gift, only $70,000 of the $100,000 receivable by her on July 1, 1965, will be considered as property with respect to which a marital deduction is allowable. The present value on July 1, 1955, of the right to receive $70,000 at the end of 10 years is $49,624.33 ($70,000 × 0.708919, as found in Table II of § 25.2512–5). The value of the property qualifying for the marital deduction, therefore, is $49,624.33 and a marital deduction is allowed for one-half of that amount, or $24,812.17.

§ 25.2523 (d) *Statutory provisions; gift to spouse; joint interest.*

SEC. 2523. *Gift to spouse.* * * *

(d) *Joint interest.* 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 purposes of subsection (b) as an interest retained by the donor in himself.

§ 25.2523 (d)–1 *Joint interests.* Section 2523 (d) provides that if a property interest is transferred to the donee spouse as sole joint tenant with the donor or as a 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 2523 (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 transferred to the donee spouse does not preclude the allowance of the marital deduction with respect to the latter interest. Thus, if the donor purchased real property in the name of himself and wife as tenants by the entirety, or as joint

tenants with right of survivorship and, pursuant to the provisions of section 2515 (c), elected to treat such transaction as a completed gift in the calendar year effected, a marital deduction equal to one-half the value of the interest of the donee spouse in such property may be taken. See paragraph (c) of § 25.2523 (b)–1, and section 2524.

§ 25.2523 (e) *Statutory provisions; gift to spouse; life estate with power of appointment in donee spouse.*

SEC. 2523. *Gift to spouse.* * * *

(e) *Life estate with power of appointment in donee spouse.* Where the donor transfers an interest in property, if by such transfer his spouse is entitled for life to all of the income from the entire interest, or all the income from a specific portion thereof, payable annually or at more frequent intervals, with power in the donee spouse to appoint the entire interest, or such specific portion (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 such interest, or such portion, to any person other than the donee spouse—

(1) The interest, or such portion, so transferred shall, for purposes of subsection (a) be considered as transferred to the donee spouse, and

(2) No part of the interest, or such portion, so transferred shall, for purposes of subsection (b) (1), be considered as retained in the donor or transferred to any person other than the donee spouse.

This subsection shall apply only if, by such transfer, such power in the donee spouse to appoint the interest, or such portion, whether exercisable by will or during life, is exercisable by such spouse alone and in all events.

§ 25.2523 (e)–1 *Marital deduction; life estate with power of appointment in donee spouse*—(a) *In general.* Section 2523 (e) provides that if an interest in property is transferred by a donor to his spouse (whether or not in trust) and the spouse is entitled for life to all the income from the entire interest or all the income from a specific portion of the entire interest, with a power in her to appoint the entire interest or the specific portion, the interest transferred to her is a deductible interest, to the extent that it satisfies all five of the conditions set forth below (see paragraph (b) of this section if one or more of the conditions is satisfied as to only a portion of the interest):

(1) The donee spouse must be entitled for life to all of the income from the entire interest or a specific portion of the entire interest, or to a specific portion of all the income from the entire interest.

(2) The income payable to the donee spouse must be payable annually or at more frequent intervals.

(3) The donee spouse must have the power to appoint the entire interest or the specific portion to either herself or her estate.

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

(5) The entire interest or the specific portion must not be subject to a power in any other person to appoint any part to any person other than the donee spouse.

(b) *Specific portion; deductible amount.* If either the right to income or the power of appointment given to the donee spouse pertains only to a specific portion of a property interest, the portion of the interest which qualifies as a deductible interest is limited to the extent that the rights in the donee spouse meet all of the five conditions described in paragraph (a) of this section. While the rights over the income and the power must coexist as to the same interest in property, it is not necessary that the rights over the income or the power as to such interest be in the same proportion. However, if the rights over income meeting the required conditions set forth in paragraph (a) (1) and (2) of this section extend over a smaller share of the property interest than the share with respect to which the power of appointment requirements set forth in paragraph (a) (3) through (5) of this section are satisfied, the deductible interest is limited to the smaller share. Conversely, if a power of appointment meeting all the requirements extends to a smaller portion of the property interest than the portion over which the income rights pertain, the deductible interest cannot exceed the value of the portion to which such power of appointment applies. Thus, if the donor gives to the donee spouse the right to receive annually all of the income from a particular property interest and a power of appointment meeting the specifications prescribed in paragraph (a) (3) through (5) of this section as to only one-half of the property interest, then only one-half of the property interest is treated as a deductible interest. Correspondingly, if the income interest of the spouse satisfying the requirements extends to only one-fourth of the property interest and a testamentary power of appointment satisfying the requirements extends to all of the property interest, then only one-fourth of the interest in the spouse qualifies as a deductible interest. Further, if the donee spouse has no right to income from a specific portion of a property interest but a testamentary power of appointment which meets the necessary conditions over the entire interest, then none of the interest qualifies for the deduction. In addition, if, from the time of the transfer, the donee spouse has a power of appointment meeting all of the required conditions over three-fourths of the entire property interest and the prescribed income rights over the entire interest, but with a power in another person to appoint one-half of the entire interest, the value of the interest in the donee spouse over only one-half of the property interest will qualify as a deductible interest.

(c) *Definition of "specific portion".* A partial interest in property is not treated as a specific portion of the entire interest unless the rights of the donee spouse in income and as to the power constitute a fractional or percentile share of a property interest so that such interest or share in the donee spouse reflects its proportionate share of the increment or decline in the whole of the property interest to which the income rights and the power relate. Thus, if the right of the spouse to income and the power extend to one-half or a specified percentage of the property, or the equivalent, the interest is considered as a specific portion. On the other hand, if the annual income of the spouse is limited to a specific sum, or if she has a power to appoint only a specific sum out of a larger fund, the interest is not a deductible interest. Even though the rights in the donee spouse may not be expressed in terms of a definite fraction or percentage, a deduction may be allowable if it is shown that the effect of local law is to give the spouse rights which are identical to those she would have acquired if the size of the share had been expressed in terms of a definite fraction or percentage. The following examples illustrate the application of this and the preceding paragraphs of this section:

Example (1). The donor transferred to a trustee 500 identical shares of X Company stock. He provided that during the lifetime of the donee spouse the trustee should pay her annually one-half of the trust income or $6,000, whichever is the larger. The spouse was also given a general power of appointment, exercisable by her last will over the sum of $160,000 or over three-fourths of the trust corpus, whichever should be of larger value. Since there is no certainty that the trust income will not vary from year to year, for purposes of paragraphs (a) and (b) of this section, an annual payment of a specified sum, such as the $6,000 provided for in this case, is not considered as representing the income from a definite fraction or a specific portion of the entire interest if that were the extent of the spouse's interest. However, since the spouse is to receive annually at least one-half of the trust income, she will, for purposes of paragraphs (a) and (b) of this section, be considered as receiving all of the income from one-half of the entire interest in the stock. Inasmuch as there is no certainty that the value of the stock will be the same on the date of the donee spouse's death as it was on the date of the transfer to the trustee, for purposes of paragraphs (a) and (b) of this section, a specified sum, such as the $160,000 provided for in this case, is not considered to be a definite fraction of the entire interest. However, since the donee spouse has a general power of appointment over at least three-fourths of the trust corpus, she is considered as having a general power of appointment over three-fourths of the entire interest in the stock.

Example (2). The donor transferred to a trustee an office building and 250 identical shares of Y Company stock. He provided that during the lifetime of the donee spouse the trustee should pay her annually three-fourths of the trust income. The spouse was given a general power of appointment, exercisable by will, over the office building and 100 shares of the stock. By the terms of the trust instrument the donee spouse is given all the income from a definite fraction of the entire interest in the office building and in the stock. She also has a general power of appointment over the entire interest in the office building. However, since the amount of property represented by a single share of stock would be altered if the corporation split its stock, issued stock dividends, made a distribution of capital, etc., a power to appoint 100 shares at the time of the donee spouse's death is not the same necessarily as a power to appoint $\frac{100}{250}$ of the entire interest which the 250 shares represented on the date of the gift. If it is shown in this case that the effect of local law is to give the spouse a general power to appoint not only the 100 shares designated by the donor

but also 100/250 of any shares or amounts which are distributed by the corporation and included in the corpus, the requirements of this paragraph will be satisfied and the donee spouse will be considered as having a general power to appoint 100/250 of the entire interest in the 250 shares.

(d) *Definition of "entire interest".* Since a marital deduction is allowed for each qualifying separate interest in property transferred by the donor to the donee spouse, for purposes of paragraphs (a) and (b) of this section, each property interest with respect to which the donee spouse received some rights is considered separately in determining whether her rights extend to the entire interest or to a specific portion of the entire interest. A property interest which consists of several identical units of property (such as a block of 250 shares of stock, whether the ownership is evidenced by one or several certificates) is considered one property interest, unless certain of the units are to be segregated and accorded different treatment, in which case each segregated group of items is considered a separate property interest. The bequest of a specified sum of money consitutes the bequest of a separate property interest if immediately following the transfer and thenceforth it, and the investments made with it, must be so segregated or accounted for as to permit its identification as a separate item of property. The application of this paragraph may be illustrated by the following examples:

Example (1). The donor transferred to a trustee three adjoining farms, Blackacre, Whiteacre, and Greenacre. The trust instrument provided that during the lifetime of the donee spouse the trustee should pay her all of the income from the trust. Upon her death, all of Blackacre, a one-half interest in Whiteacre, and a one-third interest in Greenacre were to be distributed to the person or persons appointed by her in her will. The donee spouse is considered as being entitled to all of the income from the entire interest in Blackacre, all of the income from the entire interest in Whiteacre, and all of the income from the entire interest in Greenacre. She also is considered as having a power of appointment over the entire interest in Blackacre, over one-half of the entire interest in Whiteacre, and over one-third of the entire interest in Greenacre.

Example (2). The donor transferred $250,000 to C, as trustee. C is to invest the money and pay all of the income from the investments to W, the donor's spouse, annually. W was given a general power, exercisable by will, to appoint one-half of the corpus of the trust. Here, immediately following establishment of the trust, the $250,000 will be sufficiently segregated to permit its identification as a separate item, and the $250,000 will constitute an entire property interest. Therefore, W has a right to income and a power of appointment such that one-half of the entire interest is a deductible interest.

Example (3). The donor transferred 100 shares of Z Corporation stock to D, as trustee. W, the donor's spouse, is to receive all of the income of the trust annually and is given a general power, exercisable by will, to appoint out of the trust corpus the sum of $25,000. In this case the $25,000 is not, immediately following establishment of the trust, sufficiently segregated to permit its identification as a separate item of property in which the donee spouse has the entire interest. Therefore, the $25,000 does not constitute the entire interest in a property for the purpose of paragraphs (a) and (b) of this section.

(e) *Application of local law.* In determining whether or not the conditions set forth in paragraph (a) (1) through (5) of this section are satisfied by the instrument of transfer, regard is to be had to the applicable provisions of the law of the jurisdiction under which the interest passes and, if the transfer is in trust, the applicable provisions of the law governing the administration of the trust. For example, silence of a trust instrument as to the frequency of payment will not be regarded as a failure to satisfy the condition set forth in paragraph (a) (2) of this section that income must be payable to the donee spouse annually or more frequently unless the applicable law permits payment to be made less frequently than annually. The principles outlined in this paragraph and paragraphs (f) and (g) of this section which are applied in determining whether transfers in trust meet such conditions are equally applicable in ascertaining whether, in the case of interests not in trust, the donee spouse has the equivalent in rights over income and over the property.

(f) *Right to income.* (1) If an interest is transferred in trust, the donee spouse is "entitled for life to all of the income from the entire interest or a specific portion of the entire interest," for the purpose of the condition set forth in paragraph (a) (1) of this section, 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 donee 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 of the entire interest or a specific portion of the entire interest will be sufficient to qualify the trust unless the terms of the trust and the surrounding circumstances considered as a whole evidence an intention to deprive the spouse of the requisite degree of enjoyment. In determining whether a trust evidences that 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.

(2) If the over-all effect of a trust is to give to the donee spouse such enforceable rights as will preserve to her the requisite degree of enjoyment, it is immaterial whether that 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, a provision in the trust instrument for amortization of bond premium by appropriate periodic charges to interest will not disqualify the interest transferred in trust even though there is no State law specifically authorizing amortization or there is a State law denying amortization which is applicable only in the absence of such a provision in the trust instrument.

(3) In the case of a 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. If 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 interest transferred in trust. Similarly, provision for a depletion charge against income in the case of trust assets which are subject to depletion will not disqualify the interest transferred in 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.

(4) Provisions granting administrative powers to the trustees will not have the effect of disqualifying an interest transferred in trust unless the grant of powers evidences the intention to deprive the donee spouse of the beneficial enjoyment required by the statute. Such an 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 the powers. Among the powers which if subject to reasonable limitations will not disqualify the interest transferred in trust are the power to determine the allocation or apportionment of receipts and disbursements between income and corpus, the power to apply the income or corpus for the benefit of the spouse, and the power to retain the assets transferred to the trust. For example, a power to retain trust assets which consist substantially of unproductive property will not disqualify the interest if the applicable rules for administration of the trust require, or permit the spouse to require, that the trustee either make the property productive or convert it within a reasonable time. Nor will such a power disqualify the interest if the applicable rules for administration of the trust 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. Further, a power to retain a residence for the spouse or other property for the personal use of the spouse will not qualify the interest transferred in trust.

(5) An interest transferred in trust will not satisfy the condition set forth in paragraph (a) (1) of this section that the donee spouse be entitled to all the income if the primary purpose of the trust 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 donee spouse and that the spouse cannot compel the trustee to convert or otherwise deal with the property as described in subparagraph (4) of this paragraph. An interest transferred to such a trust will not qualify unless the applicable rules for the administration require, or permit the spouse to require, that the trustee provide the required beneficial enjoyment, such as by payments to the spouse out of other assets of the trust.

(6) If a trust 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 interest transferred in trust satisfies the condition set forth in paragraph (a) (1) of this section (that the spouse be entitled to all the income) if she (i) is entitled to the income until the trust terminates, or (ii) has the right, exercisable in all events, to have the corpus distributed to her at any time during her life.

(7) An interest transferred in trust fails to satisfy the condition set forth in paragraph (a) (1) of this section, that the spouse be entitled to all the income, to the extent that 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; to the extent that the consent of any person other than the donee spouse is required as a condition precedent to distribution of the income; or to the extent that any person other than the donee spouse has the power to alter the terms of the trust so as to deprive her of her right to the income. An interest transferred in trust will not fail to satisfy the condition that the spouse be entitled to all the income merely because its terms provide that the right of the donee spouse to the income shall not be subject to assignment, alienation, pledge, attachment or claims of creditors.

(8) In the case of an interest transferred in trust, the terms "entitled for life" and "payable annually or at more frequent intervals", as used in the conditions set forth in paragraph (a) (1) and (2) of this section, require that under the terms of the trust the income referred to must be currently (at least annually; see paragraph (e) of this section) distributable to the spouse or that she must have such command over the income that it is virtually hers. Thus, the conditions in paragraph (a) (1) and (2) of this section are satisfied in this respect if, under the terms of the trust instrument, the donee 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 that income is subject to the spouse's power to appoint. Thus, if the trust instrument provides that income accrued or undistributed on the date of the spouse's death is to be disposed of as if it had been received after her death, and if the spouse has a power of appointment over the trust corpus, the power necessarily extends to the undistributed income.

(g) *Power of appointment in donee spouse.* (1) The conditions set forth in paragraph (a) (3) and (4) of this section, that is, that the donee spouse must have a power of appointment exercisable in favor of herself or her estate and exercisable alone and in all events, are not met unless the power of the donee spouse to appoint the entire interest or a specific portion of it falls within one of the following categories:

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

(ii) A power so to appoint exercisable in favor of her estate. Such a 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; or

(iii) A combination of the powers described under subdivisions (i) and (ii) of this subparagraph. For example, the donee 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, the condition that the spouse's power must be exercisable in all events is not satisfied unless irrespective of when the donee spouse may die the entire interest or a specific portion of it will at the time of her death be subject to one power or the other.

(2) The power of the donee spouse must be a power to appoint the entire interest or a specific portion of it as unqualified owner (and free of the trust if a trust is involved, or free of the joint tenancy if a joint tenancy is involved) or to appoint the entire interest or a specific portion of it as a part of her estate (and free of the trust if a trust is involved), that is, in effect, to dispose of it to whomsoever she pleases. Thus, if the donor transferred property to a son and the donee spouse as joint tenants with right of survivorship and under local law the donee spouse has a power of severance exercisable without consent of the other joint tenant, and by exercising this power could acquire a one-half interest in the property as a tenant in common, her power of severance will satisfy the condition set forth in paragraph (a) (3) of this section that she have a power of appointment in favor of herself or her estate. However, if the donee spouse entered into a binding agreement with the donor to exercise the power only in favor of their issue, that condition is not met. An interest transferred in trust will not be regarded as failing to satisfy the condition 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.

(3) A power is not considered to be a power exercisable by a donee spouse alone and in all events as required by paragraph (a) (4) of this section if the exercise of the power in the donee spouse to appoint the entire interest or a specific portion of it to herself or to her estate requires the joinder or consent of any other person. The power is not "exercisable in all events", if it can be terminated during the life of the donee spouse by any event other than her complete exercise or release of it. Further, a power is not "exercisable in all events" if it may be exercised for a limited purpose only. For example, a power which is not exercisable in the event of the spouse's remarriage is not exercisable in all events. Likewise, if there are any restrictions, either by the terms of the instrument or under applicable local law, on the exercise of a power to consume property (whether or not held in trust) for the benefit of the spouse, the power is not exercisable in all events. Thus, if a power of invasion is exercisable only for the spouse's support, or only for her limited use, the power is not exercisable in all events. In order for a power of invasion to be exercisable in all events, the donee spouse must have the unrestricted power exercisable at any time during her life to use all or any part of the property subject to the power, and to dispose of it in any manner, including the power to dispose of it by gift (whether or not she has power to dispose of it by will).

(4) If the power is in existence at all times following the transfer of the interest, limitations of a formal nature will not disqualify the interest. Examples of formal limitations on a power exercisable during life are requirements that an exercise must be in a particular form, that it must be filed with a trustee during the spouse's life, 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 making of the gift or that exercise must be by specific reference to the power.

(5) If the donee spouse has the requisite power to appoint to herself or her estate, it is immaterial that she also has one or more lesser powers. Thus, if she has a testamentary power to appoint to her estate, she may also have a limited power of withdrawal or of appointment during her life. Similarly, if she has an unlimited power of withdrawal, she may have a limited testamentary power.

(h) *Existence of a power in another.* Paragraph (a) (5) of this section provides that a transfer described in paragraph (a) is nondeductible to the extent that the donor created a power in the trustee or in any other person to appoint a part of the interest to 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 a portion of the interest to fail to satisfy the condition set forth in paragraph (a) (5) of this section. Thus, a power in a trustee to distribute corpus

to or for the benefit of the donee spouse will not disqualify the trust. Similarly, a power to distribute corpus to the spouse for the support of minor children will not disqualify the trust if she is legally obligated to support such children. The application of this paragraph may be illustrated by the following examples:

Example (1). Assume that a donor created a trust, designating his spouse as income beneficiary for life with an unrestricted power in the spouse to appoint the corpus during her life. 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 a power in the son to appoint the corpus. Since the power in the son could become exercisable only after the death of the donee spouse, the interest is not regarded as failing to satisfy the condition set forth in paragraph (a) (5) of this section.

Example (2). Assume that the donor created a trust, designating his spouse as income beneficiary for life and as donee of a power to appoint by will the entire corpus. The donor further provided that the trustee could distribute 30 percent of the corpus to the donor's son when he reached the age of 35 years. Since the trustee has a power to appoint 30 percent of the entire interest for the benefit of a person other than the donee spouse, only 70 percent of the interest placed in trust satisfied the condition set forth in paragraph (a) (5) of this section. If, in this case, the donee spouse had a power, exercisable by her will, to appoint only one-half of the corpus as it was constituted at the time of her death, it should be noted that only 35 percent of the interest placed in the trust would satisfy the condition set forth in paragraph (a) (3) of this section.

§ 25.2523 (f) *Statutory provisions; community property.*

SEC. 2523. *Gift to spouse.* * * *

(f) *Community property.* (1) A deduction otherwise allowable under this section 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.

(2) For purposes of paragraph (1), community property (except property which is considered as community property solely by reason of paragraph (3)) 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.

(3) If during the calendar year 1942 or in succeeding calendar years, property held as such community property (unless considered by reason of paragraph (2) 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 coownership 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 purposes of paragraph (1), be considered as "held as community property."

(4) 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, paragraph (3) shall apply 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.

§ 25.2523 (f)-1 *Marital deduction in cases involving community property—* (a) *In general.* The marital deduction is allowable with respect to any transfer by a donor to his spouse only to the extent that the 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."* (1) For the purpose of paragraph (a) of this section, the term "community property" is considered to include—

(i) 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 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 that 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 of it), would be treated as the amount of the gift.

(ii) Separate property acquired by the donor as a result of a "conversion", after December 31, 1941, 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, subject to the limitation with respect to value contained in subparagraph (5) of this paragraph.

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

(2) The characteristics of property which acquired a noncommunity instead of a community status by reason of an agreement (whether antenuptial or postnuptial) are such that section 2523 (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 noncommunity status from property which acquired such a status solely by operation of the community property law, section 2523 (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 2523 (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 noncommunity 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 noncommunity status.

(3) The separate property which section 2523 (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 2523 (f):

(i) A partition of community property between husband and wife, whereby a portion of the property became the separate property of each, is a conversion of community property.

(ii) A transfer of community property into some other form of coownership, such as a joint tenancy, is a conversion of the property.

(iii) An agreement (whether made before or after marriage) that future earnings and gains which would otherwise be community property shall be shared by the spouses as separate property effects a conversion of such earnings and gains.

(iv) A change in the form of ownership of property which causes future rentals, which would otherwise have been acquired as community property, to be acquired as separate property effects a conversion of the rentals.

(4) The rules of section 2523 (f) are applicable, however, only if the conversion took place after December 31, 1941, and only to the extent stated in this section.

(5) If 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. If the value (at the time of conversion) of the separate property so acquired by the donor exceeded the value (at that 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 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 for it) which is considered as so held is the same proportion of it which the value (at the time of the conversion) of the separate property so acquired by the donee spouse is of the value (at that time) of the separate property so acquired by the donor. The following example illustrates the application of the provisions of this paragraph:

Example. During 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 the 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. In 1955 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 prop-

erty transferred by gift which is considered as community property is

$64,000 (value of property acquired by donee spouse)

$160,000 (value of property acquired by donor spouse)

×$200,000=$80,000. The marital deduction with respect to the gift is, therefore, limited to one-half of $120,000 (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.

§ 25.2524 *Statutory provisions; extent of deductions.*

SEC. 2524. *Extent of deductions.* The deductions provided in sections 2522 and 2523 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.

§ 25.2524–1 *Extent of deductions.* Under the provisions of section 2524, the charitable deduction provided for in section 2522 and the marital deduction provided for in section 2523 are allowable only to the extent that the gifts with respect to which those deductions are authorized are included in the "total amount of gifts" made during the calendar year, computed as provided in section 2503 and § 25.2503–1 (i. e., the total gifts less exclusions). The following example illustrates the application of the provisions of this section:

Example. The only gifts made by a donor to his spouse during the calendar year 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 2503 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 2524 to $2,000.

PROCEDURE AND ADMINISTRATION

§ 25.6001 *Statutory provisions; notice or regulations requiring records, statements and special returns.*

SEC. 6001. *Notice or regulations requiring records, statements, and special returns.* Every person liable for any tax imposed by this title, or for the collection thereof, shall keep such records, render such statements, make such returns, and comply with such rules and regulations as the Secretary or his delegate may from time to time prescribe. Whenever in the judgment of the Secretary or his delegate it is necessary, he may require any person, by notice served upon such person or by regulations, to make such returns, render such statements, or keep such records, as the Secretary or his delegate deems sufficient to show whether or not such person is liable for tax under this title.

§ 25.6001–1 *Records required to be kept*—(a) *In general.* Every person subject to taxation under chapter 12 of the Internal Revenue Code of 1954 shall for the purpose of determining the total amount of his gifts, keep such permanent books of account or records as are necessary to establish the amount of his total gifts (limited as provided by section 2503 (b)), together with the deductions allowable in determining the amount of his taxable gifts, and the other information required to be shown in a gift tax return. All documents and vouchers used in preparing the gift tax return (see § 25.6019–1) shall be retained by the donor so as to be available for inspection whenever required.

(b) *Supplemental data.* In order that the district director may determine the correct tax the donor shall furnish such supplemental data as may be deemed necessary by the district director. It is, therefore, the duty of the donor to furnish, upon request, copies of all documents relating to his gift or gifts, appraisal lists of any items included in the total amount of gifts, copies of balance sheets or other financial statements obtainable by him relating to the value of stock constituting the gift, and any other information obtainable by him that may be necessary in the determination of the tax. See section 2512 and the regulations issued thereunder. For every policy of life insurance listed on the return, the donor must procure a statement from the insurance company on Form 938 and file it with the district director who receives the return. If specifically requested by the district director, the insurance company shall file this statement direct with the district director.

§ 25.6011 *Statutory provisions; general requirement of return, statement, or list.*

SEC. 6011. *General requirement of return, statement, or list*—(a) *General rule.* When required by regulations prescribed by the Secretary or his delegate any person made liable for any tax imposed by this title, or for the collection thereof, shall make a return or statement according to the forms and regulations prescribed by the Secretary or his delegate. Every person required to make a return or statement shall include therein the information required by such forms or regulations.

* * * * *

(c) *Income, estate, and gift taxes.* For requirement that returns of income, estate, and gift taxes be made whether or not there is tax liability, see sections 6012 to 6019, inclusive.

§ 25.6011–1 *General requirement of return, statement, or list*—(a) *General rule.* Every person made liable for any tax imposed by chapter 12 of the Code shall make such returns or statements as are required by the regulations in this part. The return or statement shall include therein the information required by the applicable regulations or forms.

(b) *Use of prescribed forms.* Copies of the forms prescribed by paragraph (b) of § 25.6001–1 and § 25.6019–1 may be obtained from district directors. The fact that a person required to file a form has not been furnished with copies of a form will not excuse him from the making of a gift tax return, or from the furnishing of the evidence for which the forms are to be used. Application for a form should be made to the district director in ample time to enable the person whose duty it is to file the form to have the form prepared, verified, and filed with the district director on or before the date prescribed for the filing thereof.

§ 25.6019 *Statutory provisions; gift tax returns.*

SEC. 6019. *Gift tax returns*—(a) *In general.* Any individual who in any calendar year makes any transfers by gift (except those which under section 2503 (b) are not to be included in the total amount of gifts for such year) shall make a return with respect to the gift tax imposed by subtitle B.

(b) *Tenancy by the entirety.* For provisions relating to requirement of return in the case of election as to the treatment of gift by creation of tenancy by the entirety, see section 2515 (c).

§ 25.6019–1 *Persons required to file returns*—(a) *In general.* Any individual citizen or resident of the United States who within the calendar year 1955, or within any calendar year thereafter, makes a transfer or transfers by gift to any one donee of a value or total value in excess of $3,000 (or regardless of value in the case of a gift of a future interest in property) must file a gift tax return on Form 709 for that year. A nonresident not a citizen of the United States who made such a gift must also file a return on Form 709 if under § 25.2511–3 the transfer is subject to the gift tax. The return is required even though because of the deductions authorized by sections 2521 (specific exemption), 2522 (charitable, etc., deduction), and 2523 (marital deduction) no tax may be payable. Individuals only are required to file returns and not trusts, estates, partnerships or corporations. Duplicate copies of the return are not required to be filed. See §§ 25.6075–1 and 25.6091–1 for the time and place for filing the gift tax return. For delinquency penalty for failure to file return, see section 6651 and § 301.6651–1 of this chapter (Regulations on Procedure and Administration). For criminal penalties for failure to file a return and filing a false or fraudulent return, see sections 7203, 7206, and 7207.

(b) *Deceased donor.* If the donor dies before filing his return, the executor of his will or the administrator of his estate shall file the return. If the donor becomes legally incompetent before filing his return, his guardian or committee shall file the return.

(c) *Ratification of return.* The return shall not be made by an agent unless by reason of illness, absence, or nonresidence, the person liable for the return is unable to make it within the time prescribed. Mere convenience is not sufficient reason for authorizing an agent to make the return. If by reason of illness, absence or nonresidence, a return is made by an agent, the return must be ratified by the donor or other person liable for its filing within a reasonable time after such person becomes able to do so. If the return filed by the agent is not so ratified, it will not be considered the return required by the statute. Supplemental data may be submitted at the time of ratification. The ratification may be in the form of a statement, executed under the penalties of perjury and filed with the district director, showing specifically that the return made by the agent has been carefully examined and that the person signing ratifies the return as the donor's. If a return is signed by an agent, a statement fully explaining the inability of the donor must accompany the return.

§ 25.6019–2 *Returns required in case of consent under section 2513.* Except as otherwise provided in this section, the

provisions of § 25.6019–1 are applicable with respect to the filing of a gift tax return or returns in the case of a husband and wife who consent (see § 25.2513–1) to the application of section 2513. In such a case, if both of the consenting spouses are (without regard to the provisions of section 2513) required under the provisions of § 25.6019–1 to file returns, returns must be filed by both spouses. If only one of the consenting spouses is (without regard to the provisions of section 2513) required under § 25.6019–1 to file a return, a return must be filed by that spouse. In the latter case, if after giving effect to the provisions of section 2513 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 must also be filed by such other spouse. Thus, if during any calendar year the husband made a gift of $5,000 to a son (the gift not being a future interest in property) 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 if the consent is signified as provided in section 2513.

§ 25.6019–3 *Contents of return*—(a) *In general.* The return shall set forth: (1) Each gift made during the calendar year which under sections 2511 through 2515 is to be included in computing taxable gifts; (2) the deductions claimed and allowable under sections 2521 through 2524; and (3) the taxable gifts made for each of the preceding calendar years (see § 25.2504–1). In addition the return shall set forth the fair market value of all gifts not made in money, including gifts resulting from sales and exchanges of property made for less than full and adequate consideration in money or money's worth, giving, as of the date of the sale or exchange, both the fair market value of the property sold or exchanged and the fair market value of the consideration received by the donor. If a donor contends that his retained power over property renders the gift incomplete (see § 25.2511–2) and hence not subject to tax as of the calendar year of the initial transfer, the transaction should be disclosed in the return for the calendar year of the initial transfer and evidence showing all relevant facts, including a copy of the instrument of transfer, shall be submitted with the return. The instructions printed on the return should be carefully followed. A certified or verified copy of each document required by the instructions printed on the return form shall be filed with the return. Any additional documents the donor may desire to submit may be submitted with the return.

(b) *Disclosure of transfers coming within provisions of section 2516.* Section 2516 provides that certain transfers of property pursuant to written property settlements between husband and wife are deemed to be transfers for full and adequate consideration in money or money's worth if divorce occurs within two years. In any case where a husband and wife enter into a written agreement of the type contemplated by section 2516, and the final decree of divorce is not granted on or before the due date for the filing of a gift tax return for the calendar year in which the agreement became effective (see § 25.6075–1), the transfer shall be disclosed by the transferor upon a gift tax return filed for the calendar year in which the agreement became effective and a copy of the agreement shall be attached to the return. In addition, a certified copy of the final divorce decree shall be furnished the district director not later than 60 days after the divorce is granted. Pending receipt of evidence that the final decree of divorce has been granted (but in no event for a period of more than two years from the effective date of the agreement), the transfer will tentatively be treated as made for a full and adequate consideration in money or money's worth.

§ 25.6019–4 *Description of property listed on return.* The properties comprising the gifts made during the calendar year shall be listed on the return and shall be described in such a manner that they may be readily identified. Thus, there should be given for each parcel of real estate a legal description, its area, a short statement of the character of any improvements, and, if located in a city, the name of the street and number. Description of bonds shall include the number transferred, principal amount, name of obligor, date of maturity, rate of interest, date or dates on which interest is payable, series number where there is more than one issue, and the principal exchange upon which listed, or the principal business office of the obligor, if unlisted. Description of stocks shall include number of shares, whether common or preferred, and, if preferred, what issue thereof, par value, quotation at which returned, exact name of corporation, and, if the stock is unlisted, the location of the principal business office, the State in which incorporated and the date of incorporation, or if the stock is listed, the principal exchange upon which sold. Description of notes shall include name of maker, date on which given, date of maturity, amount of principal, amount of principal unpaid, rate of interest and whether simple or compound, and date to which interest has been paid. If the gift of property includes accrued income thereon to the date of the gift, the amount of such accrued income shall be separately set forth. Description of the seller's interest in land contracts transferred shall include name of buyer, date of contract, description of property, sale price, initial payment, amounts of installment payments, unpaid balance of principal, interest rate and date prior to gift to which interest has been paid. Description of life insurance policies shall show the name of the insurer and the number of the policy. In describing an annuity, the name and address of the issuing company shall be given, or, if payable out of a trust or other fund, such a description as will fully identify the trust or fund. If the annuity is payable for a term of years, the duration of the term and the date on which it began shall be given, and if payable for the life of any person, the date of birth of that person shall be stated. Judgments shall be described by giving the title of the cause and the name of the court in which rendered, date of judgment, name and address of judgment debtor, amount of judgment, rate of interest to which subject, and by stating whether any payments have been made thereon, and, if so, when and in what amounts.

§ 25.6075 *Statutory provisions; time for filing gift tax returns.*

SEC. 6075. *Time for filing estate and gift tax returns.*

* * * * *

(b) *Gift tax returns.* Returns made under section 6019 (relating to gift taxes) shall be filed on or before the 15th day of April following the close of the calendar year.

§ 25.6075–1 *Returns; time for filing gift tax returns.* The gift tax return required by section 6019 must be filed on or before the due date. The due date is the date on or before which the return is required to be filed in accordance with the provisions of section 6075 (b) or the last day of the period covered by an extension of time granted by the district director as provided in § 25.6081–1. Unless an extension of time has been granted, the due date is the 15th day of April following the close of the calendar year in which gifts were made. When the due date falls on Saturday, Sunday, or a legal holiday, the due date for filing the return is the next succeeding day which is not Saturday, Sunday, or a legal holiday. For definition of a legal holiday, see section 7503 and § 301.7503–1 of this chapter (Regulations on Procedure and Administration). As to additions to the tax for failure to file the return within the prescribed time, see section 6651 and § 301.6651–1 of this chapter (Regulations on Procedure and Administration).

§ 25.6081 *Statutory provisions; extension of time for filing returns.*

SEC. 6081. *Extension of time for filing returns*—(a) *General rule.* The Secretary or his delegate may grant a reasonable extension of time for filing any return, declaration, statement, or other document required by this title or by regulations. Except in the case of taxpayers who are abroad, no such extension shall be for more than 6 months.

* * * * *

(c) *Postponement by reason of war.* For time for performing certain acts postponed by reason of war, see section 7508.

§ 25.6081–1 *Extension of time for filing returns.* It is important that the donor file or before the due date a return as nearly complete and final as it is possible for him to prepare. However, the district director is authorized to grant a reasonable extension of time for filing returns. Applications for extensions of time for filing gift tax returns shall be addressed to the district director for the district in which the donor files his returns and must contain a full recital of the causes for delay. Except in the case of donors who are abroad, no extension for filing gift tax returns may be granted for more than 6 months. An extension of time for filing a return

does not operate to extend the time for payment of the tax or any part thereof, unless so specified in the extension. For extensions of time for payment of tax, see § 25.6161–1. No extension of time for filing a return may be granted unless the application is received by the district director before the expiration of the time within which the return must otherwise be filed. The application should, when possible, be made sufficiently early to permit the district director to consider the matter and reply before what otherwise would be the due date of the return.

§ 25.6091 *Statutory provisions; place for filing returns or other documents.*

SEC. 6091. *Place for filing returns or other documents*—(a) *General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the place for the filing of any return, declaration, statement, or other document, or copies thereof, required by this title or by regulations.

(b) *Tax returns.* In the case of returns of tax required under authority of part II of this subchapter—

(1) *Individuals.* Returns (other than corporation returns) shall be made to the Secretary or his delegate in the internal revenue district in which is located the legal residence or principal place of business of the person making the return, or, if he has no legal residence or principal place of business in any internal revenue district, then at such place as the Secretary or his delegate may by regulations prescribe.

* * * * *

§ 25.6091–1 *Place for filing returns and other documents.* If the donor is a resident of the United States, the gift tax return required by section 6019 shall be filed with the district director for the district in which the legal residence or principal place of business of the donor is located. If the donor is a nonresident (whether or not a citizen), and his principal place of business is located in an internal revenue district, the gift tax return shall be filed with the district director for the internal revenue district in which the donor's principal place of business is located. If the donor is a nonresident (whether or not a citizen), and he does not have a principal place of business which is located in an internal revenue district, the gift tax return shall be filed with the Director of International Operations, Internal Revenue Service, Washington 25, D. C., or with such other official as the Commissioner may designate.

§ 25.6151 *Statutory provisions; time and place for paying tax shown on returns.*

SEC. 6151. *Time and place for paying tax shown on the returns*—(a) *General rule.* Except as otherwise provided in this section, when a return of tax is required under this title or regulations, the person required to make such return shall, without assessment or notice and demand from the Secretary or his delegate, pay such tax to the principal internal revenue officer for the internal revenue district in which the return is required to be filed, and shall pay such tax at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return).

* * * * *

(c) *Date fixed for payment of tax.* In any case in which a tax is required to be paid on or before a certain date, or within a certain period, any reference in this title to the date fixed for payment of such tax shall be deemed a reference to the last day fixed for such payment (determined without regard to any extension of time for paying the tax).

§ 25.6151–1 *Time and place for paying tax shown on return.* The tax shown on the gift tax return is to be paid by the donor at the time and place fixed for filing the return (determined without regard to any extension of time for filing the return), unless the time for paying the tax is extended in accordance with the provisions of section 6161. However, for provisions relating to certain cases in which the time for paying the gift tax is postponed by reason of an individual serving in, or in support of, the Armed Forces of the United States in a combat zone, see section 7508. For provisions relating to the time and place for filing the return, see §§ 25.6075–1 and 25.6091–1.

§ 25.6161 *Statutory provisions; extension of time for paying tax.*

SEC. 6161. *Extension of time for paying tax*—(a) *Amount determined by taxpayer on return*—(1) *General rule.* The Secretary or his delegate, except as otherwise provided in this title, may extend the time for payment of the amount of the tax shown, or required to be shown, on any return or declaration required under authority of this title (or any installment thereof), for a reasonable period not to exceed 6 months from the date fixed for payment thereof. Such extension may exceed 6 months in the case of a taxpayer who is abroad.

* * * * *

(b) *Amount determined as deficiency.* Under regulations prescribed by the Secretary or his delegate, the Secretary or his delegate may extend, to the extent provided below, the time for payment of the amount determined as a deficiency:

(1) In the case of a tax imposed by chapter 1 or 12, for a period not to exceed 18 months from the date fixed for payment of the deficiency, and, in exceptional cases, for a further period not to exceed 12 months;

* * * * *

An extension under this subsection may be granted only where it is shown to the satisfaction of the Secretary or his delegate that the payment of a deficiency upon the date fixed for the payment thereof will result in undue hardship to the taxpayer in the case of a tax imposed by chapter 1, to the estate in the case of a tax imposed by chapter 11, or to the donor in the case of a tax imposed by chapter 12. No extension shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

* * * * *

§ 25.6161–1 *Extension of time for paying tax or deficiency*—(a) *In general*—(1) *Tax shown on return.* A reasonable extension of time to pay the amount of tax shown on the return may be granted by the district director at the request of the donor. The period of such extension shall not be in excess of six months from the date fixed for the payment of the tax, except that if the taxpayer is abroad the period of extension may be in excess of six months.

(2) *Deficiency.* The time for payment of any amount determined as a deficiency in respect of tax imposed by chapter 12 of the Code, or for payment of any part thereof may be extended by the district director at the request of the donor for a period not to exceed 18 months from the date fixed for the payment of the deficiency, as shown on the notice and demand from the district director, and, in exceptional cases, for a further period not in excess of 12 months. No extension of time for the payment of a deficiency shall be granted if the deficiency is due to negligence, to intentional disregard of rules and regulations, or to fraud with intent to evade tax.

(3) *Extension of time for filing distinguished.* The granting of an extension of time for filing a return does not operate to extend the time for the payment of the tax or any part thereof, unless so specified in the extension.

(b) *Undue hardship required for extension.* An extension of the time for payment shall be granted only upon a satisfactory showing that payment on the due date of the amount with respect to which the extension is desired will result in an undue hardship. The extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the taxpayer. It must appear that substantial financial loss, for example, loss due to the sale of property at a sacrifice price, will result to the donor from making payment on the due date of the amount with respect to which the extension is desired. If a market exists, the sale of the property at the current market price is not ordinarily considered as resulting in an undue hardship.

(c) *Application for extension.* An application for an extension of the time for payment of the tax shown on the return, or for the payment of any amount determined as a deficiency, shall be in writing and shall be accompanied by evidence showing the undue hardship that would result to the donor if the extension were refused. The application shall also be accompanied by a statement of the assets and liabilities of the donor and an itemized statement showing all receipts and disbursements for each of the three months immediately preceding the due date of the amount to which the application relates. The application, with supporting documents, must be filed with the district director on or before the date prescribed for payment of the amount with respect to which the extension is desired. The application will be examined by the district director, and within 30 days, if possible, will be denied, granted, or tentatively granted subject to certain conditions of which the donor will be notified. If an additional extension is desired, the request therefor must be made to the district director on or before the expiration of the period for which the prior extension is granted.

(d) *Payment pursuant to extension.* If an extension of time for payment is granted, the amount the time for payment of which is so extended shall be paid on or before the expiration of the period of the extension without the necessity of notice and demand from the district director. The granting of an extension of the time for payment of the tax or deficiency does not relieve the donor from liability for the payment of interest thereon during the period of the

extension. See section 6601 and § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

§ 25.6165 *Statutory provisions; bonds where time to pay tax or deficiency has been extended.*

SEC. 6165. *Bonds where time to pay tax or deficiency has been extended.* In the event the Secretary or his delegate grants any extension of time within which to pay any tax or any deficiency therein, the Secretary or his delegate may require the taxpayer to furnish a bond in such amount (not exceeding double the amount with respect to which the extension is granted) conditioned upon the payment of the amount extended in accordance with the terms of such extension.

§ 25.6165–1 *Bonds where time to pay tax or deficiency has been extended.* For general provisions relating to bonds when extensions of time to pay the gift tax are granted, see the regulations under sections 6165 and 7101 contained in Part 301 of this chapter (Regulations on Procedure and Administration).

§ 25.6321 *Statutory provisions; lien for taxes.*

SEC. 6321. *Lien for taxes.* If any person liable to pay any tax neglects or refuses to pay the same after demand, the amount (including any interest, additional amount, addition to tax, or assessable penalty, together with any costs that may accrue in addition thereto) shall be a lien in favor of the United States upon all property and rights to property, whether real or personal, belonging to such person.

§ 25.6321–1 *Lien for taxes.* For regulations concerning the lien for taxes, see § 301.6321–1 of this chapter (Regulations on Procedure and Administration).

§ 25.6322 *Statutory provisions; period of lien.*

SEC. 6322. *Period of lien.* Unless another date is specifically fixed by law, the lien imposed by section 6321 shall arise at the time the assessment is made and shall continue until the liability for the amount so assessed is satisfied or becomes unenforceable by reason of lapse of time.

§ 25.6323 *Statutory provisions; validity against mortgagees, pledgees, purchasers, and judgment creditors.*

SEC. 6323. *Validity against mortgagees, pledgees, purchasers, and judgment creditors*—(a) *Invalidity of lien without notice.* Except as otherwise provided in subsection (c), the lien imposed by section 6321 shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Secretary or his delegate—

(1) *Under State or Territorial laws.* In the office designated by the law of the State or Territory in which the property subject to the lien is situated, whenever the State or Territory has by law designated an office within the State or Territory for the filing of such notice; or

(2) *With clerk of district court.* In the office of the clerk of the United States district court for the judicial district in which the property subject to the lien is situated, whenever the State or Territory has not by law designated an office within the State or Territory for the filing of such notice; or

(3) *With clerk of District Court for District of Columbia.* In the office of the clerk of the United States District Court for the District of Columbia, if the property subject to the lien is situated in the District of Columbia.

(b) *Form of notice.* If the notice filed pursuant to subsection (a) (1) is in such form as would be valid if filed with the clerk of the United States district court pursuant to subsection (a) (2), such notice shall be valid notwithstanding any law of the State or Territory regarding the form or content of a notice of lien.

(c) *Exception in case of securities*—(1) *Exception.* Even though notice of a lien provided in section 6321 has been filed in the manner prescribed in subsection (a) of this section, the lien shall not be valid with respect to a security, as defined in paragraph (2) of this subsection, as against any mortgagee, pledgee, or purchaser of such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

(2) *Definition of security.* As used in this subsection, the term "security" means any bond, debenture, note, or certificate or other evidence of indebtedness, issued by any corporation (including one issued by a government or political subdivision thereof), with interest coupons or in registered form, share of stock, voting trust certificate, or any certificate of interest or participation in, certificate of deposit or receipt for, temporary or interim certificate for, or warrant or right to subscribe to or purchase, any of the foregoing; negotiable instrument; or money.

(d) *Disclosure of amount of outstanding lien.* If a notice of lien has been filed under subsection (a), the Secretary or his delegate is authorized to provide by rules or regulations the extent to which, and the conditions under which, information as to the amount of the outstanding obligation secured by the lien may be disclosed.

§ 25.6323–1 *Validity against mortgagees, pledgees, purchasers, and judgment creditors.* For regulations concerning the validity of liens against mortgagees, pledgees, purchasers, and judgment creditors, see § 301.6323–1 of this chapter (Regulations on Procedure and Administration).

§ 25.6324 *Statutory provisions; special liens for estate and gift taxes.*

SEC. 6324. *Special liens for estate and gift taxes*—

* * * * *

(b) *Lien for gift tax.* Except as otherwise provided in subsection (c) (relating to transfers of securities), the gift tax imposed by chapter 12 shall be a lien upon all gifts made during the calendar year, for 10 years from the time the gifts are made. If the tax is not paid when due, the donee of any gift shall be personally liable for such tax to the extent of the value of such gift. Any part of the property comprised in the gift transferred by the donee (or by a transferee of the donee) to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth shall be divested of the lien herein imposed and the lien, to the extent of the value of such gift, shall attach to all the property (including after-acquired property) of the donee (or the transferee) except any part transferred to a bona fide purchaser, mortgagee, or pledgee for an adequate and full consideration in money or money's worth.

(c) *Exception in case of securities.* The lien imposed by subsection (a) or (b) shall not be valid with respect to a security, as defined in section 6323 (c) (2), as against any mortgagee, pledgee, or purchaser of any such security, for an adequate and full consideration in money or money's worth, if at the time of such mortgage, pledge, or purchase such mortgagee, pledgee, or purchaser is without notice or knowledge of the existence of such lien.

§ 25.6324–1 *Special lien for gift tax.* For regulations concerning the special lien for the gift tax, see § 301.6324–1 of this chapter (Regulations on Procedure and Administration).

§ 25.6601 *Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment, of tax.*

SEC. 6601. *Interest on underpayment, nonpayment, or extensions of time for payment, of tax*—(a) *General rule.* If any amount of tax imposed by this title (whether required to be shown on a return, or to be paid by stamp or by some other method) is not paid on or before the last date prescribed for payment, interest on such amount at the rate of 6 percent per annum shall be paid for the period from such last date to the date paid.

* * * * *

§ 25.6601–1 *Interest on underpayment, nonpayment, or extensions of time for payment, of tax.* For regulations concerning interest on underpayment, nonpayment, or extensions of time for payment, of tax, see § 301.6601–1 of this chapter (Regulations on Procedure and Administration).

§ 25.7101 *Statutory provisions; form of bonds.*

SEC. 7101. *Form of bonds.* Whenever, pursuant to the provisions of this title (other than sections 7485 and 6803 (a) (1)), or rules or regulations prescribed under authority of this title, a person is required to furnish a bond or security—

(1) *General rule.* Such bond or security shall be in such form and with such surety or sureties as may be prescribed by regulations issued by the Secretary or his delegate.

(2) *United States bonds and notes in lieu of surety bonds.* The person required to furnish such bond or security may, in lieu thereof, deposit bonds or notes of the United States as provided in 6 U. S. C. 15.

§ 25.7101–1 *Form of bonds.* For general provisions relating to bonds, see the regulations under sections 6165 and 7101 contained in part 301 of this chapter (Regulations on Procedure and Administration).

[SEAL] O. GORDON DELK,
Acting Commissioner of Internal Revenue.

Approved: November 10, 1958.

FRED C. SCRIBNER, Jr.,
Acting Secretary of the Treasury.

[F. R. Doc. 58–9462; Filed, Nov. 14, 1958; 8:45 a. m.]

TITLE 32—NATIONAL DEFENSE

Chapter I—Office of the Secretary of Defense

Subchapter N—Transportation

PART 209—MOVEMENT OF PERSONNEL VIA COMMERCIAL CONTRACT AND CHARTER AIR TRANSPORTATION

Sec.
209.1 Authority and scope.
209.2 Background.
209.3 Policy.

AUTHORITY: §§ 209.1 to 209.3 issued under sec. 202, 61 Stat. 500, as amended; 5 U. S. C. 171a.

§ 209.1 *Authority and scope.* This part prescribes policies for the movement of personnel for the Department of

Defense via commercial contract and charter air transportation within the continental United States and to, from and outside the continental United States.

§ 209.2 *Background.* Regulations of civil air regulatory agencies govern such matters as the safety of air transportation, airworthiness of aircraft, proficiency of flight and maintenance crews, minimum performance limitations, minimum operating limitations, maximum weight limitations, and requirements for first aid and emergency equipment.

§ 209.3 *Policy.* (a) The military departments will not knowingly take any action which will contribute to or result in a carrier violation of any requirement of civil air regulatory agencies.

(b) Pressurized aircraft:

(1) Except as provided in this section, all passenger or convertible aircraft used in service between points in the United States and overseas areas will be pressurized. This requirement may be waived by the procuring agency for certain traffic over specific routes when required by exigencies of the mission.

(2) All other factors being equal, preference will be given to the use of pressurized aircraft when tendered by the carriers for travel between points within the continental United States.

(c) Uniform minimum standards of service for the movement of personnel for the Department of Defense via commercial contract and charter air transportation shall be developed by the Single Manager for Traffic Management and the Single Manager for Airlift Service (in coordination with the military departments) in implementation of this part, as they apply within the continental United States and to, from, and outside the continental United States, respectively. Such standards will provide for comfort of travel and service which will be comparable to that available to and used by the general public. The standards established may be changed or waived by the procuring agency only when such action is required to meet exigencies of the mission.

Part 209 published at 21 F. R. 938 is hereby superseded and cancelled.

PERKINS MCGUIRE,
Assistant Secretary of Defense (Supply and Logistics).

[F. R. Doc. 58-9480; Filed, Nov. 14, 1958; 8:45 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 15—MATTER MAILABLE UNDER SPECIAL RULES

PART 36—SPECIAL CANCELLATIONS

MISCELLANEOUS AMENDMENTS

1. In § 15.7 *Identification and marking* (23 F. R. 7910), amend paragraph (d) to read as follows:

(d) *Customs declaration tag for Canal Zone.* Any package of merchandise weighing 16 ounces or more addressed to the Canal Zone shall have attached a customs declaration, Form 2966, except when addressed to a Government agency. It is not sufficient to state on the customs tag that a parcel contains merchandise or a gift. The contents must be itemized and the value shown.

NOTE: The corresponding Postal Manual section is 125.74.

(R. S. 161, as amended, 396, as amended; 5 U. S. C. 22, 369)

2. In § 36.3 *Application*, make the following changes:

a. Amend the opening statement to read as follows: "Application for a special cancellation must be submitted in writing to the postmaster at the post office where the cancellation is to be used. The application must provide the following information:"

b. Amend paragraph (f) to read as follows:

(f) Name and address of sponsor who will pay the cost of special die hub.

Postmasters at first- and second-class post offices will forward applications to the Postal Services Division, Bureau of Operations, Post Office Department, Washington 25, D. C. Postmasters must furnish with the applications the name of the manufacturer and model of the cancelling machine in use at their office; and must be certain to specify whether the machine is new or old (square or round type ring die) when applicable. Postmasters at third- and fourth-class post offices will inform applicants that special cancellations may not be used at these offices.

NOTE: The corresponding Postal Manual sections are 146.3 and 146.31.

(R. S. 161, as amended, 396, as amended, secs. 1, 2, 42 Stat. 539, 540; 5 U. S. C. 22, 369; 39 U. S. C. 368)

[SEAL] HERBERT B. WARBURTON,
General Counsel.

[F. R. Doc. 58-9484; Filed, Nov. 14, 1958; 8:46 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 121]

FOOD ADDITIVES

POULTRY FEEDS

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 409 (b) (5), 72 Stat. 1786; 21 U. S. C. 348 (b) (5)), the following notice is issued:

A petition has been filed by Monsanto Chemical Company, Lindbergh and Olive Street Road, St. Louis 24, Missouri, proposing the issuance of a regulation to establish a tolerance of 150 parts per million (0.015 percent) of 1,2-dihydro-6-ethoxy-2,2,4-trimethylquinoline, a chemical preservative, when used to protect poultry feeds from oxidative destruction of the carotenes, xanthophylls, and vitamins A, E, and K.

Dated: November 7, 1958.

[SEAL] GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 58-9481; Filed, Nov. 14, 1958; 8:45 a. m.]

NOTICES

DEPARTMENT OF THE INTERIOR

Bonneville Power Administration

REDELEGATIONS OF AUTHORITY

MISCELLANEOUS AMENDMENTS

1. Section 7, Redelegations of Authority, published in the FEDERAL REGISTER March 9, 1955 (20 F. R. 1412), as amended November 29, 1956 (21 F. R. 9333), is hereby amended to read as follows:

SEC. 7. *Land activities.* (a) The Chief of the Branch of Land may:

(1) Negotiate for the purchase of all interests in real estate and other rights and privileges pertaining to real property necessary for the Administration's programs; and for the disposition of land and property rights, except purchase or disposition of electric utility system properties;

(2) Approve appraisals, accept options, and authorize the purchase of all interests in real estate necessary for the Administration's program, and authorize payment action thereon;

(3) Execute agreements under which the Administration receives or grants permits, franchises, or other rights or privileges pertaining to real property; execute trust fund agreements for the accomplishment of work for others relating to real property owned by the Government and other agreements necessary for the protection of land rights obtained by the Government, except those involving power contracts; authorize the publication of advertisements, notices, or proposals when required by law therefor; and authorize payment action thereon as required;

(4) Issue the necessary purchase orders for procuring title services.

(b) The Principal Negotiator, the Principal Title Officer, and the Assistant to the Chief, Branch of Land, each may exercise the authority delegated by (a) (1) of this section and, when the amount

involved does not exceed $1500, the authority delegated by paragraph (a) (2) and (3) of this section.

(c) The Principal Title Officer may exercise the authority delegated by (a) (4) of this section when the amount does not exceed $1500, and the Law Clerk (Land) for land activities may exercise similar authority when the amount involved does not exceed $100. (Secretary's Order No. 2830; Secretary's Order No. 2735, as amended January 19, 1954; Secretary's Order No. 2563, 15 F. R. 3193; Secretary's Order No. 2753, as amended, 22 F. R. 9196.)

2. Section 12 of said Redelegations of Authority as amended and published in the FEDERAL REGISTER March 6, 1958 (23 F. R. 1605) is hereby amended to read as follows:

SEC. 12. *Materials and equipment contracts.* (a) The Chief of Supply, without monetary limitation, may:

(1) Execute contracts, amendments to contracts, and procurement transactions for materials, equipment and services (excepting personal services and services in connection with the transfer or transmission of electrical energy);

(2) Execute contracts and amendments to contracts for the disposal of surplus personal property. (Secretary's Order No. 2642, as amended, 16 F. R. 6318, 19 F. R. 7417.)

(b) The Head of the Procurement Section may exercise the authority delegated to the Chief of Supply when the amount involved does not exceed $50,000.

(c) The Purchasing Agents may exercise the authority delegated to the Chief of Supply when the amount involved does not exceed $2,500. (Departmental Manual, Part 404, Chapter 1, Paragraph 5, dated September 4, 1958.)

Dated: November 6, 1958.

WM. A. PEARL,
Administrator.

[F. R. Doc. 58-9482; Filed, Nov. 14, 1958; 8:45 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

N. V. STOOMVAART MAATSCHAPPIJ (NEDERLAND) ET AL.

NOTICE OF AGREEMENT FILED FOR APPROVAL

Notice is hereby given that the following described agreement has been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916 (39 Stat. 733, 46 U. S. C. 814):

Agreement No. 8338, between N. V. Stoomvaart Maatschappij "Nederland" and Koninklijke Rotterdamsche Lloyd, N. V. (the carriers comprising the Nedlloyd Line joint service) and Waterman Steamship Corporation of Puerto Rico, covers the transportation of general cargo under through bills of lading from India, Pakistan, Federation of Malaya, Colony of Singapore and Philippine Islands to Puerto Rico, with transshipment at New Orleans, La. or Mobile, Alabama.

Interested parties may inspect this agreement and obtain copies thereof at the Regulation Office, Federal Maritime Board, Washington, D. C., and may submit, within 20 days after publication of this notice in the FEDERAL REGISTER, written statements with reference to the agreement and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

Dated: November 12, 1958.

By order of the Federal Maritime Board.

GEO. A. VIEHMANN,
Assistant Secretary.

[F. R. Doc. 58-9487; Filed, Nov. 14, 1958; 8:46 a. m.]

Office of the Secretary

[Dept. Order 46 (Revised)]

DIRECTOR OF OFFICE OF ADMINISTRATIVE OPERATIONS AND HEADS OF CERTAIN PRIMARY ORGANIZATION UNITS

DELEGATION OF CONTRACTING AUTHORITY

The material appearing at 21 F. R. 6718-6719 of September 6, 1956 is superseded by the following:

SECTION 1. *Purpose.* This order delegates authority to approve and execute contracts required for the performance of the Department's functions.

SEC. 2. *Delegation of authority.* .01 Pursuant to authority vested in the Secretary of Commerce by law, the Director of the Office of Administrative Operations for those primary organization units served by that office (the Office of the Secretary, Office of Business Economics, Business and Defense Services Administration, and the Bureau of Foreign Commerce) and the head of each other primary organization unit of the Department of Commerce are hereby authorized, subject to the provisions of this order and applicable laws and regulations, to approve and execute:

(1) Advertised contracts and accompanying bonds, including annual bid bonds;

(2) Any contract which is supplemental to an advertised contract; and

(3) Negotiated contracts and accompanying bonds, including annual bid bonds, or any contract supplemental thereto. (For the purpose of this order, a negotiated contract is one entered into without advertising, whether or not it falls within any of the exceptions mentioned in R. S. 3709 (41 U. S. C. 5).)

.02 The Director of the Office of Administrative Operations and the heads of primary organization units may redelegate the authority granted herein and may impose such conditions and limitations as they deem necessary.

SEC. 3. *General provisions.* .01 The authority delegated herein shall not be deemed to include contracting authority delegated to the Secretary of Commerce by the Administrator, General Services Administration under Title III of the Federal Property and Administrative Services Act (63 Stat. 393; 41 U. S. C. 251); as amended. These authorities are generally redelegated to heads of affected Offices and Bureaus on an individual basis as the need arises.

.02 Any contract and supplement thereto and amendments thereof for services by a management consultant or management consulting firm when authorized by law, shall be approved by the Assistant Secretary of Commerce for Administration, regardless of amount, prior to execution.

.03 Contractual documents shall be cleared by the Office of the General Counsel or by the primary organization unit legal staff, where one exists, in accordance with such instructions as may be issued from time to time by the Office of the General Counsel, or the appropriate legal staff.

Effective date: November 4, 1958.

SINCLAIR WEEKS,
Secretary of Commerce.

[F. R. Doc. 58-9490; Filed, Nov. 14, 1958; 8:47 a. m.]

[Dept. Order 83 (Revised)]

ORGANIZATION, DUTIES AND FUNCTIONS

OFFICE OF THE SECRETARY OF COMMERCE

The material appearing at 20 F. R. 2696-2697 of April 22, 1955 is superseded by the following:

SECTION 1. *Purpose.* The purpose of this order is to define the broad authority and functions of the Secretary of Commerce and to prescribe the method and channels through which these functions are performed.

SEC. 2. *Secretary of Commerce.* .01 The Secretary of Commerce is responsible for the administration of the functions and authorities asassigned to the Department of Commerce broadly described in the act of February 14, 1903 (32 Stat. 826), which reads in part as follows:

> It shall be the province and duty of the said Department (Department of Commerce) to foster, promote, and develop the foreign and domestic commerce, * * * manufacturing, shipping * * * industries, and the transportation facilities of the United States; and to this end it shall be vested with jurisdiction and control of the departments, bureaus, offices, and branches of the public service hereinafter specified, and with such other powers and duties as may be prescribed by law.

.02 In addition to the generic authority provided in the Act of February 14, 1903, supra, Reorganization Plan No. 5 of 1950 and Reorganization Plan No. 21 of 1950 transferred to the Secretary of Commerce, with certain exceptions not here pertinent, the related functions and authorities vested in all other officers and organization units of the Department of Commerce.

.03 The Secretary is also responsible for advising the President on Federal policy and programs affecting the industrial and commercial segments of the national economy within the scope of the Department of Commerce.

.04 The order of precedence to act as Secretary of Commerce is established by law and Executive Order which provide that the following officers, in the order

designated, shall perform the duties of the Secretary of Commerce in the event of the absence or sickness of the Secretary, or until a successor is appointed in the event of the vacancy of that position:

(1) The Under Secretary.

(2) The Under Secretary for Transportation.

(3) The Assistant Secretaries of Commerce in the order of precedence as determined by the dates of their commissions.

(4) The General Counsel.

SEC. 3. *Office of the Secretary of Commerce.* .01 The Office of the Secretary of Commerce is composed of the following officers and organization units:

(1) The Secretary of Commerce.

(2) The Under Secretary.

(3) The Under Secretary for Transportation: Defense Air Transportation Administration.

(4) The Assistant Secretary for Domestic Affairs.

(5) The Assistant Secretary for International Affairs: Office of International Trade Fairs.

(6) The Assistant Secretary for Administration: Office of Budget and Management, Office of Personnel Management, Office of Publications, Office of Administrative Operations, Office of Security Control, Office of Field Services, Emergency Planning Coordinator, Agency Inspection Staff, Appeals Board.

(7) The General Counsel.

(8) Office of Public Information.

.02 In the execution of his responsibilities for the administration of the functions and authorities assigned to the Department of Commerce, the Secretary has delegated, by separate orders, the performance of certain specified functions, together with the related operating authority, to the heads of the constituent units of the Office of the Secretary and to the heads of the primary organization units of the Department.

.03 Exhibit 1 to this order indicates the respective areas of functional supervision and authority exercised by the heads of the constituent units of the Office of the Secretary of Commerce and identifies the applicable enabling Department order.

Effective date: November 1, 1958.

SINCLAIR WEEKS,
Secretary of Commerce.

[F. R. Doc. 58-9491; Filed, Nov. 14, 1958; 8:47 a. m.]

[Dept. Order 128 (Revised)]

ORGANIZATION, DUTIES AND FUNCTIONS

UNDER SECRETARY OF COMMERCE FOR TRANSPORTATION

This material supersedes the material appearing at 21 F. R. 2129 of April 13, 1956 and amends section 2.01 of the material appearing at 21 F. R. 4028 of June 12, 1956 by adding the words "for Transportation" to the last line thereof.

SECTION 1. *Purpose.* The purpose of this order is to describe the duties and responsibilities of the Under Secretary of Commerce for Transportation.

SEC. 2. *Authority.* .01 The duties and responsibilities of the Under Secretary of Commerce for Transportation described in this order are assigned pursuant to the authority vested in the Secretary of Commerce by law, including authority under Reorganization Plan Nos. 5 and 21 of 1950.

.02 All the authority vested in and exercised by the heads of the Defense Air Transportation Administration, the Bureau of Public Roads, Civil Aeronautics Administration, Weather Bureau, Coast and Geodetic Survey, and Maritime Administration and the Federal Maritime Board, except for such regulatory or other functions specifically reserved to the Board under the law, are hereby made subject to the policy direction and coordination of the Under Secretary of Commerce for Transportation.

SEC. 3. *Duties and responsibilities.* .01 The Under Secretary of Commerce for Transportation shall:

(1) Serve as the principal advisor to the Secretary on all policy matters concerning transportation responsibilities and activities of the Department of Commerce and on all matters which involve the transportation policies of the Federal Government;

(2) Exercise policy direction over and coordinate the transportation and related activities of the Department;

(3) Formulate an integrated transportation program for the Department and establish the Department's position respecting the development of over-all transportation policy and program within the executive branch of the Government, including the mobilization aspects thereof;

(4) Initiate action before the transportation regulatory agencies when such action appears to be appropriate for the effectuation of transportation policies and programs, or present the Department's views on matters under consideration by such regulatory agencies as they may affect the Department's programs or over-all transportation policy;

(5) Serve as the local point within the Department on all coordination activities of an interpartmental nature which involve transportation matters, and represent the Department on the Air Coordinating Committee; and

(6) Consult with the Under Secretary of Commerce, the Assistant Secretaries of Commerce for Domestic Affairs, and International Affairs, on matters of common interest in their respective areas of responsibility.

SEC. 4. *Deputy Under Secretary of Commerce for Transportation.* .01 The Deputy Under Secretary of Commerce for Transportation shall serve as the deputy to the Under Secretary of Commerce for Transportation and shall:

(1) Assist in the formulation of policy proposals or changes in policy with respect to over-all transportation programs of the executive branch of the Government.

(2) Be responsible for the general policy guidance of program development activities of the respective primary organization units named in section 2.02 hereof; and

(3) Assist in the fulfillment of the Department's role in the effectuation of transportation policies and programs.

.02 The Deputy Under Secretary assumes the full responsibilities of the Under Secretary of Commerce for Transportation during the latter's absence.

SEC. 5. *Assistant to the Under Secretary of Commerce for Transportation.* The Assistant to the Under Secretary of Commerce for Transportation shall provide the staff assistance for the review and evaluation of all proposed transportation policies and programs on behalf of the Office of the Under Secretary of Commerce for Transportation; review proposed programs initiated by the respective primary organization units under the jurisdiction of the Under Secretary of Commerce for Transportation, and assist in the formulation of policy proposals or changes in policy.

Effective date: November 1, 1958.

SINCLAIR WEEKS,
Secretary of Commerce.

[F. D. Doc. 58-9492; Filed, Nov. 14, 1958; 8:47 a. m.]

[Dept. Order 133 (Revised)]

ORGANIZATION, DUTIES AND FUNCTIONS

ASSISTANT SECRETARY OF COMMERCE FOR DOMESTIC AFFAIRS

This material supersedes the material appearing at 20 F. R. 904–905 of February 11, 1955. In addition sections 2.01 of the material appearing at 21 F. R. 1665 of March 15, 1956 and 23 F. R. 4110 of June 11, 1958 are amended by substituting "The Assistant Secretary of Commerce for Domestic Affairs" for the "Under Secretary of Commerce."

SECTION 1. *Purpose.* The purpose of this order is to delegate and describe the duties and responsibilities of the Assistant Secretary of Commerce for Domestic Affairs.

SEC. 2. *Authority.* .01 The duties and responsibilities of the Assistant Secretary of Commerce for Domestic Affairs described in this order are prescribed pursuant to the authority vested in the Secretary of Commerce by law, including Reorganization Plan No. 5 of 1950.

.02 All the authority vested in and exercised by the heads of the Business and Defense Services Administration, the Bureau of the Census, the Office of Business Economics, the Patent Office and the National Bureau of Standards by department orders or other delegations of authority are hereby made subject to the policy direction and coordination of the Assistant Secretary of Commerce for Domestic Affairs.

SEC. 3. *Duties and responsibilities.* .01 The Assistant Secretary of Commerce for Domestic Affairs shall:

(1) Serve as the principal advisor to the Secretary on all domestic aspects of the Department's responsibilities concerning industry, trade, and related economic activities;

(2) Exercise policy direction and coordinate the activities of the Department relating to the promotion of domestic industry and trade; defense production and mobilization preparedness of domestic industry; commodity and industrial activity reporting; the conduct of censuses, surveys, and statistical analyses; foreign excess property; analyses of economic trends and conditions; scientific and technological research; and issuance of patents;

(3) Consult with the Under Secretary of Commerce, the Under Secretary for Transportation, and the Assistant Secretary for International Affairs on matters of common interest in their respective areas of responsibility.

Effective date: November 1, 1958.

SINCLAIR WEEKS,
Secretary of Commerce.

[F. R. Doc. 58-9493; Filed, Nov. 14, 1958; 8:47 a. m.]

[Dept. Order 163 (Revised)]

ORGANIZATION, DUTIES AND FUNCTIONS

ESTABLISHMENT OF THE NATIONAL DEFENSE EXECUTIVE RESERVE

The material appearing at 21 F. R. 3804-3805 of June 2, 1956, is superseded by the following:

SECTION 1. *Purpose.* The purpose of this order is to provide for the establishment and administration of the National Defense Executive Reserve in the Department of Commerce.

SEC. 2. *Legal basis*—.01 *Statute.* Section 710 (e) of the Defense Production Act of 1950, as amended, August 9, 1955 (69 Stat. 583; 50 U. S. C. App. 2160 (e)), authorizes the President to provide for the establishment and training of a nucleus Executive Reserve for employment in executive positions in Government during periods of emergency.

.02 *Executive Order.* Executive Order No. 10660, of February 15, 1956, established the National Defense Executive Reserve; authorized the Director of the Office of Defense Mobilization to institute and administer the Executive Reserve Program and to coordinate the activities of other agencies in establishing units of the Reserve; and authorized the heads of departments and agencies designated by the Director of the Office of Defense Mobilization to establish units of the Executive Reserve and to select and designate persons to serve as members of the units.

.03 *Defense Mobilization Order.* Defense Mobilization Order No. I-21 (Revised), dated May 19, 1958, provides among other things that departments and agencies of the Executive Branch having major mobilization responsibilities are authorized to establish national and regional units of the Executive Reserve, select and designate members of such units, and institute programs for their training.

.04 *Letter from Director, Office of Defense Mobilization.* A letter from the Director, Office of Defense Mobilization, dated February 24, 1956, designates the Department of Commerce as an agency authorized to establish a unit of the Reserve.

SEC. 3. *Definitions.* .01 The Executive Reserve is an organization composed of persons selected from various segments of the civilian economy and from Government who are to be trained for assignment to executive positions in the Federal Government during periods of emergency.

.02 An Executive Reservist is a member of the National Defense Executive Reserve.

.03 The Department of Commerce Unit of the National Defense Executive Reserve shall consist of all units of the National Defense Executive Reserve established in the several primary organization units of the Department, including both national and regional Reserve units of the primary organization units.

SEC. 4. *Policy and delegation of authority.* .01 It is the policy of the Department of Commerce to establish and maintain, where appropriate, an Executive Reserve unit as part of the manpower mobilization base for national security in each primary organization unit having major mobilization responsibilities. The head of each such primary organization unit is hereby delegated authority to establish an Executive Reserve unit, including a national unit and such regional units as may in his opinion be appropriate. In the Office of the Secretary this authority will be exercised by the Assistant Secretary for Administration.

.02 Each primary organization unit establishing a Reserve unit in the Department of Commerce shall establish a training program which shall include but not be limited to orientation sessions, continuous and up-to-date information on the Government organization and program planned in the event of mobilization, and information to keep the Reservist fully abreast of developments in his field which affect the capacity of the United States to mobilize its resources in an emergency. The training programs will be carried out at Washington and regional levels as appropriate and will include actual participation in the testing of mobilization plans at relocation sites to the extent feasible.

.03 Activities of persons by reason of designation to the Executive Reserve shall not include advising, consulting, or acting on any matter pending before any department or agency of the Government but shall be limited to receiving training for mobilization assignments under the Executive Reserve Program.

.04 The number of Executive Reservists will be limited to those for which there is a demonstrable need in the essential mobilization functions for which the primary organization unit is responsible.

.05 Members of these Reserve units shall be drawn, as appropriate, from all geographic areas and from all segments of the economy concerned with the major mobilization responsibilities of the primary unit. They may include persons now serving in Government on a full- or part-time basis.

.06 Specific qualification standards must be established by each primary organization unit for selection of Executive Reservists. Reservists shall be persons with broad experience in important functional and industry areas and shall be qualified to participate in an executive capacity in such areas in the event of an emergency. Candidates for the Executive Reserve will be selected on the basis of each individual's (a) qualifications to perform the duties and responsibilities of a contemplated mobilization assignment and (b) likelihood of being available in the event of full mobilization.

.07 Reservists will be chosen to serve in major functional and industry areas, e. g., priorities and directives, copper, lumber, metalworking equipment, etc., and will not as a rule be selected for specific positions. Exceptions to this principle would include cases where it is deemed desirable to have predesignated executive talent in depth to man top level administrative posts.

.08 Policies and procedures relating to the designation of members of national Reserve units shall be applicable to the designation of members of regional Reserve units.

SEC. 5. *Administration.* .01 The Executive Reserve Program of the Department of Commerce shall be under the supervision of the Assistant Secretary of Commerce for Administration, who will be responsible for the conduct of the program.

.02 In order to carry out his responsibilities under this program, the Assistant Secretary for Administration will utilize the services of such other personnel of the Department as may be necessary or desirable and will issue such regulations and instructions as he may deem appropriate for this purpose.

.03 The Assistant Secretary of Commerce for Administration and the Administrator, Business and Defense Services Administration, have been named to serve as members of the Interagency Executive Reserve Committee of the Office of Civil and Defense Mobilization. The Assistant Secretary for Administration shall coordinate all liaison with the Office of Civil and Defense Mobilization relating to the Reserve Program.

.04 Each primary organization unit is authorized and directed to prescribe, after clearance with the appropriate Under Secretary or Assistant Secretary and with the Assistant Secretary for Administration, such operating procedures and instructions not inconsistent with this order as may be necessary or desirable to execute the general purposes of this order in the light of their individual operating requirements.

.05 In the interest of practical operation as well as in the interest of economy, the program shall be set up in such a way that it functions automatically to the maximum extent possible, using existing material and information channels and existing staff. The administrative procedures involved in the program shall be integrated with the existing administrative procedures for current operations.

.06 Each primary organization unit establishing a unit in the Executive Reserve is responsible for avoiding the issuance of invitations to persons already in the Reserve and avoiding excessive Government demands on a single employer. To assist agencies in carrying out this objective, a central register of Reserve members will be maintained by the Civil Service Commission for reference. Each primary organization unit designating a person as a member of the Reserve must notify the Commission of such designation. Each primary organization unit contemplating recruitment of a person into the Reserve shall first check with the Civil Service Commission to see whether the person has already been designated a member of the Reserve.

.07 Insofar as practicable, in order to maintain sound relationships with employers, the consent of a proposed Reservist's employer will be obtained prior to negotiations with the proposed Reservist himself, except for former employees of the National Production Authority or of the Business and Defense Services Administration.

.08 Prior to designation as a member of the Reserve, each proposed designee must submit a statement of understanding as to availability, with the formal concurrence of his employer.

.09 When the proposed Reservist has held a security clearance from this Department within the preceding year, the formal invitation to become a member and the designation as a member of the Reserve may be issued, if otherwise in order. When the proposed Reservist has not held a security clearance from this Department within the preceding year, no designation nor any commitment as to designation shall be made pending the receipt of such clearance.

.10 Designations as members of the Reserve will be made by the Secretary, on recommendation of the head of the primary organization unit concerned and the Assistant Secretary for Administration.

.11 Under existing law Reservists are not, by reason of designation as such, subject to any requirement relating to filing or publication of statements of financial interests.

.12 With respect to training activities under the Reserve Program, as limited by Executive Order No. 10660 and stated in section 4 of this order, Reservists who are not full-time Government employees shall be exempt from the operation of sections 281, 283, 284, 434, and 1914 of Title 18, United States Code, and section 190 of the Revised Statutes (5 U. S. C. 99).

.13 Each Reservist will file an appropriate waiver of compensation in connection with or as a part of his statement of understanding.

.14 Members of the Executive Reserve who are not full-time Government employees may be authorized transportation and not to exceed $15 per diem in lieu of subsistence while away from their homes or regular places of business for the purpose of participating in the Executive Reserve training program.

.15 Records and reports, the forms and procedures relating to designation of Reservists, and conducting liaison with the Civil Service Commission will be prescribed in instructions to be issued by or with the approval of the Assistant Secretary for Administration.

SEC. 6. *Report.* Heads of the primary organization units will be responsible for the preparation of such reporting material as required by the Assistant Secretary for Administration for inclusion in the annual report from the Secretary to the Director, Office of Civil and Defense Mobilization, regarding the organization, training, and state of readiness of the Department of Commerce unit of the Executive Reserve, indicating its size, composition, and representation, together with recommendations thereon.

Effective date: November 6, 1958.

SINCLAIR WEEKS,
Secretary of Commerce.

[F. R. Doc. 58-9494; Filed, Nov. 14, 1958; 8:47 a. m.]

ATOMIC ENERGY COMMISSION

[Docket No. 27-10]

NUCLEAR ENGINEERING CO., INC.

AMENDMENT TO BYPRODUCT, SOURCE, AND SPECIAL NUCLEAR MATERIAL LICENSE

Please take notice that the Atomic Energy Commission has issued the following Amendment (No. 1) to License No. 4-3766-1 authorizing Nuclear Engineering Company, Inc. as requested in its applications for license amendment dated October 31, 1958, and November 4, 1958 to conduct intrastate transportation of low-level liquid radioactive waste material in cargo tanks. The Commission has found that such transportation of low-level liquid waste in accordance with the terms and conditions of the license as amended will not present undue hazard to the health and safety of the public and will not be inimical to the common defense and security.

The Commission has found that prior public notice of proposed issuance of this amendment is not necessary in the public interest since the conduct of the authorized activities would not present any substantial changes in the hazards to the health and safety of the public from those presented by the previously approved waste disposal activities of the licensee.

In accordance with the Commission's "Rules of Practice" (10 CFR Part 2) the Commission will direct the holding of a formal hearing on the matter of the issuance of the license amendment upon receipt of a request therefor from the licensee or an intervener within thirty days after the issuance of the license amendment. For further details, see the application for license amendment submitted by Nuclear Engineering Company, Inc. which is on file at the Commission's Public Document Room, 1717 H Street NW., Washington, D. C. A copy of the applications may be obtained at the Commission's Public Document Room or upon request addressed to the Atomic Energy Commission, Washington 25, D. C., Attention: Director, Division of Licensing and Regulation.

Dated at Germantown, Md., this 7th day of November 1958.

For the Atomic Energy Commission.

JAMES R. MASON,
Chief,
Isotopes Branch,
Division of Licensing and Regulation.

[License No. 4-3766-1 (I60), Amdt. 1]

In addition to the activities previously authorized by the Commission under License No. 4-3766-1, Nuclear Engineering Company, Inc. (hereinafter referred to as the "licensee") is authorized to:

(1) Conduct intrastate transportation of low-level liquid wastes in cargo tanks approved under Bureau of Explosives Permit 612; and

(2) Transport and process as low-level liquid waste a total of 4000 gallons of liquid waste in concentrations not exceeding 2.0×10^{-3} uc/cc;

in accordance with the procedures and subject to the limitations stated in the licensee's applications for amendment dated October 31, 1958, and November 4, 1958.

In conducting these activities the licensee shall comply with the conditions and regulations contained or incorporated in License No. 4-3766-1, except as provided otherwise in this amendment, and shall comply with the following additional requirement:

All low level liquid wastes transported in cargo tanks to the licensee's locations in Cowell, California, or Kearny, New Jersey, shall be solidified and packed for disposal at sea within three months from the date of receipt of such material by the licensee.

Date of Issuance: November 7, 1958.

This amendment is effective as of the date of issuance.

For the Atomic Energy Commission.

JAMES R. MASON,
Chief,
Isotopes Branch,
Division of Licensing and Regulation.

[F. R. Doc. 58-9479; Filed, Nov. 14, 1958; 8:45 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 8971]

ALLIED AIR FREIGHT, INC., ET AL.; COMMON CONTROL AND INTERLOCKING RELATIONSHIPS

NOTICE OF HEARING

In the matter of the joint application of Allied Air Freight, Inc., Allied Air Freight International Corporation and Allied Terminal Corporation for approval of certain control and interlocking relationships pursuant to the provisions of sections 408 and 409 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given, pursuant to the Civil Aeronautics Act of 1938, as amended, that public hearing in the above-entitled proceeding is assigned to be held on November 17, 1958, at 10:00 a. m., e. s. t., in Room 1064, Temporary Building No. 5, 16th Street and Constitution Avenue NW., Washington, D. C., before Examiner James S. Keith.

Dated at Washington, D. C., November 10, 1958.

[SEAL] FRANCIS W. BROWN, *Chief Examiner.*

[F. R. Doc. 58-9559; Filed, Nov. 14, 1958; 11:56 a. m.]

FEDERAL COMMUNICATIONS COMMISSION

[Docket Nos. 12258, 12260; FCC 58M-1262]

WABASH VALLEY BROADCASTING CORP. AND ILLIANA TELECASTING CORP.

ORDER CONTINUING HEARING

In re applications of Wabash Valley Broadcasting Corporation, Terre Haute, Indiana; Docket No. 12258, File No. BPCT-2293; Illiana Telecasting Corporation, Terre Haute, Indiana; Docket No. 12260, File No. BPCT-2392; for construction permits for new Television Broadcast Stations (Channel 2).

The Hearing Examiner having under consideration a joint motion for continuance filed by the two applicants herein on November 7, 1958;

It appearing, that counsel for the Chief of the Commission's Broadcast Bureau has no objection to the grant of this motion or to its immediate consideration;

It is ordered, This 10th day of November 1958, that the above motion is granted, and the dates designated for various procedural steps herein are postponed as follows:

Date for exchange of exhibits, from November 10, 1958 to January 12, 1959.
Date for further prehearing conference, from November 19, 1958 to January 21, 1959.
Hearing date, from December 1, 1958 to February 2, 1959.

Released: November 12, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 58-9496; Filed, Nov. 14, 1958; 8:48 a. m.]

[Docket No. 12586 etc.; FCC 58M-1263]

M. V. W. RADIO CORP. ET AL.

ORDER GOVERNING COURSE OF HEARING

In re applications of M. V. W. Radio Corporation, San Fernando, California; Docket No. 12586, File No. BP-10888; KGB, Incorporated (KGB), San Diego, California; Docket No. 12587, File No. BP-11103; Robert S. Marshall, Newhall, California; Docket No. 12588, File No. BP-11705; William H. Wilson and Shirley Ann Wilson, d/b as Wilson Broadcasting Company, Oxnard, California; Docket No. 12589, File No. BP-11911; for construction permits.

It is ordered, This 10th day of November 1958, that the following calendar, which was agreed upon by all parties at a prehearing conference held on November 4, 1958, shall govern the future course of this proceeding:

Exchange of engineering exhibits, January 5, 1959.
Engineering conference, January 15, 1959.
Future prehearing conference, February 2, 1959.
Hearing, February 5, 1959.

Released: November 12, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 58-9497; Filed, Nov. 14, 1958; 8:48 a. m.]

[Docket No. 12593; FCC 58M-1258]

SOUTH COUNTY BROADCASTING CO.

ORDER CONTINUING HEARING CONFERENCE

In re application of Jack C. Salera, tr/as South County Broadcasting Company, Wickford, Rhode Island; Docket No. 12593, File No. BP-11383; for construction permit.

Upon the Examiner's own motion: *It is ordered*, This 10th day of November 1958, that the prehearing conference in the above-entitled proceeding presently scheduled to be held on November 12, 1958, is hereby continued to December 3, 1958.

Released: November 10, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS, *Secretary.*

[F. R. Doc. 58-9498; Filed, Nov. 14, 1958; 8:48 a. m.]

[Docket Nos. 12650-12651; FCC 58-1041]

OROVILLE BROADCASTERS (KMOR) AND JAMES E. WALLEY

ORDER DESIGNATING APPLICATIONS FOR CONSOLIDATED HEARING ON STATED ISSUES

In re applications of Oroville Broadcasters (KMOR), Oroville, California; Docket No. 12650, File No. BR-1926; for renewal of license. James E. Walley, Oroville, California; Docket No. 12651, File No. BP-11655; for construction permit for new standard broadcast station.

At a session of the Federal Communications Commission held at its offices in Washington, D. C., on the 5th day of November 1958;

The Commission having under consideration the application (BR-1926) of Oroville Broadcasters for renewal of license of standard broadcast Station KMOR, Oroville, California, on 1340 kilocycles, 250 watts, unlimited time, and the application (BP-11655 as amended) of James E. Walley requesting a construction permit for a new standard broadcast station to operate on 1340 kilocycles, 250 watts, unlimited time, in Oroville, California; and

It appearing, that the above-captioned applications are mutually exclusive, in that operation by more than one of the applicants, as proposed, would result in mutually destructive interference; and that the proposed operation of James E. Walley would cause objectionable interference to Stations KCRA, Sacramento, California (1320 kc, 1 kw, 5 kw-LS, DA-2, U) and Station KATO, Reno, Nevada (1340 kc, 250 w, V); and

It further appearing, that by letters dated June 3 and 25, 1958, the licensees of Stations KATO and KCRA, respectively, expressed intentions of appearing at a hearing on the application of James E. Walley; and

It further appearing, that pursuant to section 309(b) of the Communications Act of 1934, as amended, the Commission on May 26, 1958, notified the above-named applicants of the fact that their applications were mutually exclusive; of the fact that the proposed operation of James E. Walley would cause objectionable interference to Stations KCRA, Sacramento and KATO, Reno; of all objections to a grant of their applications; of the need for a hearing; and that the applicants were afforded an opportunity to reply; and

It further appearing, that upon due consideration of the above-captioned applications, the amendments filed thereto, and the Commission's letters with respect thereto and the replies of the parties, the Commission finds that pursuant to section 309 (b) of the Communications Act of 1934, as amended, a hearing is necessary on the above-captioned applications; that the applicants herein are qualified in all respects to construct, own and operate the proposed standard broadcast stations except with respect to the matters set forth in the issues listed below;

It is ordered, That pursuant to section 309 (b) of the Communications Act of 1934, as amended, the above-captioned applications of Oroville Broadcasters and James E. Walley are designated for hearing in a consolidated proceeding at a time and place to be specified in a subsequent order upon the following issues:

1. To determine the areas and populations which would receive primary service from each of the proposed operations and the availability of other primary service to such areas and populations.

2. To determine whether the proposed operation of James E. Walley would cause objectionable interference to Stations KCRA, Sacramento, California, and KATO, Reno, Nevada, or any other existing standard broadcast stations, and, if so, the nature and extent thereof, the areas and populations affected thereby, and the availability of other primary service to such areas and populations.

3. To determine whether the application of James E. Walley was filed in good faith or whether said application was filed for the purpose of hindering and obstructing a grant of the above application for renewal of license or the assignment of said license.

4. To determine whether Oroville Broadcasters discontinued operation of Station KMOR without Commission consent and abandoned said station contrary to the provisions of its license and in violation of § 3.71 of the Commission's rules.

5. To determine whether Oroville Broadcasters is financially qualified to own and operate proposed standard broadcast Station KMOR.

6. To determine whether Oroville Broadcasters operated Station KMOR without having in full-time employment an operator holding a radio-telephone first class operator license as required by § 3.93 (c) of the Commission's rules.

7. To determine on a comparative basis which of the operations proposed in the above-captioned applications would better serve the public interest in the light of the evidence adduced under the foregoing issues and the record made with respect to the significant differences between the applicants as to:

(a) The background and experience of each of the above-named applicants having a bearing on its ability to own and operate the proposed stations.

(b) The proposals of each of the above-named applicants with respect to the management and operation of the proposed stations.

(c) The programming service proposed in each of the above-mentioned applications.

8. To determine, in the light of the evidence adduced pursuant to the foregoing issues, which, if either, of the above applications should be granted.

It is further ordered, That the issues in the above-entitled proceeding may be enlarged by the Examiner, on his own motion or on petition properly filed by a party to the proceeding and upon sufficient allegations of fact in support thereof, by the addition of the following issue:

To determine whether the funds available to the applicant will give reasonable assurance that the proposals set forth in the application will be effectuated.

It is further ordered, That KCRA, Inc., and Robert L. Stoddard trading as Sierra Broadcasting Company, licensees of Stations KCRA and KATO, respectively, are made parties to this proceeding; and

It is further ordered, That to avail themselves of the opportunity to be heard, the applicants and parties respondents herein, pursuant to § 1.140 of the Commission's rules, in person or by attorney, shall within 20 days of the mailing of this order, file with the Commission, in triplicate, a written appearance stating an intention to appear on the date fixed for the hearing and present evidence on the issues specified in this order.

Adopted: November 5, 1958.

Released: November 12, 1958.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-9499; Filed, Nov. 14, 1958; 8:48 a. m.]

[Change List 126]

CANADIAN BROADCAST STATIONS

LIST OF CHANGES, PROPOSED CHANGES, AND CORRECTIONS IN ASSIGNMENTS

OCTOBER 30, 1958.

Notification under the provisions of Part III, section 2 of the North American Regional Broadcasting Agreement.

List of changes, proposed changes, and corrections in assignments of Canadian broadcast stations modifying appendix containing assignments of Canadian broadcast stations (Mimeograph 47214-3) attached to the recommendations of the North American Regional Broadcasting Agreement Engineering Meeting.

Call letters	Location	Power kw	Antenna	Schedule	Class	Expected date of commencement of operation
		550 Kc.				
CFNB (PO: 550 kc 5 kw DA-N III).	Fredericton, N. B.	50 kw	DA-2	U	III	EIO 10-15-59.
CFBR	Sudbury, Ontario	1 kw	ND	D	III	Now in operation.
		590 Kc.				
CKAR	Huntsville, Ontario	1 kw	DA-1	U	III	Do.
		600 Kc.				
CFCF	Montreal, P. Q.	5 kw	DA-1	U	III	Now in operation at new site with pattern notified on list No. 101.
		680 Kc.				
CFCL (PO: 680 kc 1 kw DA-1 III).	Timmins, Ontario	10 kw D/2.5 kw N.	DA-2	U	III	EIO 10-15-59.
		680 Kc.				
CJOB	Winnipeg, Manitoba	10 kw D/2.5 kw N.	DA-N	U	II	Now in operation.
		730 Kc.				
CJNR	Blind River, Ontario	1 kw	DA-N	U	II	Do.
		800 Kc.				
CHRC	Quebec, P. Q.	10 kw	DA-1	U	II	Do.
		980 Kc.				
CFPL (PO: 980 kc 5 kw DA-2 III).	London, Ontario	10 kw D/5 kw N.	DA-2	U	III	EIO 10-15-59
		1220 Kc.				
CKDA	Victoria, B. C.	10 kw	DA-1	U	II	Now in operation.
		1220 Kc.				
CKDA	Victoria, B. C.	5 kw	DA-1		III	Delete assign—vide 1220 kc.
CJMS (PO: 1280 kc 5 kw DA-1 III).	Montreal, P. Q.	10 kw D/5 kw N.	DA-2	U	III	EIO 10-15-59.
		1340 Kc.				
CKAR	Huntsville, Ontario	0.25 kw	ND	U	IV	Delete assign—vide 590 kc.
		1380 Kc.				
CKLC	Kingston, Ontario	5 kw	DA-2	U	III	Now in operation.
		1400 Kc.				
CKDH	Amherst, N. S.	0.25 kw	ND	U	IV	Do.
		1570 Kc.				
CHUB	Nanaimo, B. C.	10 kw	DA-2	U	II	EIO 11-15-58.

NOTE: Inadvertently the notification for CHUB, Nanaimo, British Columbia, was deleted in Change List No. 125. The notification for CHUB on this list, No. 126, is identical to that of list No. 119 and supplementary information notified at that time will apply.

FEDERAL COMMUNICATIONS COMMISSION,
[SEAL] MARY JANE MORRIS,
Secretary.

[F. R. Doc. 58-9500; Filed, Nov. 14, 1958; 8:48 a. m.]