

FEDERAL REGISTER

VOLUME 22

NUMBER 2

Washington, Thursday, January 3, 1957

TITLE 6—AGRICULTURAL CREDIT

Chapter III—Farmers Home Administration, Department of Agriculture

Subchapter B—Farm Ownership Loans

[FHA Instruction 443.2]

PART 332—PROCESSING INITIAL LOANS

PROCESSING INITIAL INSURED AND DIRECT FARM OWNERSHIP LOANS

Sections 332.1 to 332.13, Title 6, Code of Federal Regulations, are amended to include regulations with respect to optioning of land, to conform Farm Ownership loan processing with revised title clearance regulations in §§ 307.1 to 307.7 of this chapter (21 F. R. 9929) and with revised loan policies under Public Law 878, 84th Congress, and to read as follows:

§ 332.1 *Optioning of land.* When land is to be purchased, the applicant will be responsible for selecting the land he intends to purchase and for obtaining an option on such land. Ordinarily, the County Committee should have viewed the applicant with favor before he obtains an option on the land to be purchased. The County Supervisor should, if possible, prior to the applicant's selection of the land to be purchased, advise him with respect to the approximate size and quality of farms which are generally considered as family-type farms in the particular county. Such advice, together with the consideration of the applicant's eligibility by the County Committee before the land is selected, will save applicant's time in looking for farms and will reduce the number of options taken on farms which are obviously too small, too large, or too unproductive to qualify for the Farm Ownership program. Form FHA-188, "Option to Purchase Real Property," will be given to the applicant with an explanation of the provisions of the form and how it will be completed. Generally, the Farmers Home Administration option form should be used; however, other option forms may be used if their provisions are acceptable.

(a) The County Supervisor is responsible for examining each completed option to determine if it is acceptable. When the County Supervisor is doubtful as to whether the option is acceptable

due to questions of a legal or administrative nature, such as the effect of mineral or other reservations on the applicant's or the Government's interest, or unusual conditions or alterations of the Farmers Home Administration option form or other option form, if used, he will forward the option to the State Director for advice.

(b) The County Supervisor also will determine that:

(1) At least one dollar is actually paid to the seller by the applicant and the receipt for this amount is acknowledged in the option.

(2) The option protects the interests of the applicant, and that the option is recorded, if necessary. Recordation fees will be paid by the applicant.

(3) The following clause is inserted in options in connection with loans which involve more than one tract:

"The seller agrees that, irrespective of any other provision in this option, the buyer, or his assignees may, if the option is accepted, without any liability therefor, refuse to accept conveyance of the property described herein if the aforesaid loan cannot be made or insured because of defects in the title to other land now owned by, or being purchased by, the buyer."

(c) When a tract of land is to be optioned and subdivided, the applicant, in whose name the option is to be taken, must be advised by the County Supervisor that he is not designated as an agent or trustee and will not receive any remuneration for assigning interest in the option to other applicants. The County Supervisor is responsible for explaining to the seller and the applicant, in whose name the option is taken, the terms and conditions of the option including the provision that the seller will provide an accurate survey, if required by the Government.

(1) The County Supervisor will discuss any proposed subdivision with the County Committee and the Area Supervisor before any definite commitments are made to the prospective seller with respect to utilizing a tract for subdivision purposes. He will also obtain the assistance of the employee authorized to appraise farms in making a thorough study of the tract and in plotting the

(Continued on next page)

CONTENTS

	Page
Agriculture Department	
See also Agricultural Marketing Service; Commodity Stabilization Service; Farmers Home Administration.	
Notices:	
Pennsylvania; sale of mineral interests; area designation	89
Agricultural Marketing Service	
Rules and regulations:	
Onions grown in certain designated counties in Idaho and Malheur County, Oreg.; handling	26
Oranges, navel, grown in Arizona and designated part of California; limitation of handling	26
Alien Property Office	
Notices:	
Certain Bulgarian, Hungarian, and Rumanian debtors; order fixing bar date for filing debt claims	88
Army Department	
See Engineers Corps.	
Business and Defense Services Administration	
Rules and regulations:	
Aluminum	32
Civil Aeronautics Board	
Notices:	
Prehearing conferences:	
Capital Airlines, Inc. (2 documents)	89
Pan American World Airways, Inc., and Flying Tiger Line, Inc.	89
Rate of return local service carriers	89
Commerce Department	
See also Business and Defense Services Administration; Federal Maritime Board.	
Notices:	
Zahn, Lawrence H.; report of appointment and statement of financial interests	88
Commodity Stabilization Service	
Rules and regulations:	
Soil bank:	
Acreage Reserve Program; when redemption of certificates may be made	24



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.

The FEDERAL REGISTER will be furnished by mail to subscribers, free of postage, for \$1.50 per month or \$15.00 per year, payable in advance. The charge for individual copies (minimum 15 cents) varies in proportion to the size of the issue. Remit check or money order, made payable to the Superintendent of Documents, directly to the Government Printing Office, Washington 25, D. C.

The regulatory material appearing herein is keyed to the CODE OF FEDERAL REGULATIONS, which is published, under 50 titles, pursuant to section 11 of the Federal Register Act, as amended August 5, 1953. The CODE OF FEDERAL REGULATIONS is sold by the Superintendent of Documents. Prices of books and pocket supplements vary.

There are no restrictions on the republication of material appearing in the FEDERAL REGISTER, or the CODE OF FEDERAL REGULATIONS.

CFR SUPPLEMENTS

(As of January 1, 1956)

The following Supplement is now available:

Titles 1-3 (\$0.75)

All Supplements and revised books are Order from Superintendent of Documents, Government Printing Office, Washington

now available except the revised General Index
25, D. C.

CONTENTS—Continued

Commodity Stabilization Service—Continued	Page
Rules and regulations—Con.	
Soil bank—Continued	
Conservation Reserve Program; harvesting or grazing or using stored water from conservation reserve	24
Sugar quotas, allotment; domestic beet sugar area, 1957	24
Defense Department	
See Engineers Corps.	
Engineers Corps	
Rules and regulations:	
St. Johns River, Fla.; bridge regulations	32
Farmers Home Administration	
Rules and regulations:	
Operating loan processing	21
Processing initial loans	17

CONTENTS—Continued

Federal Maritime Board	Page
Notices:	
Stone Forwarding Co., Inc., et al.; notice of agreements filed for approval	88
Federal Power Commission	
Notices:	
Hearings, etc.:	
Continental Oil Co. et al.	91
Georgia Power and Light Co. and Florida Power Corp.	89
Natural Gas Pipeline Company of America et al.	90
Northern Natural Gas Co. (2 documents)	90
Phillips Petroleum Co.	92
Federal Reserve System	
Notices:	
First New York Corp. et al.; applications filed for approval of action to become bank holding companies and order for hearing thereon	92
Food and Drug Administration	
Proposed rule making:	
Pesticide chemicals in or on raw agricultural commodities:	
Bromides, inorganic; proposal to establish tolerances for residues after fumigation with ethylene dibromide	87
Diphenyl; petition for establishment of exemption from requirement of tolerances for residues	87
Maneb; filing of petition for establishment of tolerances for residues	88
Rules and regulations:	
Sodium 2,2-dichloropropionate; tolerances for residues in or on raw agricultural commodities	32
Health, Education, and Welfare Department	
See Food and Drug Administration.	
Interior Department	
See Land Management Bureau.	
Internal Revenue Service	
Proposed rule making:	
Gift tax; gifts made after December 31, 1954	53
Income tax; taxable years beginning after December 31, 1953; gain or loss in disposition of property	35
Interstate Commerce Commission	
Notices:	
Fourth section applications for relief	99
Motor carrier applications	96
Rules and regulations:	
Motor carriers, reports; Annual Report Form A	35
Railroad accidents; codes for accident reporting	35
Justice Department	
See Alien Property Office.	
Land Management Bureau	
Notices:	
Riverton Project, Wyoming; order of revocation	88

CONTENTS—Continued

Post Office Department	Page
Rules and regulations:	
Bulk mailings; second and third class matter	32
Securities and Exchange Commission	
Notices:	
Hearings, etc.:	
Bauer, Elmer E., and Philadelphia Co.	93
Mississippi Power & Light Co.	94
Ohio Valley Electric Corp. et al.	95
Treasury Department	
See Internal Revenue Service.	
CODIFICATION GUIDE	
A numerical list of the parts of the Code of Federal Regulations affected by documents published in this issue. Proposed rules, as opposed to final actions, are identified as such.	
Title 6	Page
Chapter III:	
Part 332	17
Part 342	21
Chapter IV:	
Part 485 (2 documents)	24
Title 7	
Chapter VIII:	
Part 814	24
Chapter IX:	
Part 914	26
Part 1017	26
Title 21	
Chapter I:	
Part 120	32
Proposed rules (3 documents)	87, 88
Title 26 (1954)	
Chapter I:	
Part 1 (proposed)	35
Part 25 (proposed)	53
Title 32A	
Chapter VI (BDSA):	
M-5A	32
Title 33	
Chapter II:	
Part 203	32
Title 39	
Chapter I:	
Part 16	32
Title 49	
Chapter I:	
Part 125	35
Part 205	35
units to show proposed roads and other necessary facilities in order to determine whether it is practicable to subdivide the tract into adequate farms.	
(2) If the tract is determined to be suitable, an option will be taken on Form FHA-188A, "Option for Purchase of Farm (Land to be Subdivided)." The tract will be subdivided into units, each unit will be surveyed, and the applicant, in whose name the tract is optioned, with the guidance of the County Supervisor, will execute Form FHA-188B, "Assignment of Interest in Option (Land to be Subdivided)," with each applicant who is to receive one of the units. If it becomes necessary for the State Di-	

rector to designate an applicant an interest in the option, Form FHA-188C, "Designation of Assignee of Interest in Option (Land to be Subdivided)," will be used.

(Secs. 1, 2, 60 Stat. 1072, 1073, as amended, Pub. Law 878, 84th Cong.; 7 U. S. C. 1001, 1002)

§ 332.2 *Suitability of farm for the Farm Ownership program*—(a) *Responsibility for determining suitability of farms.* The County Supervisor is responsible for making a preliminary determination with respect to whether a loan can be made on the farm. This determination will be based on a personal inspection of the farm and the consideration of such factors as: Productivity of the land; condition and adequacy of the buildings; approximate value of the farm; approximate amount of funds required for land purchase, refinancing or development; available title information; legal description and boundaries of the farm; roads, schools, markets, other community facilities; tax rates; and adequacy of the water supply.

(b) *Development of loan docket and plans.* When the County supervisor makes a preliminary determination that a loan can be made, he also will determine if it is a family-type or less than family-type farm and proceed to develop the loan docket. Farm and Home plans will be prepared on Form FHA-14A, "Long Time Farm and Home Plan," when applicable, and Form FHA-14, "Farm and Home Plan." The farm development plan will be prepared in accordance with Part 324, Subpart B, of this chapter. When the Farm and Home Plan(s) and the tentative draft of the farm development plan have been completed, the County Supervisor will request the services of the appraiser. If it appears that a loan cannot be made, the County Supervisor will promptly notify the applicant of the specific reasons for the decision. In case the applicant is dissatisfied with the decision and requests further consideration, the County Supervisor may ask the County Committee to consider the farm and give an opinion regarding its suitability for a Farm Ownership loan.

(Secs. 1, 2, 3, 60 Stat. 1072, 1073, 1074, as amended, sec. 16, added 69 Stat. 553, as amended, Pub. Law 878, 84th Cong.; 7 U. S. C. 1001, 1002, 1003, 1006c)

§ 332.3 *County Committee certification.* The County Supervisor will arrange for a meeting of the County Committee to inspect the farm, and to make the necessary determinations with respect to the applicant and the farm. He will make available to the Committee completed Forms FHA-596, "Appraisal Report," FHA-596B, "Map of Farm," FHA-643, "Farm Development Plan," and FHA-14, "Farm and Home Plan." He will also make available Form FHA-14A, "Long-Time Farm and Home Plan," for all full-time farmers. However, when a loan is being made to an active borrower for whom Farm and Home Plans have been developed in connection with other Farmers Home Administration loans, existing Forms FHA-14 and FHA-14A will be revised to show a cur-

rent financial statement and significant changes in the plan of operation.

(a) *Certification as to applicant.* The County Committee is responsible for certifying as to the eligibility of each applicant to receive the benefits of Title I of the Bankhead-Jones Farm Tenant Act, as amended, and that, in the opinion of the Committee, the applicant by reason of his character, ability, industry, and experience honestly will endeavor to, and successfully will, carry out undertakings and obligations required of him under a Farm Ownership loan. The Committee also will determine that credit, sufficient in amount to finance the needs of the applicant, is not available to him at the rates (but not exceeding the rate of 5 percent per annum) and terms similar to those prevailing in the community in or near which the applicant resides for loans of similar size and character from commercial banks, cooperative lending agencies, or from any other responsible source.

(b) *Certification as to farm.* The County Committee is responsible for certifying that the farm is of such character that there is a reasonable likelihood that the making of the loan will carry out the purposes of Title I. The County Committee also is responsible for certifying as to the fair and reasonable value of the farm based upon its normal earning capacity for a family-type farm or normal market value for a less than family-type farm. The County Committee's certification as to the fair and reasonable value of the farm should represent its determination with respect to the farm under consideration after personally inspecting the farm and reviewing Form FHA-596. Usually, the inspection of the farm will be accomplished by the Committee as a group in order to obtain the benefit of group discussion.

(Sec. 2, 60 Stat. 1073, as amended, Pub. Law 878, 84th Cong.; 7 U. S. C. 1002)

§ 332.4 *Deferred payments.* (a) For a direct Farm Ownership loan, the initial payment may be deferred until the end of the second full crop year from the date of the loan. Such payments may be deferred only when the Farm and Home Plan covering the first full crop year indicates that there will be insufficient income to meet a regular annual installment on the loan after farm operating, family living, and other essential expenses are paid during the first or first and second full crop years. Further, in the judgment of the loan approval official, there must be adequate evidence that income in subsequent years will be sufficient to meet the requirements of the loan. The initial payment must always be more than a nominal payment. Deferred payments should not be used to permit the accelerated repayment of other debts, to purchase an unusually large amount of capital goods, or to perform major items of land development. Deferment will be justified only when:

(1) There is a substantial reorganization of the farming system, adequate returns from which will be delayed for one or two full crop years; or

(2) There is being established a system of farming requiring substantial improvements in land clearing, draining, leveling, irrigating, basic fertilizing, and seeding, or other land development or soil improvement operations, adequate returns from which will be delayed for one or two full crop years.

(b) For an insured loan, in addition to meeting the requirements for a direct Farm Ownership loan, the initial payment may be deferred only when the lender has agreed to such deferment and the deferment does not violate State or local laws or regulations to which the lender may be subject.

(Sec. 48, 60 Stat. 1070, as amended; 7 U. S. C. 1022)

§ 332.5 *Second mortgage loan.* When a loan is to be secured by a second mortgage, the following items will apply:

(a) When the County Supervisor determines that it is necessary in protection of the Government's interest to obtain an agreement from a prior lienholder, Form FHA-446, "Agreement with Prior Lienholder," will be used in accordance with the provisions of Part 307, Subpart A, of this chapter.

(b) The applicant will be required to furnish the County Supervisor, before the docket is assembled, a copy of any note and mortgage held by the prior lienholder so that a proper determination can be made as to whether it should be refinanced. In addition, the County Supervisor will be furnished a current statement from the mortgagee showing the correct outstanding principal balance of the existing mortgage(s); the amount of any accrued interest; whether the account(s) is (are) current or delinquent; and rate of interest, if not shown in the mortgage. This information will be included in the docket for the information of the loan approval official. Any cost incident to securing a copy of a mortgage or current statement will be paid by the applicant.

(c) In states where a prior mortgage holder may foreclose his mortgage and make junior liens unenforceable without giving notice of foreclosure to the holder of the junior lien, a junior lien on the real estate will be taken as security for a loan only if the prior lienholder executes an agreement to give the Government actual advance notice of foreclosure or assignment of the mortgage. The State Director, with the advice of the Attorney in Charge, will prescribe an appropriate form of notice agreement and will issue a regulation regarding its use. The regulation will prescribe the minimum acceptable period of notice. If the notice agreement is to be recorded, the cost of recording will be paid by the borrower.

(Sec. 3, 60 Stat. 1074, as amended, sec. 16, added 69 Stat. 553, as amended, Pub. Law 878, 84th Cong.; 7 U. S. C. 1003, 1006c)

§ 332.6 *Preparation of loan docket and action by loan approval official.*

(a) Forms required in loan processing will be prepared and assembled in the County Office. The County Supervisor will assemble the loan docket when the County Committee has signed Form FHA-491, "County Committee Certification (Farm Ownership Loans)." If the

applicant is a veteran, the loan docket will include evidence of discharge or release, and, if he is a disabled veteran, also evidence showing the amount of and reason for his pension. The loan docket will be submitted to the State Office.

(b) *Examination of loan.* Before approving any loan, the loan approval official will make a comprehensive and objective study of the proposed loan, utilizing all available information regarding the family, the farm, and the plans of operation. This study is to determine the eligibility of the applicant and the farm and the soundness of the loan, and to see if the loan is within prescribed limitations. In the case of a loan where the property is subject to an existing mortgage, the loan approval official must determine whether the loan should be secured by a first or second mortgage. If the loan approval official's findings do not concur with the County Supervisor's recommendation, the docket will be returned to the County Supervisor with his comments and suggestions for revision.

(c) *Approval or disapproval of a loan.*

(1) If the loan is approved, the loan approval official will:

(i) Indicate approval of the loan on Form FHA-476, "Record of Actions."

(ii) Sign Form FHA-5 for a direct loan or an insured loan when the United States as trustee for a State Rural Rehabilitation Corporation is the lender.

(2) If the loan is disapproved, the loan approval official will explain on Form FHA-476 the reasons therefor. The County Supervisor will notify the applicant, giving the reasons for the disapproval of the loan.

§ 332.7 *Requesting title service and accepting option.* When the County Supervisor receives Form FHA-476 indicating approval of the loan, he will see that title service is requested in accordance with Part 307, Subpart A, of this chapter, and, where land is being acquired, also see that Form FHA-191, "Acceptance of Option," is completed, signed, and mailed to the seller; however, in connection with acceptance of option on a subdivision Form FHA-191A, "Acceptance of Option by Assignee," and FHA-191B, "Acceptance of Option by Buyer," will be used, as appropriate.

§ 332.8 *Cancellation of loan.* Loans may be cancelled before loan closing upon request of the applicant or upon order of the County Supervisor through the use of Form FHA-903, "Request for Cancellation of Loan," and approval of such cancellation by the loan approval official. For an insured loan, any checks advanced will be returned promptly to the lender with an explanatory letter. Interested parties will be notified of the cancellation as provided in § 307.7 of this chapter.

§ 332.9 *Increase or decrease in amount of loan.* If it becomes necessary that the amount of the loan be increased or decreased, the County Supervisor will request that all distributed docket forms be returned to the County Office. The loan docket will be revised accordingly and reprocessed.

§ 332.10 *Occupancy of farms by borrowers acquiring land.* When the ac-

ceptance of option letter has been mailed to the seller, the borrower will arrange with the seller, in consultation with the Supervisor, to occupy and operate the farm as soon as practicable. Agreements will be in writing and cover such subjects as disposition of growing crops, rentals, payment of maintenance costs, and other pertinent points. The following Forms will be used for this purpose, as appropriate:

Form FHA-189, "Short-Term Lease of Optioned Land".

Form FHA-198, "Short-Term Lease (Between Purchaser and Seller)".

Form FHA-129, "Temporary Cropping License".

Form FHA-199, "Agreement (Between Seller, Purchaser, and Tenant)". (Sec. 3, 60 Stat. 1074, sec. 16, added 69 Stat. 553; 7 U. S. C. 1003, 1006c)

§ 332.11 *Action by State Office after approval of loan—(a) Insured loan.* When Form FHA-971, "Request for Check," is received from the County Office, the State Office will:

(1) When the name of the lender is known, enter the loan on the records maintained in the State Office to control the allocation of loans among lenders, attest the signature of the County Supervisor on the original of Form FHA-971, and forward the original of Form FHA-971 to the lender.

(2) When the National Office must provide the name of the lender, the State Director or other authorized State Office official will attest the signature of the County Supervisor on the original of Form FHA-971 and submit the Form FHA-971, without the name of the lender, to the National Office. The National Office will select a lender to make the loan and will forward the original of Form FHA-971 to the lender selected.

§ 332.12 *Actions subsequent to receipt of preliminary title evidence and prior to loan closing—(a) County Supervisor.* When the preliminary title evidence is received, it will be processed in accordance with Part 307 Subpart A, of this chapter. When necessary curative actions have been taken to provide a satisfactory title and a date has been set for loan closing, the County Supervisor will order the loan check. For an insured loan, the County Supervisor will request the check by preparing Form FHA-971 and submitting it to the State Director. In a case where the seller is to become the lender, the amount of the check requested will be only the amount of cash he will advance. Whenever the bank handling a supervised bank account will require the lender's personal check to clear before disbursing funds, the lender should be requested to furnish a certified or cashier's check. When suitable arrangements can be made with the lender, the bank draft method may be used to obtain insured loan funds. When a lender issues a loan check payable jointly to the borrower(s) and the Farmers Home Administration as a precaution against loss of funds, the County Supervisor is authorized to endorse the check on behalf of the Farmers Home Administration at the time of loan closing as follows: "Endorsed without recourse: Farmers Home Administration, By _____, Title _____"

The State Director also is authorized to endorse such a check in the same manner. Authority to endorse such checks in no way relates to or modifies the regulations contained in Part 362 of this chapter regarding collection items, or the endorsement of such items.

(b) *Designated attorney.* When the designated attorney receives the County Supervisor's comments on the preliminary title opinion and necessary waivers, he will determine if a satisfactory title can be obtained. When it is determined that a satisfactory title can be obtained, he will consult with the County Supervisor as to a suitable closing date. Closing documents will be prepared in accordance with Part 307, Subpart A, of this chapter.

(c) *Attorney in Charge.* When the Attorney in Charge receives the preliminary title evidence or binder and any other material required in § 307.3 (d) or § 307.4 (a) of this chapter, and determines that title is satisfactory or that satisfactory title can be obtained, he will prepare and forward closing instructions to the County Supervisor. Any other documents to be used in connection with loan closing also will be forwarded.

§ 332.13 *Loan closing actions.* When a loan closing date has been agreed upon, the County Supervisor will notify the borrower and seller, if any, of the loan closing date. The loan will be closed with the assistance of the designated attorney, or in accordance with the closing instructions of the Attorney in Charge, and the following appropriate actions will be taken prior to and after loan closing:

(a) *Insured loan.* When a loan check has been received and the loan cannot be closed on the date set for loan closing or within 21 days from the date of the check, it will be returned to the lender with a request for cancellation. When a loan check is lost or destroyed, the County Supervisor will immediately notify the lender and, if the borrower still desires to close the loan, the lender will be requested to issue a new check. When a check is returned and the loan will be closed at a subsequent date, another check will be requested in accordance with the provisions of § 332.12 (a).

(b) *Deposit of check.* The loan check will be deposited in a supervised bank account, in accordance with Part 303 of this chapter, on the date of loan closing after it has been determined that the loan can be closed.

(c) *Assignment of income from property to be mortgaged.* Assignments will be taken when income is to be received by the borrower from royalties, leases, or other existing agreements under which the value of the security will be depreciated. Such assigned income will be applied as an extra payment on the loan. When the County Supervisor deems it advisable, assignments may also be taken for all or a portion of the income derived from nondepleting items such as bonus payments or annual delay rentals. Such assigned income will be applied as a regular payment. When a second mortgage loan is made, the written consent of the prior lienholder to the assignment will be obtained either by a

letter or written approval by the lienholder on the assignment form.

(1) In cases in which income is to be received by the borrower from a mineral lease or other existing agreement pertaining to the property at the time of purchase, a Form FHA-253, "Assignment of Income from Real Estate Security," will be prepared and executed by the borrower and his wife at the time of loan closing. The original and one copy will be forwarded to the lessee with the request that the original be signed and returned to the County Office.

(2) If he deems it advisable, the County Supervisor, upon advice of the designated attorney or Attorney in Charge, as appropriate, may require the acknowledgment and recordation of the assignment. Any cost incident thereto will be borne by the borrower.

(d) *Collection of appraisal fee and initial loan insurance charge for insured loans.* (1) The County Supervisor will collect a \$20 appraisal fee from each applicant at the time of loan closing. This fee may be included in the loan. Form FHA-37, "Receipt for Payment," will be prepared for the appraisal fee payment.

(2) The initial loan insurance charge will be collected from an insured loan applicant at the time of loan closing. The amount of such charge will be computed at the rate of one percent of the principal amount of the loan for the period from the date of loan closing to the first January 1 thereafter. Such charge must be paid from the applicant's personal funds. The amount of initial loan insurance charge will be included on the same Form FHA-37 prepared for the appraisal fee payment. If the first installment on the loan, or any portion thereof, is collected at the time of loan closing, it will be entered as a regular payment on the same Form FHA-37.

(e) *Preparation of note.* The date of the note, Forms FHA-190, "Promissory Note," or FHA-190A for direct loans or Forms FHA-240, "Promissory Note (Insured Farm Ownership Loan)," or FHA-240A for insured loans, will be the date of loan closing.

(1) When determining the amount of the first installment, the County Supervisor will consider the borrower's financial circumstances and the extent to which he will receive income from the farm during the calendar year preceding the date of the first installment. The amount of the first installment may be less but not more than a regular annual installment. If the borrower will not receive income from the farm during the calendar year preceding the date of the first installment, a nominal first installment will be sufficient, unless the borrower desires to pay more.

(2) The regular amortized installment will be the amount of principal and interest which, if paid annually, will retire the full amount of the note plus interest within the amortization period of the loan.

(3) When a loan is closed between December 1 and January 1, the first installment will be collected at the time of loan closing unless deferment is approved.

(4) The promissory note and mortgage will be signed by the borrower and, if

married, his wife, at the time of loan closing.

NOTE: In the States of Delaware, New Jersey, New York, and Pennsylvania, Forms FHA-190A, "Bond," and FHA-240A, "Bond (Insured Farm Ownership Loan)," are used in place of Forms FHA-190, "Promissory Note," and FHA-240, "Promissory Note (Insured Farm Ownership Loan)," respectively.

(f) *Mortgage forms.* Real estate mortgage forms in series FHA-187 will be used for direct loans and forms in series FHA-242 will be used for insured loans.

(g) *Applicant's financial condition.* The County Supervisor will review with the applicant the financial statement which was prepared at the time the docket was developed. If there have been significant changes in his financial condition, the financial statement will be revised. When an applicant's financial condition has changed to the extent that it appears that the loan would be unsound or improper, the County Supervisor will submit a revised loan docket to the loan approval official for reconsideration.

(h) *Change in use of funds planned for refinancing.* (1) In cases where funds are included in the loan to refinance debts, the County Supervisor is authorized to transfer funds planned for refinancing between debts, provided all debts for which loan funds were planned are paid and the amount of loan funds to be used for refinancing does not exceed the amount planned for such purpose; except that the County Supervisor is authorized to use funds planned for other purposes to pay small deficiencies in estimates of the amount needed for refinancing, if he determines that sufficient funds will remain available to complete the planned farm development or land purchase.

(2) When the total amount of debts planned to be paid have increased so that they cannot be met within the authorities in subparagraph (1) of this paragraph or the applicant desires to transfer funds to pay debts for which loan funds were not planned, a revised loan docket will be submitted to the loan approval official for reconsideration. If the total amount of the loan will be increased, the docket will be processed in accordance with § 332.9.

(i) *Insurance endorsement for insured loan.* The County Supervisor is authorized to execute the insurance endorsement on the reverse of Form FHA-240 or FHA-240A. The State Director also is authorized to sign the insurance endorsement. Execution of the insurance endorsement constitutes the Government's insurance of the loan. If, for any reason, it is not possible for the same County Supervisor who signed Form FHA-971 to sign the insurance endorsement on the Promissory note, the original of the completed note will be sent to the State Office instead of directly to the lender. In such case, the State Director, or other authorized State Office official, will attest on the reverse of the note the signature of the different County Supervisor before sending the note to the lender. This will not be necessary when a local lender has no objection to a different signature on the insurance endorse-

ment than that which appeared on Form FHA-971.

(j) *Obtaining insurance.* When there are insurable buildings on the farm, the County Supervisor will see that adequate insurance is provided, effective as of the time of loan closing, in accordance with Part 306 of this chapter.

(k) *Loan closing.* Loans will be closed in accordance with Part 307, Subpart A, of this chapter.

(1) Immediately after loan closing, the original Form FHA-190 or a conformed copy of Form FHA-240 will be sent to the Finance Office.

(2) Immediately after loan closing, the original Form FHA-240 will be sent to the lender, except that when the United States as trustee for a State Rural Rehabilitation Corporation is the lender it will be forwarded to the State Director for safekeeping.

(3) When the mortgage is returned by the recording official, it will be retained in the County Office.

(4) The original deed of conveyance, if any, and conformed copy of the mortgage will be delivered to the borrower.

(5) If the borrower secures an owner's policy of title insurance, the County Supervisor will deliver it to the borrower as soon as it is received from the title insurance company.

(l) *Effective time of loan closing.* A Farm Ownership loan is considered closed when the mortgage is filed for record.

(m) *Water stock certificates.* Water stock certificates will be sent to the State Office for safekeeping.

(n) *Abstracts of title.* Any abstract of title will be delivered to the borrower for safekeeping except when an abstract is secured from a third party with the understanding it will be returned, such abstract will be sent directly to the third party. The County Supervisor will obtain a receipt from the borrower at the time the abstract is delivered to him. The receipt will be signed and dated by the borrower and the abstract will be identified in the receipt by showing the name of the abstractor who prepared the abstract, the number, if any, assigned by the abstractor, and the period covered by the abstract.

(R. S. 161, sec. 41 (1), 60 Stat. 1066, sec. 4 (c), 64 Stat. 100; 5 U. S. C. 22, 7 U. S. C. 1015 (1), 40 U. S. C. 442 (c))

Dated: December 28, 1956.

[SEAL] H. C. SMITH,
Acting Administrator,
Farmers Home Administration.

[F. R. Doc. 57-16; Filed, Jan. 2, 1957;
8:47 a. m.]

Subchapter C—Operating Loans

[FHA Instruction 441.3]

PART 342—OPERATING LOAN PROCESSING

Part 342, "Processing," Title 6, Code of Federal Regulations, is revised to read as follows:

- | | |
|-------|-----------------------------------|
| Sec. | |
| 342.1 | General. |
| 342.2 | Definitions. |
| 342.3 | Loan forms and routines. |
| 342.4 | Review and approval or rejection. |

- Sec.
342.5 Loan checks.
342.6 Loan closing.
342.7 Revision in the use of loan funds.

AUTHORITY: §§ 342.1 to 342.7 issued under sec. 41 (1), 60 Stat. 1066, 7 U. S. C. 1015 (1). Interpret or apply sec. 21, 70 Stat. 802, sec. 42 (c), 60 Stat. 1067, sec. 44, 60 Stat. 1068, as amended, sec. 48, 60 Stat. 1070, as amended, sec. 1, 63 Stat. 407, sec. 1311, 68 Stat. 830; 7 U. S. C. 1007, 1016, 1018, 1022, 31 U. S. C. 712a, 200.

§ 342.1 *General.* This part sets forth the requirements and procedures for the preparation and execution of documents and for other routines in connection with making Operating loans as prescribed in Subparts A and B of Part 341 in this chapter.

§ 342.2 *Definitions.* (a) "Applicant" is any individual who applies for an Operating loan under Title II of the Bankhead-Jones Farm Tenant Act, regardless of whether he has previously obtained or is presently indebted for such a loan.

(b) "Initial Operating Loan" is an Operating loan made to an applicant who is not indebted for a loan made under Title II of said act.

(c) "Subsequent Operating Loan" is an Operating loan made to an applicant who is indebted for a loan made under Title II of said act.

§ 342.3 *Loan forms and routines—(a) Applications for loans.* (1) Applicants for initial loans will execute Form FHA-197, "Application for FHA Services."

(2) Applicants for subsequent loans will not be required to execute Form FHA-197 but will be required to execute Form FHA-49, "Certifications—Operating Loans," in accordance with paragraph (b) of this section. If the financial statement executed by the applicant in connection with his most recent Farmers Home Administration loan does not reflect his current financial situation, a new financial statement will be made on a Form FHA-14, "Farm and Home Plan," for use by the County Committee in determining the eligibility of the applicant.

(3) If any debts owed by the applicant to the Farmers Home Administration have been settled for less than payment in full, the loan docket and any related County Office case files will be submitted to the National Office for review prior to approval of the loan.

(b) *Form FHA-49, "Certifications—Operating Loans."* (1) The "Applicant Certification," on Form FHA-49 will be executed by each applicant at the time the application for assistance for the crop year is made. However, if the County Committee has previously certified the applicant as eligible for loan assistance for a designated crop year, it will not be necessary for the applicant to execute another certification on Form FHA-49 provided the loan assistance to be extended is within the maximum amount established and the period covered by the existing County Committee certification.

(2) When the applicant is determined to be eligible, the County Committee will execute the "County Committee Certification," on Form FHA-49 before the loan is approved. This certification will

cover any loan(s) to be made to the applicant for the crop year specified within the maximum amount of credit established by the County Committee. The date designated by the County Committee as the end of the crop year and the maximum amount of credit will be inserted in the appropriate spaces.

(3) In connection with an application for a subsequent loan, when the County Committee has agreed to increase the original amount of loan assistance certified for the crop year because such amount was insufficient to meet the needs of the borrower, a new Form FHA-49 will be prepared and executed.

(4) When the applicant is determined to be ineligible, the County Supervisor will notify the applicant of the County Committee action and the reasons therefor.

(5) County Committee actions regarding the eligibility of applicants will be taken in Committee meetings attended by at least two members.

(c) *Form FHA-14A, "Long-Time Farm and Home Plan."* Form FHA-14A will be developed for all applicants for initial loans who are full-time operators of family-type farms except for those whose loans are scheduled for payment in full from the income received from the first year's operations.

(d) *Form FHA-14, "Farm and Home Plan."* Form FHA-14 will be developed for all Operating loans.

(e) *Appraisal of property.* The following information will be obtained concerning each secured or unsecured debt to be refinanced: The name of the applicant; the name of the lienholder, if any; the amount owing on the debt; a description of each item of property on which the indebtedness is owed and the market value of each; and the total value of all property on which the indebtedness is owed.

(f) *Tenure agreement.* Generally, a copy of the lease agreement between tenant applicants and their landlords will be obtained and made a part of the loan docket. Where it is not practical to obtain a copy of the lease agreement, a statement setting forth those terms and conditions of the agreement which are not clearly reflected in the Farm and Home Plan will be prepared and made a part of the loan docket.

(g) *Form FHA-31, "Promissory Note."* The amount of each loan and the scheduled payments thereon will be in multiples of \$10. Not more than four payments on a single note will be scheduled for any year. The time limitations for payment schedules prescribed in § 341.9 of Subpart A, of this chapter run from the date of the loan check instead of from the date of the note. Form FHA-31 will be dated as of the date of execution by the applicant. The applicant's spouse will be required to execute Form FHA-31 when legally required by State law, or the loan approval official determines that the signature is needed because of the spouse's interest in the farm being operated or in property offered as security, or it is determined by the State Director, on a state basis, that the spouse's signature will be required.

(h) *Form FHA-5, "Loan Authorization."* Form FHA-5 will be prepared for

the total amount of the loan as indicated on Form FHA-31. Separate Forms FHA-5 will be prepared for each loan. The approval official will indicate his determination that the applicant is eligible and his approval of the loan by signing and dating the original in the space provided.

(i) *Immediate and future loans.* All of the applicant's anticipated credit needs for the crop year will be planned for when Form FHA-14 is developed and, ordinarily, all of the required loan documents will be submitted to the Finance Office at one time. Such documents may provide for the loan funds to be disbursed in an immediate loan, or an immediate loan and one or more future loans, or one or more future loans without an immediate loan. However, all such loans must be disbursed at least 30 days apart and not later than the end of the fiscal year in which they were approved. If it is not practical for all of the loans to be disbursed by the end of the fiscal year, additional loans may be approved and submitted after the beginning of the succeeding fiscal year to meet the remainder of the applicant's credit needs for that crop year if the loan funds are then available. Subject to the above requirements, additional loans also may be submitted at any time during the crop year to meet credit needs of the applicant which could not be anticipated at the beginning of the crop year, provided the need for such credit is reflected on a revision of Form FHA-14.

(1) When credit is to be extended in more than one loan, a separate loan authorization and note must be submitted for each loan.

(2) When a loan is approved for a single future disbursement, the loan will be "initial" or "subsequent" in accordance with § 342.2 (b) or (c), whichever is appropriate. When loan assistance is provided in more than one loan, all such loans will be shown as the same type, that is, either initial or subsequent, depending on the status of the account at the time the first such loan is made.

(j) *Form FHA-30, "Crop and Chattel Mortgage."* The property listed should be described accurately and adequately. The requirements for the signature of the applicant's spouse will be as prescribed for Form FHA-31 in paragraph (g) of this section.

(k) *Form FHA-32, "Subordination Agreement."* When a Subordination Agreement is required, Form FHA-32, or other form approved by the State Director, with the advice of the Attorney in Charge, where Form FHA-32 is not legally sufficient, will be used. The years to be covered by the subordination generally will be for the unexpired period of the lease but as a minimum will be for the year for which the loan is made.

(l) *Form FHA-80, "Assignment of Proceeds from the Sale of Agricultural Products."* Form FHA-80 or other form approved by the State Director, with the advice of the Attorney in Charge, will be used to obtain an assignment of proceeds from the sale of farm, dairy, poultry, or other agricultural products.

(m) *Form FHA-916, (Form Letter).* Form FHA-916 will be used when it is necessary to obtain both a division of in-

come and a non-disturbance agreement from prior lienholders.

(n) *Form FHA-933, "Nondisturbance Agreement."* Form FHA-933 will be used when it is necessary to obtain only non-disturbance agreements from creditors of an applicant who are in a position to interfere with the applicant's farming operations.

(o) *Form FHA-310, "Extension Agreement."* Form FHA-310 will be used when it is necessary to extend installments on a borrower's note(s) and advance him additional credit after the 7-year continuous indebtedness limitation has been reached. Form FHA-310 will be prepared for each note on which an installment(s) is extended in accordance with the policies expressed in § 341.12 (c) of this subchapter and the following.

(1) Loans may be made after the 7-year continuous indebtedness limitation has been reached only during the period for which the borrower's existing note(s) has been extended. Therefore, the payment schedule on at least one note will be extended when making the first loan after the 7-year continuous indebtedness limitation has been reached. After the extension has been processed, additional loans may be made within the extended period without further extension. If the original extension was not for the full period authorized, and an additional loan is to be made after the expiration of the extended period, a further extension, within the maximum period, must be approved. The extended period is the period between the date ending the period of 7-year continuous indebtedness and the latest due date to which any installment is extended. Extension agreements will be entered into only in connection with the making of additional loans.

(2) Form FHA-310 will be executed by the borrower, the loan approval official, and by any junior lien holder(s). The Form will be dated as of the date it is executed by the borrower. The original will be transmitted to the Finance Office along with Forms FHA-31 and FHA-5.

(3) Any necessary actions will be taken to maintain the priority of the Government's lien securing the note(s) being extended.

§ 342.4 *Review and approval or rejection.* After the loan documents have been assembled, the loan approval official will make the determinations required in § 341.13 (a) or § 341.33 of this subchapter, whichever is applicable to the type of loan involved.

(a) *Approval of loans.* If the loan is to be approved, the loan approval official will date and sign Form FHA-5. In cases in which an Operating loan is being made in connection with the making of a Real Estate loan and one loan is dependent on the other, the loan approval official may determine that the loan checks should be issued simultaneously in order to avoid unnecessary interest charges to the applicant. In such cases, when it is not possible to request the Farm Ownership funds before the end of the fiscal year, it will be necessary to obtain a new note and a loan authorization for the Operating

loan which must be approved after the beginning of the new fiscal year.

(b) *Rejection of loans.* If a loan is rejected, the County Supervisor will notify the applicant of the rejection and will return to him only the signed copy of Form FHA-31, tenure agreements, and any executed security instruments.

§ 342.5 *Loan checks—(a) Undelivered checks.* If for any reason a loan check cannot be delivered within 21 days from the date thereof, it will be returned to the Regional Disbursing Office, United States Treasury Department, 716 New Federal Building, St. Louis 1, Missouri, with a request for cancellation or remailing. When a substantial delay is likely to be encountered in the delivery of a loan check, ordinarily it will be advisable to return the check for cancellation rather than remailing because interest accrues from the date of the loan check. In such cases, a new loan check can be obtained at a suitable time by submitting a new loan authorization and note to the Finance Office.

(b) *Lost or destroyed checks.* When a loan check is lost or destroyed, and the borrower desires to cancel the check, or if a substitute check is to be issued, the County Supervisor will so advise the Finance Office which will take the necessary action. Under no circumstances will the County Supervisor process a new loan authorization to obtain a check to replace one which has been lost or destroyed.

§ 342.6 *Loan closing—(a) Check delivery.* Only bonded employees of the Farmers Home Administration will receive and deliver loan checks. Upon receipt of a loan check, the County Supervisor will notify the applicant promptly, indicating where and when he may expect delivery of the check, or will mail the check to him, or when a supervised bank account is required and the depository bank does not require the applicant's endorsement for deposit, he may deposit the loan check in the supervised bank account and furnish the applicant a copy of the deposit slip. If the bank will not accept the loan check for deposit in a supervised bank account without the applicant's endorsement, the County Supervisor will retain the check and arrange with the applicant for a time and place for its deposit.

(b) *Form FHA-87, "Report of Lien Search."* Form FHA-87 or other form providing substantially the same information will be prepared.

(1) Lien searches will be obtained at a time which will assure that the security instruments filed or recorded give the Government the required security.

(2) Except as otherwise provided in this subparagraph, applicants are required to obtain and pay the cost of lien searches. County Supervisors will make inquiries locally concerning the available sources through which satisfactory lien searches can be obtained at nominal cost to applicants. However, applicants should select the sources through which lien searches are made. The cost of lien searches may be paid from the proceeds of loan checks when necessary.

(1) State Directors may authorize the employees of a particular County Office unit to make lien searches without cost to applicants when the cost of lien searches is exorbitant, such service is not available, or experience has shown that the service available will cause undue delay in the closing of loans or make it difficult to comply with the provisions of subparagraph (1) of this paragraph.

(ii) County Office employees may make continuation lien searches when such searches are made as referred to in the last sentence of subparagraph (1) of this paragraph; or if such lien searches are required, as determined by the State Director based upon the advice of the Attorney in Charge, in connection with subsequent mortgages taken to describe additional chattels purchased with loan funds.

(c) *Security documents.* Bonded County Office employees are authorized to execute and file or record any legal instruments necessary to obtain or preserve security for loans. This includes mortgages and similar lien instruments, as well as affidavits, acknowledgments, and other certifications, when the mortgagee must execute such instruments under State law.

(d) *Obtaining security for Operating loans.* In cases in which capital goods are to be purchased and covered by a lien, the County Supervisor will encourage the applicant to make preliminary arrangements for the purchase of all such items by the time the initial mortgage is taken in order to eliminate the taking of additional mortgages. The taking of security in closing loans will be governed by the following requirements:

(1) If all of the loan funds are deposited in a supervised bank account, the initial mortgage to secure the loan will be taken not later than the date of the first withdrawal of any of the loan funds from such account.

(2) If only a part or none of the loan funds are deposited in a supervised bank account, the initial mortgage to secure the loan will be taken not later than the time of the delivery of the loan check to the applicant.

(3) If, at the time the initial mortgage is taken under the requirements of subparagraphs (1) or (2) of this paragraph, a part of the property which is to serve as security for the loan is yet to be purchased, a first lien will be taken on such property at the time it is purchased, unless the after-acquired property clause in the mortgage gives the Government a first lien on such property.

(e) *Executing and recording or filing.* Crop and chattel mortgages must be delivered or mailed to the recording office for recordation or filing, whichever is appropriate, the same day such instruments are executed and delivered to the Farmers Home Administration, provided that executed lien instruments received too late in the day to be delivered or mailed to the recording office on that day will be delivered or mailed not later than the next work day; and in those cases in which lien instruments are taken before delivery of the loan checks, such instruments will be delivered or mailed to the

recording official for filing or recording by the time the loan check is delivered.

(f) *Fees.* Statutory fees for filing or recording mortgages or other legal instruments and notary and lien search fees incident to loan transactions in all cases will be paid by the borrower from personal funds or from the proceeds of the loan.

(1) Whenever cash is accepted by Farmers Home Administration personnel to be used to pay the filing or recording fees for security instruments, or the cost of making lien searches, Form FHA-385, "Acknowledgment of Payment for Recording and Lien Search Fees," will be executed.

§ 342.7 *Revision in the use of loan funds.* (a) The concurrence of the official who approved the loan involved ordinarily will be obtained before changes are made in the purposes for which loan funds are to be used. However, minor changes involving only relatively nominal amounts may be approved by the County Supervisor with respect to loans approved by other officials, provided adequate loan funds will be available to carry out the purposes of the loan. In all instances, the use made of loan funds must be in accord with the purposes for which Operating loans may be made, and the borrower and the County Supervisor must agree to the changes.

(b) When changes are made in the use of loan funds, no revision will be made in the payment schedule on Form FHA-31. However, when funds loaned for the purchase of capital goods are to be used to meet operating expenses, the borrower must agree to pay the funds so used in accordance with the payment terms prescribed in § 341.9 of this subchapter. Appropriate changes with respect to the payments will be made in Form FHA-14 and initialed by the borrower.

Dated: December 28, 1956.

[SEAL] H. C. SMITH,
Acting Administrator,
Farmers Home Administration.

[F. R. Doc. 57-15; Filed, Jan. 2, 1957;
8:47 a. m.]

Chapter IV—Commodity Stabilization Service and Commodity Credit Corporation, Department of Agriculture

Subchapter D—Regulations Under Soil Bank Act

PART 485—SOIL BANK

SUBPART—ACREAGE RESERVE PROGRAM

REDEMPTION OF CERTIFICATES

The regulations governing the redemption of certificates in grain under the acreage reserve program, 21 F. R. 6881 and 8131 are hereby amended as follows:

1. Section 485.258 is amended to read as follows:

§ 485.258 *When redemption may be made.* Certificates issued with respect to any year's crop shall be redeemable in a grain only (a) after the end of the

normal harvesting season for that year's crop of such grain in the area where delivery is desired or the area where the grain under price support loan is stored, and (b) before the beginning of the normal harvesting season for the succeeding year's crop of such grain in such area. The normal harvesting season for each area is published in Appendix A to these regulations (21 F. R. 8131).

2. Appendix A to the regulations governing the redemption of certificates in grain under the acreage reserve program (21 F. R. 8131) is amended by deleting the parenthetical statement at the end of the introductory paragraph of such appendix.

(Sec. 124, 70 Stat. 198)

Issued at Washington, D. C., this 27th day of December 1956.

[SEAL] E. L. PETERSON,
Acting Secretary.

[F. R. Doc. 57-36; Filed, Jan. 2, 1957;
8:52 a. m.]

PART 485—SOIL BANK

SUBPART—CONSERVATION RESERVE PROGRAM

HARVESTING OR GRAZING OR USING STORED WATER FROM CONSERVATION RESERVE

Pursuant to the authority vested in the Secretary of Agriculture pursuant to the Soil Bank Act (70 Stat. 188), § 485.157 (i) of the Conservation Reserve Program Regulations issued August 16, 1956 (21 F. R. 6289) is hereby amended by adding at the end thereof the following:

(3) Except where 1956 is included as a part of the contract period, such restrictions on harvesting and grazing shall not apply to harvesting or grazing prior to March 15 of the first year of the contract period of a crop which matured and normally would have been harvested in the preceding year, unless harvesting of the crop would have been in violation of an acreage reserve agreement.

(Sec. 124, 70 Stat. 198)

Done at Washington, D. C., this 28th day of December 1956.

[SEAL] E. L. PETERSON,
Acting Secretary.

[F. R. Doc. 57-14; Filed, Jan. 2, 1957;
8:47 a. m.]

TITLE 7—AGRICULTURE

Chapter VIII—Commodity Stabilization Service (Sugar), Department of Agriculture

Subchapter B—Sugar Requirements and Quotas

[Sugar Reg. 814.33]

PART 814—ALLOTMENT OF SUGAR QUOTAS

DOMESTIC BEET SUGAR AREA, 1957

Basis and purpose. This allotment order is issued under section 205 (a) of the Sugar Act of 1948, as amended (hereinafter called the "act"), for the purpose of establishing allotments of the 1957

sugar quota for the Domestic Beet Sugar Area for the period January 1, 1957, to the date allotments of such quota are prescribed for the full calendar year 1957.

Omission of recommended decision and effective date. The record of the hearing regarding the subject of this order shows that about 1,515,000 short tons, raw value, of sugar will be held in inventory by the allottees on January 1, 1957, or will be produced by them from the remainder of the 1956-crop sugar beets by July 1957. This quantity of sugar, along with production of sugar from the 1957-crop beets will result in a supply of sugar available for marketing in 1957 in excess of the 1957 quota that may be expected for the area. Thus, lack of continuity in allotment of the quota might lead to disorderly marketing and some interested persons may be prevented from having equitable opportunities to market sugar and the interests of growers of sugar beets might be adversely affected (R. 5). Inventories of sugar on January 1, 1957, together with production in early 1957 may make it possible for some allottees to market a quantity of sugar larger than the allotments established by this order. It, therefore, is necessary that such allotments, to be effective, be in effect on January 1, 1957. In view thereof, and since this proceeding was instituted for the purpose of issuing allotments to prevent disorderly marketing of sugar and to afford all interested persons an equitable opportunity to market, it is hereby found that due and timely execution of the functions imposed upon the Secretary under the act imperatively and unavoidably requires omission of a recommended decision in this proceeding. It is hereby further found that compliance with the 30-day effective date requirement of the Administrative Procedure Act (60 Stat. 237), is impracticable and contrary to the public interest and, consequently, this order shall be effective on January 1, 1957.

Preliminary statement. Section 205 (a) of the act requires the Secretary to allot a quota whenever he finds that the allotment is necessary (1) to assure an orderly and adequate flow of sugar or liquid sugar in the channels of interstate or foreign commerce, (2) to prevent the disorderly marketing of sugar or liquid sugar, (3) to maintain a continuous and stable supply of sugar, or (4) to afford all interested persons equitable opportunities to market sugar within the quota for the area. Section 205 (a) also requires that such allotment be made after such hearing and upon such notice as the Secretary may by regulation prescribe.

Pursuant to the applicable rules of practice and procedure (21 F. R. 4251) a preliminary finding was made that allotment of the quota is necessary, and a notice was published on October 20, 1956 (21 F. R. 8087), of a public hearing to be held at Washington, D. C., in Room 2W, Administration Building of the Department of Agriculture on November 1, 1956, at 10:00 a. m., e. s. t., for the purpose of receiving evidence to enable the Secretary (1) to affirm, modify or revoke the preliminary finding of necessity for allotments, and (2) to establish fair, ef-

efficient and equitable allotments of a portion of the 1957 quota for the Domestic Beet Sugar Area for the period January 1, 1957 to the date the Secretary prescribes allotments of such quota for the calendar year 1957.

The hearing was held at the place and time specified in the notice.

Basis for findings and conclusions. Section 205 (a) of the act reads in pertinent part as follows:

*** Allotments shall be made in such manner and in such amounts as to provide a fair, efficient, and equitable distribution of such quota or proration thereof, by taking into consideration the processing of sugar or liquid sugar from sugar beets or sugarcane to which proportionate shares, determined pursuant to the provisions of subsection (b) of section 302, pertained; the past marketings or importations of each such person and the ability of such person to market or import that portion of such quota or proration thereof allotted to him ***

The necessity for allotment of the 1957 sugar quota for the Domestic Beet Sugar Area is indicated by the fact that the quantity of sugar in prospect for marketing in 1957 exceeds the quota that may be established and that in the absence of allotments disorderly marketing might occur and some interested persons may be prevented from having equitable opportunities to market sugar (R. 5).

Testimony indicates that it is desirable to defer allotment proceedings with respect to the allotment of the full quota for 1957 until the level of processings from the 1956 beet crop will be known or can be closely approximated; but that allotments of a portion of the quota should be in effect January 1, 1957, because inventories of sugar on January 1, 1957, together with production of sugar in early 1957 may make it possible for some allottees to market shortly after January 1, 1957, a quantity of sugar larger than eventually may be allotted to them (R. 5, 6).

To meet this situation it was proposed that allotment of 1,600,000 short tons, raw value, of the 1957 sugar quota for the Domestic Beet Sugar Area be established to be effective for the period January 1, 1957, to the date allotments of the entire quota for the calendar year are established, by allotting 1,600,000 short tons, raw value, to the respective allottees on the basis that each allottee's allotment be the same proportion of 1,600,000 short tons, raw value, as his allotment was of the total 1956 allotments established in Sugar Regulation 814.32, Amendment 2, effective August 15, 1956 (21 F. R. 6083, R. 6, Ex. 4).

Allotments established on this basis give effect to the three factors cited in section 205 (a) of the act for consideration in allotting a quota in the same manner that these factors were treated in allotting the quota for 1956 and constitute a fair, efficient and equitable allotment of a portion of the 1957 quota to be in effect for the early part of the year (R. 7, 8).

In accordance with the hearing record (R. 9) it has been found that the Holly Sugar Corporation is the successor of the Garden City Company and Menominee

Sugar Company is successor to Superior Sugar Refining Company.

The hearing record contains proposals (R. 9, 10) to include in the order to become effective January 1, 1957, paragraphs essentially the same as paragraphs (b) and (c) of Sugar Regulation 814.32 (20 F. R. 9853), which established initial allotments for 1956, and paragraph (c) of Sugar Regulation 814.32, Amendment 1 (21 F. R. 2589). No testimony, proposals or arguments contrary to that outlined above appear in the hearing record.

Findings and conclusions. On the basis of the record of the hearing, I hereby find and conclude that:

(1) For the calendar year 1957 Domestic Beet Sugar processors will have available for marketing from 1956-crop sugar beets about 1,515,000 short tons, raw value, of sugar. This quantity of sugar, together with production of sugar from 1957-crop beets, will result in a supply of sugar available for marketing in 1957 sufficiently in excess of the anticipated 1957 quota for the Domestic Beet Sugar Area to cause disorderly marketing and prevent some interested persons from having equitable opportunities to market sugar.

(2) The allotment of the 1957 Domestic Beet Sugar Area quota is necessary to prevent disorderly marketings and to afford all interested persons equitable opportunities to market sugar processed from sugar beets produced in the area.

(3) Allotment of the entire 1957 calendar year sugar quota for the Domestic Beet Sugar Area should be deferred until processings of the 1956-crop sugar beets can be known or closely estimated for all allottees. However, it is necessary that an allotment of such quota be in effect on January 1, 1957, in order to avoid disorderly marketing out of sugar on hand on that date or to be produced shortly thereafter, and to afford all interested persons equitable opportunities to market sugar.

(4) The findings in (3), above, require that, effective for the period January 1, 1957, until the date allotments of the entire 1957 Domestic Beet Sugar Area quota for the full calendar year are prescribed, 1,600,000 short tons, raw value, of the 1957 quota shall be allotted. Allotments of such quantity shall be established by allotting to each allottee the same proportion of 1,600,000 short tons, raw value, as his allotment was of the total 1956 allotments established by Sugar Regulation 814.32, Amendment 2, effective August 15, 1956.

(5) In establishing allotment of the 1957 sugar quota for the Domestic Beet Sugar Area as found in (4), above, the statutory factors, "processings *** from *** proportionate shares," "past marketings" and "ability to market" have been taken into consideration.

(6) The allotments of the 1956 quota referred to in (4), above, are as set forth in the following table:

Processor	Allotments (100-pound bags refined beet sugar)
Amalgamated Sugar Co., The.....	4,441,445
American Crystal Sugar Co.....	5,246,511

Processor	Allotments (100-pound bags refined beet sugar)
Buckeye Sugars, Inc.....	167,328
Franklin County Sugar Co.....	187,074
Garden City Co., The.....	197,074
Great Western Sugar Co., The..	7,409,468
Holly Sugar Corp.....	5,839,306
Layton Sugar Co.....	171,328
Menominee Sugar Co.....	118,480
Michigan Sugar Co.....	1,465,416
Monitor Sugar Division of Robt. Gage Coal Co.....	606,953
National Sugar Manufacturing Co., The.....	82,105
Northern Ohio Sugar Co.....	452,097
Spreckels Sugar Co.....	3,797,471
Superior Sugar Refining Co.....	89,380
Union Sugar Division of Con- solidated Foods Corp.....	1,558,167
Utah-Idaho Sugar Co.....	3,403,575
Any other person.....	000
Total.....	35,233,178

(7) The Holly Sugar Corporation shall succeed to all interests of the Garden City Company and the Menominee Sugar Company shall succeed to all interests of Superior Sugar Refining Company as allottees of the 1957 sugar quota for the Domestic Beet Sugar Area.

(8) To assure that the marketing of sugar or liquid sugar is charged against the proper allotment, it is necessary that the order provide for charges to allotments of processors who sell sugar beets, or molasses derived from sugar beets, but retain and process such sugar beets or molasses into sugar or liquid sugar for delivery to or for the account of the buyer.

(9) To facilitate full and effective use of allotments, provision shall be made in the order for transfer of allotments under circumstances of a succession of interest.

(10) Provision shall be made in the order to restrict marketings of sugar to allotments established herein.

(11) For the period January 1, 1957, until the date allotments of the entire 1957 calendar year sugar quota for the Domestic Beet Sugar Area are prescribed, the allotments established in the foregoing manner and in the quantities set forth in the order provide a fair, efficient and equitable distribution of such quota and meet the requirements of section 205 (a) of the act.

Order. Pursuant to the authority vested in the Secretary of Agriculture by section 205 (a) of the act, it is hereby ordered:

§ 814.33 Allotment of the 1957 sugar quota for the Domestic Beet Sugar Area—(a) Allotments. For the period January 1, 1957, until the date allotments of the entire 1957 calendar year sugar quota for the Domestic Beet Sugar Area are prescribed, 1,600,000 short tons, raw value, of the 1957 quota for the Domestic Beet Sugar Area, expressed in equivalent quantity as 29,906,542 one-hundred pound bags of refined beet sugar is hereby allotted to the following processors in the quantities which appear opposite their respective names:

Processors	Allotments 100-pound bags, refined sugar
Amalgated Sugar Co., The-----	3,769,977
American Crystal Sugar Co.-----	4,453,331
Buckeye Sugars, Inc.-----	142,031
Franklin County Sugar Co.-----	158,792
Great Western Sugar Co., The-----	6,289,287
Holly Sugar Corp.-----	5,123,786
Layton Sugar Co.-----	145,426
Menominee Sugar Co.-----	176,435
Michigan Sugar Co.-----	1,243,871
Monitor Sugar Division of Robert Gage Coal Co.-----	515,192
National Sugar Manufacturing Co., The-----	69,692
Northern Ohio Sugar Co.-----	383,748
Spreckels Sugar Co.-----	3,223,360
Union Sugar Division, Consoli- dated Foods Corp.-----	1,322,600
Utah-Idaho Sugar Co.-----	2,889,014
Any other person-----	000
Total-----	29,906,542

(b) *Marketing of sugar beets and molasses.* If sugar beets or molasses derived from sugar beets are sold by a processor but retained and processed by such processor and the sugar or liquid sugar processed therefrom is delivered to or for the account of the buyer of the sugar beets or molasses, the marketing of such sugar or liquid sugar shall, at the time such sugar or liquid sugar is so delivered, be charged to the allotment of the processor who sold and processed such sugar beets or molasses.

(c) *Transfer of allotment.* The Director of the Sugar Division, Commodity Stabilization Service, of the Department, may, consistent with the provisions and objectives of the Sugar Act, permit marketings to be made by one allottee, or other person, within the allotment or portion thereof established for another allottee upon receipt of evidence satisfactory to him of a merger, consolidation, transfer of sugar processing facilities, or other action of similar effect upon the allottees or persons involved, and upon relinquishment by one of the allottees of all or a portion of its allotment.

(d) *Restrictions on shipment and marketing.* For the period January 1, 1957, until the date an allotment order is issued allotting the entire 1957 calendar year sugar quota for the Domestic Beet Sugar Area, each person named in paragraph (a) of this section, and any other person is hereby prohibited from marketing in interstate commerce or in competition with sugar or liquid sugar shipped, transported or marketed in interstate commerce or foreign commerce, any sugar or liquid sugar produced from sugar beets grown in the Domestic Beet Sugar Area in excess of his allotment established in paragraph (a) of this section.

(Sec. 403, 61 Stat. 932; 7 U. S. C. 1153. Interprets or applies sec. 205, 209, 61 Stat. 926, 928; 7 U. S. C. 1115, 1119)

Done at Washington, D. C., this 28th day of December 1956.

[SEAL]

E. L. PETERSON,
Acting Secretary.

[F. R. Doc. 56-10467; Filed, Dec. 31, 1956; 12:36 p. m.]

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

[Navel Orange Reg. 98, Amdt. 1]

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

LIMITATION OF HANDLING

Findings. 1. Pursuant to the marketing agreement, as amended, and Order No. 14, as amended (7 CFR Part 914; 21 F. R. 4707), regulating the handling of navel oranges grown in Arizona and designated part of California, effective September 22, 1953, 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 amendment 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 amendment is based became available and the time when this amendment must become effective in order to effectuate the declared policy of the act is insufficient, and this amendment relieves restrictions on the handling of Navel oranges grown in Arizona and designated part of California.

Order, as amended. The provisions in paragraph (b) (1) (i) of § 914.398 (Navel Orange Regulation 98, 21 F. R. 10289) are hereby amended to read as follows:

(i) District 1: 554,400 cartons.

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

Dated: December 28, 1956.

[SEAL]

S. R. SMITH,
Director, Fruit and Vegetable
Division, Agricultural Mar-
keting Service.

[F. R. Doc. 57-35; Filed, Jan. 2, 1957; 8:52 a. m.]

PART 1017—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

ORDER REGULATING HANDLING

Sec. 1017.0 Findings and determinations.

DEFINITIONS

1017.1 Secretary.
1017.2 Act.
1017.3 Person.

Sec.
1017.4 Production area.
1017.5 Onions.
1017.6 Handler.
1017.7 Handle.
1017.8 Grading.
1017.9 Grade and size.
1017.10 Producer.
1017.11 Committee.
1017.12 Fiscal period.
1017.13 Variety or varieties.
1017.14 Export.
1017.15 District.
1017.16 Pack.
1017.17 Container.

COMMITTEE

1017.20 Establishment and membership.
1017.21 Procedure.
1017.22 Selection.
1017.23 Term of office.
1017.24 Powers.
1017.25 Duties.
1017.26 Expenses and compensation.
1017.27 Districts.
1017.28 Nominations.
1017.29 Failure to nominate.
1017.30 Vacancies.

EXPENSES AND ASSESSMENTS

1017.40 Expenses.
1017.41 Budget.
1017.42 Assessments.
1017.43 Accounting.
1017.44 Refunds.

RESEARCH AND DEVELOPMENT

1017.47 Research and development.

REGULATION

1017.50 Marketing policy.
1017.51 Recommendation for regulations.
1017.52 Issuance of regulations.
1017.53 Handling for specified purposes.
1017.54 Minimum quantities.
1017.55 Notification of regulations.
1017.56 Safeguards.

INSPECTION

1017.60 Inspection and certification.

REPORTS

1017.65 Reports.

EFFECTIVE TIME AND TERMINATION

1017.70 Effective time.
1017.71 Termination.
1017.72 Proceeding after termination.
1017.73 Effect of termination or amendment.

MISCELLANEOUS PROVISIONS

1017.81 Compliance.
1017.82 Right of the Secretary.
1017.83 Duration of immunities.
1017.84 Agents.
1017.85 Derogation.
1017.86 Personal liability.
1017.87 Separability.
1017.88 Amendments.

AUTHORITY: §§ 1017.0 to 1017.88 issued under sec. 5, 49 Stat. 753, as amended; 7 U. S. C. 608c.

§ 1017.0 *Findings and determinations—(a) Findings upon the basis of the hearing record.* Pursuant to Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq.; 68 Stat. 906, 1047), and the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held at Caldwell, Idaho, on June 20-21, 1956, upon a

proposed marketing agreement and a proposed marketing order regulating the handling of onions grown in Malheur County, Oregon, and in all counties south and southeast of the southern boundary of Idaho County in the State of Idaho. Upon the basis of the evidence introduced at such hearing, and the record thereof, it is found that:

(1) This order, and all the terms and conditions hereof, will tend to effectuate the declared policy of the act with respect to onions produced in the production area (i) by establishing and maintaining such orderly marketing conditions therefor as will tend to establish, as prices to the producers thereof, parity prices, (ii) and by protecting the interest of the consumer by approaching the level of prices which it is declared in the act to be the policy of Congress to establish by a gradual correction of the current level of prices at as rapid a rate as the Secretary deems to be in the public interest and feasible in view of the current consumptive demand in domestic and foreign markets, and by authorizing no action which has for its purpose the maintenance of prices to producers of such onions above the parity level, and (iii) by authorizing the establishment and maintenance of such minimum standards of quality and maturity, and such grading and inspection requirements as may be incidental thereto, as will tend to effectuate such orderly marketing of such onions as will be in the public interest;

(2) This order regulates the handling of onions grown in the production area in the same manner as, and is applicable only to persons in the respective classes of industrial and commercial activity specified in, a proposed marketing agreement upon which a hearing has been held;

(3) This order is limited in application to the smallest regional production area which is practicable, consistently with carrying out the declared policy of the act; and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the act;

(4) This order prescribes, so far as practicable, such different terms, applicable to different parts of the production area, as are necessary to give due recognition to the differences in the production and marketing of onions grown in the production area; and

(5) All handling of onions grown in the production area is in the current of interstate or foreign commerce, or directly burdens, obstructs, or affects such commerce.

(b) *Determinations.* It is hereby determined that:

(1) Handlers (excluding cooperative associations of producers who are not engaged in processing, distributing, or shipping onions covered by this order) of more than 50 percent of the volume of onions covered by this order have signed a marketing agreement regulating the handling of onions grown in the production area, and

(2) The issuance of this order is approved or favored (i) by at least two-thirds of the producers of onions who participated in a referendum held dur-

ing the period December 10 through December 17, 1956, and who, during the determined representative period (July 1, 1955, to June 30, 1956), have been engaged within the production area in the production of onions for market, and (ii) by producers who participated in the aforesaid referendum who, during the aforesaid representative period, produced for market at least two-thirds of the volume of such onions produced for market within the production area specified herein by all producers who participated in the said referendum.

Order relative to handling. It is, therefore, ordered that on and after the effective time thereof, the handling of onions grown in Malheur County, Oregon, and in all counties south and southeast of the southern boundary of Idaho County in the State of Idaho, shall be in conformity to and in compliance with the terms and conditions of this order; and such terms and conditions are as follows:

DEFINITIONS

§ 1017.1 *Secretary.* "Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the United States Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in his stead.

§ 1017.2 *Act.* "Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended; 7 U. S. C. 601 et seq., 68 Stat. 906, 1047).

§ 1017.3 *Person.* "Person" means an individual, partnership, corporation, association, or any other business unit.

§ 1017.4 *Production area.* "Production area" means all territory included within the boundaries of the County of Malheur in Oregon, and all counties south and southeast of the southern boundary of Idaho County in the State of Idaho.

§ 1017.5 *Onions.* "Onions" means all varieties of onions grown, or which may be grown, within the production area.

§ 1017.6 *Handler.* "Handler" is synonymous with "shipper" and means any person (except a common or contract carrier of onions owned by another person) who handles onions.

§ 1017.7 *Handle.* "Handle" is synonymous with "ship" and means to sell or transport onions, or cause onions to be sold or transported, within the production area or between the production area and any point outside thereof. Except as otherwise provided in §§ 1017.56 and 1017.65, this definition of "handle" shall not be applicable to onions that are transported within the production area for grading or storing therein, or to onions that are transported or sold to commercial dehydrators for processing by such dehydrators into dehydrated onion products.

§ 1017.8 *Grading.* "Grading" is synonymous with "prepare for market" and

means the sorting or separation of onions into grades and sizes for market purposes.

§ 1017.9 *Grade and size.* "Grade" means any of the officially established grades of onions, and "size" means any of the officially established sizes of onions, as set forth in:

(a) The United States Standards for Northern Grown Onions (21 F. R. 6251), or amendments thereto, or modifications thereof, or variations based thereon; and

(b) Any other United States Standards, or State of Idaho or Oregon Standards for onions, or amendments thereto, or modifications thereof, or variations based thereon.

The term "size" also includes any of the sizes recognized by the onion trade in the production area.

§ 1017.10 *Producer.* "Producer" means any person engaged in the production of onions for market.

§ 1017.11 *Committee.* "Committee" means the Idaho-Eastern Oregon Onion Committee established pursuant to § 1017.20.

§ 1017.12 *Fiscal period.* "Fiscal period" means the period beginning and ending on the dates approved by the Secretary pursuant to recommendations by the committee.

§ 1017.13 *Variety or varieties.* "Variety" or "varieties" means and includes all classifications of onions according to those definitive characteristics now or hereafter recognized by the United States Department of Agriculture.

§ 1017.14 *Export.* "Export" means shipment of onions beyond the boundaries of continental United States.

§ 1017.15 *District.* "District" means each of the geographical divisions of the production area initially established or as reestablished pursuant to § 1017.27.

§ 1017.16 *Pack.* "Pack" means a quantity of onions in any type of container and which falls within specific weight limits or within specific grade or size limits, or both, as may be recommended by the committee and approved by the Secretary.

§ 1017.17 *Container.* "Container" means a sack, box, bag, crate, hamper, basket, carton, package, or any other type of receptacle used in the packaging, transportation, sale, shipment or other handling of onions.

ADMINISTRATIVE COMMITTEE

§ 1017.20 *Establishment and membership.* (a) The Idaho-Eastern Oregon Onion Committee consisting of ten members, of whom six shall be producers and four shall be handlers, is hereby established. For each member of the committee there shall be an alternate who shall have the same qualifications as the member.

(b) An alternate member of the committee shall act in the place and stead of the member for whom he is an alternate, during such member's absence or inability to act, and shall perform other duties as assigned. In the event of the death, removal, resignation or disqualifi-

cation of a member, his alternate shall act for him until a successor for such member is selected and has qualified.

§ 1017.21 Procedure. (a) Seven members of the committee shall be necessary to constitute a quorum and seven concurring votes shall be required to pass any motion or approve any committee action.

(b) The committee may provide for voting by telephone, telegraph, or other means of communication and any such vote shall be confirmed promptly in writing: *Provided*, That if an assembled meeting is held, all votes shall be cast in person.

§ 1017.22 Selection. The Secretary shall select the producer and handler members and alternates from the nominee lists submitted pursuant to this part or from among other eligible persons.

(a) Each person selected as a committee member or alternate to represent producers shall be an individual who is a producer, or an officer or employee of a producer, in the district for which selected.

(b) Each person selected as a committee member or alternate to represent handlers shall be an individual who is a handler, or an officer or employee of a handler in the portion of the production area for which selected.

(c) The Secretary shall select one producer member of the committee, and alternate, from each of the districts established, or reestablished, pursuant to § 1017.27. The Secretary shall also select one handler member of the committee, and his alternate, from the Idaho portion of the production area and one member and his alternate from Malheur County, Oregon, and two handler members, and their respective alternates, from the production area-at-large.

(d) Each person selected by the Secretary as a committee member or alternate shall qualify by filing a written acceptance promptly with the Secretary.

§ 1017.23 Term of office. (a) The term of office of committee members and alternates shall be for two years beginning on the first day of June and continuing through May 31. The terms of office of members and alternates shall be so determined that one-half of the total committee membership shall terminate each May 31.

(b) Committee members and alternates shall serve during the term of office for which they are selected and have qualified, or during that portion thereof beginning on the date on which they qualify during the current term of office and continuing until the end thereof, and until their successors are selected and have qualified.

§ 1017.24 Powers. The committee shall have the following powers:

(a) To administer the provisions of this part in accordance with its terms;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 1017.25 Duties. It shall be the duty of the committee:

(a) At the beginning of each fiscal period, or as soon thereafter as practicable, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees of committee members, and to adopt such rules and regulations for the conduct of its business as it may deem advisable;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as he may request;

(d) To appoint such employees, agents, and representatives as it may deem necessary and to determine the salaries and define the duties of each such person;

(e) To investigate, from time to time, and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to onions, and to engage in such research and service activities which relate to the handling or marketing of onions as may be approved by the Secretary;

(f) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee and such minutes, books, and records shall be subject to examination at any time by the Secretary or his authorized agent or representative;

(g) To make available to producers and handlers the committee voting record on recommended regulations and on other matters of policy;

(h) At the beginning of each fiscal period, to submit to the Secretary a budget of its proposed expenses for such fiscal period, together with a report thereon;

(i) To cause the books of the committee to be audited by a competent accountant at least once each fiscal period, and at such other time as the committee may deem necessary or as the Secretary may request; and the report of such audit shall show the receipt and expenditure of funds collected pursuant to this part; a copy of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; and

(j) To consult, cooperate, and exchange information, with other onion marketing committees and other individuals or agencies in connection with all proper committee activities and objectives under this subpart.

§ 1017.26 Expenses and compensation. Committee members and alternates when acting on committee business shall be reimbursed for reasonable expenses necessarily incurred by them in the performance of their duties and in the exercise of their powers under this part, and in addition, may receive compensation at a rate to be determined by the committee and approved by the Secretary, not to exceed \$10 for each day, or portion thereof, spent in attending to committee business: *Provided*, That at its discretion the committee may request the attendance of alternates at any or all meetings, notwithstanding the ex-

pected or actual presence of the respective members.

§ 1017.27 Districts. (a) For the purpose of selecting committee members, the following districts of the production area are hereby initially established:

District No. 1 (Emmett, Payette, Weiser Area): All territory within the boundaries of Washington, Payette and Gem Counties, in Idaho.

District No. 2 (Oregon Slope): All territory within a boundary following the Snake River northwesterly from its junction with the Malheur River, to the west line of Range 46E; thence south along said west line to the south line of Township 17S, and thence east along said south line to its junction with the Malheur River, and thence northeasterly along the Malheur River to the junction with the Snake River, the point of beginning.

District No. 3 (Ontario, Vale, Jamieson, Brogan): All territory within a boundary starting at the junction of the Malheur River with the Snake River and extending southward along the Malheur River to its junction with the south line of Township 17S, E. W. M.; thence westward along this line to its junction with the west line of Range 46E; thence north along this line to its junction with the Snake River; thence northwest along the Snake River to its junction with the north boundary of Malheur County; thence west along the north boundary of Malheur County to the west boundary of the county; thence south along the west boundary of Malheur County to its intersection with the south line of Township 20S; thence east along this line to its junction with the Hyline Canal and Siphon; thence northeast along the Hyline Canal to its intersection with Highway 20; thence east along Highway 20 to Cairo Junction; thence south $\frac{1}{2}$ mile to the junction of Highway 20 to Oregon Avenue; thence east along Oregon Avenue to its termination at the Snake River; thence north along the Snake River to its junction with the Malheur River, the point of beginning.

District No. 4 (Nyssa-Adrian): All the area of Malheur County, Oregon, south of District No. 3.

District No. 5 (Parma, Wilder, Nampa, and Notus Area): Canyon County, Idaho.

District No. 6 (Homedale, Marsing, Meredian, Melba, Mountain Home, Glenns Ferry and Twin Falls Area): All counties in the Idaho portion of the production area not included within Districts Nos. 1 and 5.

(b) The Secretary, upon the recommendation of the committee, may reestablish districts within the production area and may reapportion committee membership among the various districts: *Provided*, That in recommending any such changes in districts or representation, the committee shall give consideration to: (1) The relative importance of new producing sections; (2) changes in the relative position of existing districts with respect to onion production; (3) the geographic location of areas of production as they would affect the efficiency of administering this part; (4) other relevant factors: *Provided, further*, That there shall be no change in the total number of committee members or in the total number of districts.

§ 1017.28 Nominations. Nominations from which the Secretary may select the members of the Idaho-Eastern Oregon Onion Committee and their respective alternates may be made in the following manner:

(a) The committee shall hold or cause to be held prior to April 1 of each year,

after the effective date of this subpart, one or more meetings of producers and of handlers in each of the districts, or portions of the production area, in which the then current terms of office will expire the following May 31;

(b) In arranging for such meetings the committee may, if it deems desirable, cooperate with existing organizations and agencies and may combine its meetings with others;

(c) Nominations for committee members and alternate members shall be supplied to the Secretary, in such manner and form as he may prescribe, not later than 30 days prior to the end of each fiscal period;

(d) Only producers may participate in designating nominees for producer committee members and their alternates and only handlers may participate in designating nominees for handler committee members and their alternates;

(e) Each person who is both a handler and a producer may vote either as a handler or as a producer and may select the group in which he will vote; and

(f) Regardless of the number of districts in which a person produces or handles onions, each such person is entitled to cast only one vote on behalf of himself, his partners, agents, subsidiaries, affiliates and representatives, in designating nominees for committee members and alternates. In the event a person is a producer engaged in producing onions in more than one district, such person shall select the district within which he may participate as aforesaid in designating nominees. Similarly, a person who is a handler both in Malheur County, Oregon, and in the Idaho portion of the production area, may select either Malheur County or the Idaho portion of the production area in which to cast his vote for the applicable committee handler member and alternate. Each such handler shall also be entitled to cast his vote for the committee member and alternate to represent the production area-at-large. An eligible voter's privilege of casting only one vote, as aforesaid, shall be construed to permit such voter to cast one vote for each member and alternate position to be filled in the respective district or portion of the production area, as the case may be, in which he elects to vote.

§ 1017.29 *Failure to nominate.* If nominations are not made within the time and in the manner specified by the Secretary pursuant to § 1017.28, the Secretary may, without regard to nominations, select the committee members and alternates on the basis of the representation provided for in this subpart.

§ 1017.30 *Vacancies.* To fill any vacancy occasioned by the failure of any person, selected as a committee member or alternate, to qualify, or in the event of the death, removal, resignation, or disqualification of any qualified member or alternate, a successor for his unexpired term may be selected by the Secretary from nominations made in the manner specified in § 1017.28, or the Secretary may select such committee member or alternate from previously

unselected nominees on the current nominee list from the district or portion of the production area, as the case may be, that is involved, or from other eligible persons. If the names of nominees to fill any such vacancy are not made available to the Secretary within 30 days after such vacancy occurs, the Secretary may fill such vacancy without regard to nominations, which selection shall be made on the basis of the representation provided for in this subpart.

EXPENSES AND ASSESSMENTS

§ 1017.40 *Expenses.* The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred by it during each fiscal period for its maintenance and functioning, and for such purposes as the Secretary, pursuant to this subpart, determines to be appropriate. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of such handler's onion shipments inspected pursuant to this part that are handled by him as the first handler thereof during a fiscal period, and the total quantity of such onions handled by all handlers as first handlers thereof during the same period.

§ 1017.41 *Budget.* At the beginning of each fiscal period, and as may be necessary thereafter, the committee shall prepare a budget of estimated income and expenditures necessary for the administration of this part. The committee shall recommend to the Secretary a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall present such budget promptly to the Secretary with an accompanying report thereon showing the basis for its calculations and recommended rate.

§ 1017.42 *Assessments.* (a) The funds to cover the committee's expenses pursuant to § 1017.40 shall be acquired by the levying of assessments upon handlers as provided in this subpart. Each handler who handles onions as the first handler thereof which are inspected pursuant to this part shall pay assessments to the committee upon demand, which assessments shall be in payment of such handler's pro rata share of such expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's recommendations or other available information.

(c) At any time during or subsequent to a given fiscal period, the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendation, or other available information, the Secretary may approve an amended budget and increase the rate of assessment. Such increase shall be applicable to all onion shipments inspected pursuant to this part during such fiscal period.

§ 1017.43 *Accounting.* (a) All funds received by the committee pursuant to the provisions of this part shall be used

solely for the purposes specified in this part.

(b) The Secretary may at any time require the committee, its members and alternates, employees, agents, and all other persons to account for all receipts and disbursements, funds, property, or records for which they are responsible. Whenever any person ceases to be a member or alternate of the committee, he shall account for all receipts, disbursements, funds, and property (including, but not being limited to, books and other records) pertaining to the committee's activities for which he is responsible, and deliver all such property and funds in his hands to such successor, agency, or person as may be designated by the Secretary, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in each such successor, agency, or person as may be designated by the Secretary the right to all of such property and funds and all claims vested in such person.

(c) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, and any other committee property during periods of suspension of this part, or during any periods when regulations are not in effect; and, if the Secretary determines such action appropriate, he may direct that such person or persons shall so act as trustee or trustees.

§ 1017.44 *Refunds.* At the end of each fiscal period, monies arising from the excess of assessments collected over expenses shall be accounted for as provided in this section. Each handler entitled to a proportionate refund of such excess assessments at the end of a fiscal period shall be credited with such refund against the operations of the following fiscal period unless he demands payment thereof, in which event such proportionate refund shall be paid to him. However, the Secretary, upon recommendation of the committee, may determine that it is appropriate for the maintenance and functioning of the committee that some of the funds remaining at the end of a fiscal period which are in excess of the expenses necessary for committee operations during such period may be carried over into following periods as a reserve for possible liquidation. Upon approval by the Secretary, such reserve may be used upon termination of this part to liquidate the affairs of the committee. *Provided,* That upon termination of this part any monies in the reserve for liquidation which are not required to defray the necessary expenses of committee liquidation shall, to the extent practical, be returned upon a pro rata basis to all persons from whom such funds were collected.

RESEARCH AND DEVELOPMENT

§ 1017.47 *Research and development.* The committee, with the approval of the Secretary, may provide for the establishment of marketing research and development projects designed to assist, improve, or promote the marketing, distribution, and consumption of onions.

REGULATION

§ 1017.50 *Marketing policy*—(a) *Preparation*. Prior to each marketing season the committee shall consider and prepare a proposed policy for the marketing of onions. In developing its marketing policy the committee shall investigate relevant supply and demand conditions for onions. In such investigations the committee shall give appropriate consideration to the following:

(1) Market prices for onions, including prices by variety, grade, size, and quality, and by different packs;

(2) Supply of onions by grade, size, quality, and variety in the production area and in other onion producing sections;

(3) The trend and level of consumer income;

(4) Establishing and maintaining orderly marketing conditions for onions;

(5) Orderly marketing of onions as will be in the public interest; and

(6) Other relevant factors.

(b) *Reports*. (1) The committee shall submit a report to the Secretary setting forth the aforesaid marketing policy; and the committee shall notify producers and handlers of the contents of such report.

(2) In the event it becomes advisable to shift from such marketing policy because of changed supply and demand conditions, the committee shall prepare an amended or revised marketing policy in accordance with the manner previously outlined. The committee shall submit a report thereon to the Secretary and notify producers and handlers of the contents of such report on the revised or amended marketing policy.

§ 1017.51 *Recommendations for regulations*. The committee shall recommend regulations to the Secretary whenever it finds that such regulations as provided in § 1017.52 will tend to effectuate the declared policy of the act. The committee also may recommend modification, suspension, or termination of any regulation, or amendments thereto, in order to facilitate the handling of onions for the purposes authorized in § 1017.53. The committee may also recommend amendment, modification, termination, or suspension of any regulation issued under this part.

§ 1017.52 *Issuance of regulations*. (a) Except as otherwise provided in this part, the Secretary shall limit the shipment of onions by any one or more of the methods hereinafter set forth whenever he finds from the recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the declared policy of the act. Such limitation may:

(1) Regulate in any or all portions of the production area, the handling of particular grades, sizes, or qualities of any or all varieties of onions, or combinations thereof, during any period or periods;

(2) Regulate the handling of particular grades, sizes, or qualities, of onions differently, for different varieties, for different portions of the production area, for different packs, or for any combina-

tion of the foregoing, during any period or periods;

(3) Provide a method, through rules and regulations issued pursuant to this part, for fixing the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of onions;

(4) Regulate the handling of onions by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity; or

(5) Limit the shipment of the total quantity of onions by prohibiting the handling thereof during a specified period or periods. No regulation issued pursuant to this subparagraph shall be effective for more than 96 consecutive hours: *Provided*, That not less than 72 consecutive hours shall elapse between the termination of any such period of prohibition and the beginning of the next such period.

(b) In the event the handling of onions is regulated pursuant to paragraph

(a) (5) of this section, no handler shall handle any onions which were prepared for market or loaded during the effective period of such regulation. However, during any such period, no such regulation shall be deemed to limit the right of any person to sell or contract to sell onions for future shipment or delivery.

(c) The Secretary may amend any regulation issued under this part whenever he finds that such amendment would tend to effectuate the declared policy of the act. The Secretary may also terminate or suspend any regulation or amendment thereof whenever he finds that such regulation or amendment obstructs or no longer tends to effectuate the declared policy of the act.

§ 1017.53 *Handling for specified purposes*. Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary shall issue special regulations, or modify, suspend, or terminate requirements in effect pursuant to §§ 1017.42, 1017.52, 1017.60, or any combination thereof, in order to facilitate the handling of onions for the following purposes whenever he finds that to do so will tend to effectuate the declared policy of the act:

(a) Shipments of onions for export;

(b) Shipments of onions for relief or to charitable institutions;

(c) Shipments of onions for livestock feed;

(d) Shipments of onions for planting; and

(e) Shipments of onions for other purposes which may be specified.

§ 1017.54 *Minimum quantities*. The committee, with the approval of the Secretary, may establish minimum quantities below which onion shipments will be free from the requirements in, or pursuant to, §§ 1017.42, 1017.52, 1017.53, 1017.60, or any combination thereof.

§ 1017.55 *Notification of regulations*. The Secretary shall notify the committee of each regulation issued, and of each amendment, modification, suspension, or termination thereof. The committee

shall give reasonable notice thereof to handlers.

§ 1017.56 *Safeguards*. (a) The committee, with the approval of the Secretary, may prescribe adequate safeguards to prevent onions shipped,

(1) Pursuant to § 1017.53 or § 1017.54; or

(2) To commercial dehydrators for processing by such dehydrators into dehydrated onion products,

from entering channels of trade for other than the purpose authorized therefor.

(b) The committee, with the approval of the Secretary, may also prescribe rules and regulations governing the issuance, and the contents, of Certificates of Privilege if such certificates are prescribed as safeguards by the committee. Such safeguards may include requirements that:

(1) Handlers shall first file applications with the committee to ship such onions;

(2) Handlers shall obtain inspection provided by § 1017.60, or pay the pro rata share of expenses provided by § 1017.42, or both, in connection with such onions; and

(3) Handlers shall obtain Certificates of Privilege from the committee prior to effecting the particular onion shipment.

(c) The committee may rescind any Certificate of Privilege, or refuse to issue any Certificate of Privilege to any handler if proof is obtained that onions shipped by him for the purposes stated in the Certificate of Privilege were handled contrary to the provisions of this part.

(d) The Secretary shall have the right to modify, change, alter, or rescind any safeguards prescribed and any certificates issued by the committee pursuant to the provisions of this section.

(e) The committee shall make reports to the Secretary, as requested, showing the number of applications for such certificates, the quantity of onions covered by such applications, the number of such applications denied and certificates granted, the quantity of onions handled under duly issued certificates, and such other information as may be requested.

INSPECTION

§ 1017.60 *Inspection and certification*. (a) During any period in which shipments of onions are regulated pursuant to this subpart, no handler shall handle onions unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate and are covered by a valid inspection certificate, except when relieved from such requirements pursuant to §§ 1017.53, 1017.54, or both.

(b) Regrading, resorting, or repacking any lot of onions shall invalidate prior inspection certificates insofar as the requirements of this section are concerned. No handler shall ship onions after they have been regraded, resorted, repacked or in any other way further prepared for market, unless such onions are inspected by an authorized representative of the Federal-State Inspection Service, or such other inspection service as the Secretary shall designate.

(c) Upon recommendation of the committee, and approval of the Secretary, all onions that are required to be inspected and certified in accordance with this section, shall be identified by appropriate seals, stamps, tags, or other identification to be furnished by the committee and affixed to the containers by the handler under the direction and supervision of the Federal-State, or Federal inspector, or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When onions are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made available to the committee by the inspection service.

REPORTS

§ 1017.65 *Reports.* Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following: (1) The quantities of onions received by a handler; (2) the quantities disposed of by him, segregated as to the respective quantities subject to regulation and not subject to regulation; (3) the date of each such disposition and the identification of the carrier transporting such onions; and (4) identification of the inspection certificates relating to the onions which were handled pursuant to §§ 1017.53 and 1017.54.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of individual handler's identities or operations.

(c) Each handler shall maintain for at least two succeeding years such records of the onions received, and of onions disposed of, by such handler as may be necessary to verify the reports he submits to the committee pursuant to this section.

EFFECTIVE TIME AND TERMINATION

§ 1017.70 *Effective time.* The provisions of this subpart, or any amendment thereto, shall become effective at such time as the Secretary may declare and shall continue in force until terminated in one of the ways specified in this subpart.

§ 1017.71 *Termination.* (a) The Secretary may at any time terminate the

provisions of this subpart by giving at least one day's notice by means of a press release or in any other manner which he may determine.

(b) The Secretary may terminate or suspend the operations of any or all of the provisions of this subpart whenever he finds that such provisions do not tend to effectuate the declared policy of the act.

(c) The Secretary shall terminate the provisions of this subpart at the end of any fiscal period whenever he finds that such termination is favored by a majority of producers who, during a representative period, have been engaged in the production for market of onions: *Provided*, That such majority has, during such representative period, produced for market more than fifty percent of the volume of such onions produced for market, but such termination shall be effective only if announced on or before May 31 of the then current fiscal period.

(d) The provisions of this subpart shall, in any event, terminate whenever the provisions of the act authorizing them cease to be in effect.

§ 1017.72 *Proceeding after termination.* (a) Upon the termination of the provisions of this subpart, the then functioning members of the committee shall continue as joint trustees, for the purpose of liquidating the affairs of the committee, of all the funds and property then in the possession, or under control, of the committee, including claims for any funds unpaid and property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall, from time to time, account for all receipts and disbursements and deliver all property on hand, together with all books and records of the committee and of the trustees, to such person as the Secretary may direct; and shall, upon request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the committee or the trustees pursuant to this subpart.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section, shall be subject to the same obligations imposed upon the members of the committee and upon the said trustees.

§ 1017.73 *Effect of termination or amendment.* Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart, or the issuance of any amendment to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or of any regulation issued under this subpart; (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any

rights or remedies of the Secretary or of any other person with respect to any such violations.

MISCELLANEOUS PROVISIONS

§ 1017.81 *Compliance.* No handler shall handle onions the handling of which has been prohibited or otherwise limited by the Secretary in accordance with provisions of this part; and no handler shall handle onions except in conformity to the provisions of this part.

§ 1017.82 *Right of the Secretary.* The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination, or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the said committee shall be deemed null and void except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 1017.83 *Duration of immunities.* The benefits, privileges, and immunities conferred upon any person by virtue of this subpart shall cease upon the termination of this subpart, except with respect to acts done under and during the existence of this subpart.

§ 1017.84 *Agents.* The Secretary may, by designation in writing, name any person, including any officer or employee of the Government, or name any agency in the United States Department of Agriculture, to act as his agent or representative in connection with any of the provisions of this part.

§ 1017.85 *Derogation.* Nothing contained in this subpart is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the act or otherwise, or, in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 1017.86 *Personal liability.* No member or alternate of the committee nor any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, employee, or agent, except for acts of dishonesty, wilful misconduct, or gross negligence.

§ 1017.87 *Separability.* If any provision of this subpart is declared invalid, or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other person, circumstance, or thing, shall not be affected thereby.

§ 1017.88 *Amendments.* Amendments to this subpart may be proposed, from time to time, by the committee or by the Secretary.

Issued at Washington, D. C., this 28th day of December 1956, to become effective February 4, 1957.

[SEAL]

E. L. PETERSON,
Acting Secretary.

[F. R. Doc. 57-13; Filed, Jan. 2, 1957;
8:47 a. m.]

TITLE 21—FOOD AND DRUGS

Chapter I—Food and Drug Administration, Department of Health, Education, and Welfare

Subchapter B—Food and Food Products

PART 120—TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

TOLERANCES FOR RESIDUES OF SODIUM 2,2-DICHLOROPROPIONATE

Petitions were filed with the Food and Drug Administration requesting the establishment of tolerances for residues of sodium 2,2-dichloropropionate as 2,2-dichloropropionic acid in or on sugar beets and cottonseed.

The Secretary of Agriculture has certified that this pesticide chemical is useful for the purposes for which tolerances are being established.

After consideration of the data submitted in the petition and other relevant material which show that the tolerances established in this order will protect the public health, and by virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (2), 68 Stat. 512; 21 U. S. C. 346a (d) (2)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 120.7 (g)), the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR Part 120) are amended by adding the following new section:

§ 120.149 *Tolerances for residues of sodium 2,2-dichloropropionate.* (a) A tolerance of 35 parts per million is established for residues of 2,2-dichloropropionate as 2,2-dichloropropionic acid in or on cottonseed.

(b) A tolerance of 5 parts per million is established for residues of sodium 2,2-dichloropropionate as 2,2-dichloropropionic acid in or on sugar beets and sugar beet tops.

Any person who will be adversely affected by the foregoing order may, at any time prior to the thirtieth day from the effective date thereof, file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written objections thereto. Objections shall show wherein the person filing will be adversely affected by this order, specify with particularity the provisions of the order deemed objectionable and reasonable grounds for the objections, and request a public hearing upon the objections. Objections may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Effective date. This order shall be effective upon publication in the FEDERAL REGISTER.

(Sec. 701, 52 Stat. 1055, as amended; 21 U. S. C. 371. Interprets or applies sec. 408, 68 Stat. 511; 21 U. S. C. 346a)

Dated: December 27, 1956.

[SEAL]

GEO. P. LARRICK,
Commissioner of Food and Drugs.

[F. R. Doc. 57-20; Filed, Jan. 2, 1957;
8:48 a. m.]

TITLE 32A—NATIONAL DEFENSE, APPENDIX

Chapter VI—Business and Defense Services Administration, Department of Commerce

[BDSA Order M-5A (Formerly NPA Order M-5A), Amdt. 1 of December 31, 1956]

M-5A—ALUMINUM

AMENDMENT OF SECTIONS 5 AND 9 (a)

This amendment is found necessary and appropriate to promote the national defense and is issued pursuant to the Defense Production Act of 1950, as amended. In the formulation of this amendment, there has been consultation with industry representatives, including trade association representatives, and consideration has been given to their recommendations.

BDSA Order M-5A (formerly NPA Order M-5A) dated May 6, 1953, is hereby amended as follows:

1. Section 5 is amended to read as follows:

Sec. 5. *Opening of order books.* Each producer of aluminum shall open his order books for the purpose of accepting authorized controlled material orders no later than 105 days prior to the first day of each calendar quarter for which such orders are valid pursuant to DMS Regulation No. 1. An aluminum producer may open his order books for the purpose of accepting authorized controlled material orders for any calendar quarter as long in advance of such 105-day period as he may choose, but after his order books are open he shall accept all such orders as provided in this order and in applicable DMS regulations: *Provided, however,* That the acceptance by an aluminum controlled materials producer of an authorized controlled material order or orders directly from the Department of Defense or the Atomic Energy Commission prior to the date such producer opens his order books shall not effect an opening of his books so as to require acceptance of other orders for controlled materials.

2. Paragraph (a) of section 9 is amended to read as follows:

(a) As soon as practicable after December 31, 1956, BDSA will notify each primary producer, independent fabricator, and secondary smelter of the maximum aggregate quantities of aluminum, by form and shape, for the shipment of which during any calendar month, he must accept authorized controlled material orders tendered to him prior to the commencement of "lead time," unless such maximum quantities are thereafter modified by BDSA order, regulation, or directive. These quantities will be determined by BDSA on the basis of each primary producer's, independent fabricator's, or secondary smelter's total shipments of each form and shape of aluminum during the first 6 calendar months of 1956, or such subsequent period as BDSA

may determine, and the total anticipated defense requirements from time to time for aluminum of each form and shape.

(Sec. 704, 64 Stat. 816, as amended; sec. 1, P. L. 632, 84th Cong., 70 Stat. 408; 50 U. S. C. App. 2154)

This amendment shall take effect December 31, 1956.

BUSINESS AND DEFENSE
SERVICES ADMINISTRATION,
H. B. McCoy,
Administrator.

[F. R. Doc. 56-10629; Filed, Dec. 31, 1956;
1:04 p. m.]

TITLE 33—NAVIGATION AND NAVIGABLE WATERS

Chapter II—Corps of Engineers, Department of the Army

PART 203—BRIDGE REGULATIONS

ST. JOHNS RIVER, FLA.

Pursuant to the provisions of section 5 of the River and Harbor Act of August 18, 1894 (28 Stat. 362; 33 U. S. C. 499), § 203.430 governing the operation of the State Road Department of Florida bridge across St. Johns River between Riverside Viaduct and Miami Road, Jacksonville, Florida, is hereby amended prescribing regulations to govern the operation of the State Road Department of Florida bridge across St. Johns River at Main Street, Jacksonville, Florida, as follows:

§ 203.430 *St. Johns River, Fla.; Main Street and Acosta bridges, Jacksonville.* (a) Between 7:30 a. m. and 9:00 a. m., and between 4:30 p. m. and 6:00 p. m., on all days other than Sundays and legal holidays, the draws need not be opened for the passage of vessels: *Provided,* That the draws shall be opened at any time for the passage of a vessel in an emergency involving danger of life or property, which shall be indicated by four blasts of a whistle, horn, or megaphone.

(b) In all other respects, the regulations contained in § 203.240 of this part shall govern the operation of these bridges.

[Regs., December 19, 1956, 823.01 (St. Johns River, Fla.)—ENGWO] (Sec. 5, 28 Stat. 362; 33 U. S. C. 499)

[SEAL] HERBERT M. JONES,
Major General, U. S. Army,
Acting The Adjutant General.

[F. R. Doc. 57-5; Filed, Jan. 2, 1957;
8:45 a. m.]

TITLE 39—POSTAL SERVICE

Chapter I—Post Office Department

PART 16—BULK MAILINGS

SECOND AND THIRD CLASS MATTER

The proposed amendments to Part 16, respecting bulk mailings of second and third class matter, published at page 9064 of the November 21, 1956, issue of the FEDERAL REGISTER (21 F. R. 9064), are hereby adopted as regulations of the Post Office Department, without change, as set forth below.

No. 2—3

A	B	C	D	E	F	G
1. Copies outside county of publication when advertising portion is subject to zone rates.	Zone Number	Total pounds (Rate 1 pound per ton for any zone in Item A.)	Advertising portion, pounds	Postage rate per pound	Amount of postage	
65 percent advertising all issues	1 and 2	2621	39.315	1½¢	\$.	
	3	1971	39.42	2¢		
	4	1052	31.56	3¢		
	5	170	6.80	4¢		
	6	124	6.20	5¢		
	7	38	2.28	6¢		
	8	21	1.47	7¢		
2. Total all zones.		5997	127.045	995	.021184	
3. Reading portion (column D minus column E, item 2).		127.045 - 5997 =	.021184	535	1½¢	
4. Copies outside county when total weight to any zone is 1 pound or less.				X X X X	1¢	
5. Copies outside county having 5 percent or less advertising.				X X X X	1½¢	
6. Postage at rates applicable prior to April 1, 1952 (add items 2, 3, 4 and 5).					29.11	
7. 38 percent increase on item 6 provided by Sec. 2414(a), P.R.L. & R. Do not apply this increase to classroom publications specified by sec. 2414(c) P.R.L. & R.					8.74	
8. Total of items 6 and 7.					37.85	
9. Copies outside county exempt from zone rates under sec. 2414(b)(2) P.R.L. & R.				X X X X	1½¢	
10. Copies within county at rate of 1 cent per pound.		300	300	X X X X	1¢	
11. Total pounds (items 2, 4, 5, 9, and 10) and postage (items 8, 9, and 10).			1830	X X X X	X X \$.	
12. Compute postage on total number of copies shown on Form 3542 at one-eighth cent per copy. Charge this amount if it exceeds total pound rate postage entered in column G, item 11 (rate = $\frac{34.00-(4) \times 1}{100} + \frac{(4)-(4) \times 1}{100}$ P.R.L. & R.).					\$.	
13. Weight of copies free of postage to subscribers in county of publication.		293				
14. Business 6-64, P.R.L. & R., controlled circulation publications (1 cent per piece minimum).				X X X X	10¢ \$	
15. Second-class application fee required by sec. 2415, P.R.L. & R. Enter amount of fee collected.				\$.		
16. Copies at local or headquarters rates of 1 or 2 cents each. Number of copies:					Amount of postage: \$	

Computed by _____

Illustration B

Form 3542
(3-54)

COMPUTATION OF POSTAGE ON SECOND-CLASS MATTER

This form to be attached to Forms 3542 from which computation is made

Post Office and State Mayville, Maryland Key rate (if used) .021184
 Name of Publication or News Agent Mayville Press--Daily ex. Sunday
 Dates of mailing May 1 to 31, 1954 Inclusive
 Dates of issue printed in copies May 1 to 31 Inclusive--26 Issues

1. Copies outside county of publication when advertising portion is subject to zone rates.	A	B	C	D	E	F	G
ZONE	Sample copies, pounds	Subscribers' copies, pounds	Total pounds (Enter 1 pound or less for any zone in item 4)	Advertising portion, pounds	Postage rate per pound	Amount of postage	
1 and 2					1½¢	\$	
3					2¢		
4					3¢		
5					4¢		
6					5¢		
7					6¢		
8					7¢		
2. Total all zones.			1527	1100	.021184		23.31
3. Reading portion (column D minus column E, item 2).				427	1½¢		6.41
4. Copies outside county when total weight to any zone is 1 pound or less.				X X X X	1¢		
5. Copies outside county having 5 percent or less advertising.				X X X X	1½¢		
6. Postage at rates applicable prior to April 1, 1952 (add items 2, 3, 4 and 5).							29.72
7. 50 percent increase on item 6 provided by Act, October 3, 1952. Do not apply this increase to classroom publications specified by Act, October 3, 1952.							8.92
8. Total of items 6 and 7.							38.64
9. Copies outside county exempt from zone rates under section 1104 (e) of Act of October 3, 1952.				X X X X	1½¢		
10. Copies within county at rate of 1 cent per pound.		279	279	X X X X	1¢		2.79
11. Total pounds (items 2, 4, 5, 9, and 10) and postage (items 6, 7, and 10).			1806	X X X X	X X		41.43
12. Compute postage on total number of copies shown on Form 3542 at one-eighth cent per copy. Charge this amount if it exceeds total pound rate postage entered in column G, item 11 (see Act of October 3, 1952, section 1104 (d) and Act of October 3, 1952, section 1104 (e)).							
13. Weight of copies free of postage to subscribers in county of publication.		277					
14. Section 1104 (e) of Act of October 3, 1952, controlled circulation publications (1 cent per piece minimum).				X X X X	10¢		
15. Second-class application fee required by section 1104 (b) of Act of October 3, 1952. Enter amount of fee collected.							
16. Copies at local or headquarters rates of 3 or 2 cents each. Number of copies							
Computed by							Amount of postage: \$

5. New paragraph (d) is added, to read as follows:

(d) *Newspaper treatment*—(1) *Definition*. Newspapers must be published once each week or more frequently and feature principally news of interest to the general public to be given expeditious distribution, dispatch, transit handling, and delivery, usually referred to as newspaper treatment. If the postmaster at the office of entry is in doubt as to whether any particular publication is a newspaper, he will submit all the facts to the Bureau of Post Office Operations, Mail Classification Division.

(2) *Preparation for mailing*. Newspapers must be made up in sacks plainly labeled "Newspapers". Direct city and State sacks will be made in accordance with paragraph (c) (4) of this section. Label in the following manner:

(i) *Direct sacks*:

Cincinnati, Ohio—Newspapers
Via Pitts. & St. Lou. Train 79
From The Register, Columbus, Ohio

(ii) *State sacks*:

Wheel. & Cin. Tr. 238
Ohio—Newspapers
From The Register, Columbus, Ohio

(3) *Dispatching*. Newspapers will be dispatched in pouches with first-class mail when the quantity is not sufficient to make up separate sacks. Newspapers for dispatch to a railway post office, a highway post office, a terminal, or a first-class office will not be mixed in sacks with any class of mail other than first class. Sacks labeled "Newspapers" will be dispatched with first-class mail.

(4) *Handling at delivery office*. Sacks containing newspapers will be promptly segregated and the contents distributed for the earliest possible delivery.

(5) *Notification to publishers of delays*. Publishers will be notified whenever their mailings of newspapers are not delivered to the post office or train in sufficient time to connect with the intended dispatch.

6. Redesignate paragraph (g) as paragraph (h); and insert new paragraph (g) to read as follows:

(g) *Key rate*—(1) *Authority to use*. Postmasters will use the key rate method of computing pound-rate postage on publications subject to the advertising zone rates when large mailings justify its use.

(2) *Statement showing mailings to each zone*. The publisher must submit once each calendar year, at 12-month intervals, a statement on POD Form 3542 showing the number of copies of an issue mailed to each zone. During these 12-month intervals, the publisher does not need to complete the lines for zones 1 to 8 on POD Form 3542. He enters only total zone mailings on "Total to all zones" line.

(3) *New zone statement*. Postmasters will require a new report on POD Form 3542 showing mailings to each zone at any time during the 12-month intervals when the volume of mailings show variations to the zones or an increase in the total number of copies.

(4) *Computation*. (i) Compute the key rate on Form 3541 once each calendar year at 12-month intervals. If a new report on POD Form 3542 is filed at any

time showing mailings to each zone, a new key rate must be computed and used.

(ii) Enter on the corresponding lines in column B of Form 3541 the number of copies for each zone shown on POD Form 3542. Apply the pound rates to the number of copies for each zone and enter the postage for each zone in column C of Form 3541. Divide the total postage in column C by the total number of copies in column B to obtain the key rate, which should be carried to six decimal places. Apply the key rate only to the total weight of the advertising portion of the issue and the regular reading portion rate only to the total weight of the reading portion. Enter the amount of postage in column G. Two employees must verify the computation. See illustration A, Form 3541.

(iii) Prepare Form 3541 for subsequent mailings as shown in illustration B until a new report on POD Form 3542 showing mailings to each zone is filed.

b. In § 16.2 *Third-class mailings*, make the following changes:

1. Redesignate paragraph (c) as paragraph (e).

2. Insert new paragraph (c) and (d) to read as follows:

(c) *Preparation for dispatch*—(1) *Direct sacks*. When there are sufficient direct packages for the same post office to fill a sack at least one-third full, they must be placed in a sack or sacks which should be labeled in the following manner:

Philadelphia, Pa.

Circs.

From Jay Mailing Co., Cincinnati, Ohio

(2) *State sacks*—(i) *Direct packages*. After all possible city direct sacks have been made, if there are enough direct packages remaining for post offices within the same State to fill approximately one-third of a sack, they should be placed in a State sack and labeled to the proper distribution point. See paragraph (d) of this section. State sacks should be labeled in the following manner:

Ogden, Utah Terminal

Calif. Directs Circs.

From D. C. Malters, Washington, D. C.

(ii) *State packages*. When State packages of circulars for one State will fill approximately one-third of a sack, they should be placed in a State sack and labeled to the proper distribution point. (See paragraph (d) of this section.) Label in the following form:

Ogden, Utah Terminal

Calif. Circs.

From D. C. Malters, Washington, D. C.

(3) *Mixed sacks*. (i) *Mixed State packages of circulars* may be included in sacks labeled "Mixed States—Circulars."

(ii) Any direct package for which there is insufficient quantity to make city or State direct sacks should be included in sacks labeled "Mixed Directs—Circulars."

(4) *Labels furnished by postmaster*. Where sack labels are furnished by the postmaster, the mailer will mark his name on the back of the label.

(d) *Distribution points.* A list of the proper distribution points for papers, mixed circulars, and direct circulars from each postal region is prepared by the regional transportation manager of the region. Copies of this list, along with any special instructions relating to specific locations, may be obtained through your local postmaster or district transportation manager.

[F. R. Doc. 57-24; Filed, Jan. 2, 1957; 8:50 a. m.]

TITLE 49—TRANSPORTATION

Chapter I—Interstate Commerce Commission

Subchapter A—General Rules and Regulations

PART 125—RAILROAD ACCIDENTS: REPORTS AND CLASSIFICATION

RULES GOVERNING MONTHLY REPORTS OF RAILROAD ACCIDENTS

At a general session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 27th day of December A. D. 1956.

On November 23, 1956, the Commission issued its order prescribing revised Rules Governing Monthly Reports of Railroad Accidents. Pursuant to § 125.55 (c), Appendix A of such rules, rail carriers reporting the causes of train or train-service accidents are required to utilize the codes taken from an "Alphabetical Index". However, since no Alphabetical Index has been issued, it will be necessary to use in place of such index the codes of causes of train-service accidents in the lists designated "Train accidents" and "Train-service accidents" as set forth in § 125.55 of the rules.

Rule-making procedure under Section 4 of the Administrative Procedure Act, 5 U. S. C. 1003 (a), would be impracticable, unnecessary, and contrary to the public interest because of the minor character of this amendment to the rules, and because of the proximity of the effective date of the order. For the same reasons, good cause exists for making this order effective on less than thirty days' notice.

Therefore, it is ordered, That § 125.55 paragraph (c) of Appendix A to the Commission's order of November 23, 1956, in the above-entitled matter, be, and it is hereby, modified and amended to read as set forth in the paragraph below:

It is further ordered, That 49 CFR § 125.55 (c) be, and it is hereby, modified and amended to read as follows:

§ 125.55 Codes for accident reporting.

(c) On Form T, Cause of train or train-service accident, causes should be reported in accordance with the lists designated "Train accidents" and "Train-service accidents" shown in this section under "Code of Causes";

It is further ordered, That a copy of this order shall be served on common carriers subject to the provisions of the Accident Reports Act, and that notice of this order shall be given to the general public by depositing a copy thereof in the office of the Secretary of the Com-

mission, Washington, D. C., and by filing a copy thereof with the Director, Division of Federal Register;

And it is further ordered, That this order shall be effective on January 1, 1957.

(Sec. 12, 24 Stat. 383, as amended, sec. 1, 36 Stat. 350; 49 U. S. C. 12, 45 U. S. C. 38. Interpret or apply sec. 20, 24 Stat. 386, as amended, sec. 3, 36 Stat. 351; 49 U. S. C. 20, 45 U. S. C. 40)

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-34; Filed, Jan. 2, 1957; 8:52 a. m.]

Subchapter B—Carriers by Motor Vehicle

PART 205—REPORTS OF MOTOR CARRIERS

MOTOR CARRIER ANNUAL REPORT FORM A

At a session of the Interstate Commerce Commission, held at its office in Washington, D. C., on the 10th day of December A. D. 1956.

The matter of Annual Reports from Class I Motor Carriers of Property and Class I Motor Carriers of Passengers being under consideration, and the changes in existing regulations to be effectuated by this order being only minor changes with respect to the data to be furnished, public rule-making procedures are unnecessary:

It is ordered, That the order of October 11, 1945, in the matter of Annual Reports from Class I Motor Carriers of Property and Class I Motor Carriers of Passengers be, and it is hereby modified with respect to annual reports for the year ended December 31, 1956, and subsequent years, as follows:

§ 205.1 Form prescribed for annual reports. Each Class I Common and Contract Motor Carrier of Property and each Class I Common and Contract Motor Carrier of Passengers shall file under oath an annual report for the year ended December 31, 1956, and for each succeeding year until further order, in accordance with Motor Carrier Annual Report Form A (Class I Motor Carriers of Property and Passengers) which is hereby approved and made a part of this section.¹ The annual report shall be filed, in duplicate, in the Bureau of Accounts, Cost Finding and Valuation, Interstate Commerce Commission, Washington, D. C., on or before March 31 of the year following the one to which it relates.

(49 Stat. 546, as amended; 49 U. S. C. 304. Interprets or applies 49 Stat. 563, as amended; 49 U. S. C. 320)

By the Commission.

[SEAL]

HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-18; Filed, Jan. 2, 1957; 8:48 a. m.]

PROPOSED RULE MAKING

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[26 CFR (1954) Part 1]

INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of thirty days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL]

O. GORDON DELK,
Acting Commissioner
of Internal Revenue.

The following regulations are hereby prescribed under parts I and II (except

sections 1017, 1020, and 1021) of Subchapter O of Chapter 1 of the Internal Revenue Code of 1954, and are applicable to taxable years beginning after December 31, 1953, and ending after August 16, 1954. The regulations so prescribed do not reflect the amendment made to section 1016 by Public Law 629 (84th Congress), approved June 29, 1956. Regulations under that amendment will be published with a notice of proposed rule making at a later date.

GAIN OR LOSS ON DISPOSITION OF PROPERTY

DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

- | | |
|----------|---|
| Sec. | |
| 1.1001 | Statutory provisions; determination of amount of and recognition of gain or loss. |
| 1.1001-1 | Computation of gain or loss. |
| 1.1002 | Statutory provisions; recognition of gain or loss. |
| 1.1002-1 | Sales or exchanges. |

BASIS RULES OF GENERAL APPLICATION

- | | |
|----------|--|
| 1.1011 | Statutory provisions; adjusted basis for determining gain or loss. |
| 1.1011-1 | Adjusted basis. |
| 1.1012 | Statutory provisions; basis of property—cost. |
| 1.1012-1 | Basis of property. |
| 1.1012-2 | Transfers in part a sale and in part a gift. |

¹ Filed with the Federal Register Division as part of the original document.

- Sec.
 1.1013 Statutory provisions; basis of property included in inventory.
 1.1013-1 Property included in inventory.
 1.1014 Statutory provisions; basis of property acquired from a decedent.
 1.1014-1 Basis of property acquired from a decedent.
 1.1014-2 Property acquired from a decedent.
 1.1014-3 Other basis rules.
 1.1014-4 Uniformity of basis; adjustment to basis.
 1.1014-5 Gain or loss.
 1.1014-6 Special rule for adjustments to basis where property is acquired from a decedent prior to his death.
 1.1014-7 Example applying rules of §§ 1.1014-4 through 1.1014-6 to case involving multiple interests.
 1.1014-8 Bequest, devise, or inheritance of a remainder interest.
 1.1015 Statutory provisions; basis of property acquired by gifts and transfers in trust.
 1.1015-1 Basis of property acquired by gift after December 31, 1920.
 1.1015-2 Transfer of property in trust after December 31, 1920.
 1.1015-3 Gift or transfer in trust before January 1, 1921.
 1.1015-4 Transfers in part a gift and in part a sale.
 1.1016 Statutory provisions; adjustments to basis.
 1.1016-1 Adjustments to basis; scope of section.
 1.1016-2 Items properly chargeable to capital account.
 1.1016-3 Exhaustion, wear and tear, obsolescence, amortization and depletion for periods since February 28, 1913.
 1.1016-4 Exhaustion, wear and tear, obsolescence, amortization, and depletion; periods during which income was not subject to tax.
 1.1016-5 Miscellaneous adjustments to basis.
 1.1016-6 Other applicable rules.
 1.1016-7 Adjusted basis; cancellation of indebtedness under Bankruptcy Act.
 1.1016-8 Adjusted basis; cancellation of indebtedness; special cases.
 1.1016-9 Adjusted basis; mutual savings banks, building and loan associations, and cooperative banks.
 1.1016-10 Substituted basis.
 1.1018 Statutory provisions; adjustment of capital structure before September 22, 1938.
 1.1018-1 Adjusted basis; exception to section 270 of the Bankruptcy Act, as amended.
 1.1019 Statutory provisions; property on which lessee has made improvements.
 1.1019-1 Property on which lessee has made improvements.
 1.1022 Statutory provisions; cross references.

GAIN OR LOSS ON DISPOSITION OF PROPERTY

DETERMINATION OF AMOUNT OF AND RECOGNITION OF GAIN OR LOSS

§ 1.1001 Statutory provisions; determination of amount of and recognition of gain or loss.

SEC. 1001. Determination of amount of and recognition of gain or loss—(a) Computation of gain or loss. The gain from the sale or other disposition of property shall be the excess of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided

in such section for determining loss over the amount realized.

(b) Amount realized. The amount realized from the sale or other disposition of property shall be the sum of any money received plus the fair market value of the property (other than money) received. In determining the amount realized—

(1) There shall not be taken into account any amount received as reimbursement for real property taxes which are treated under section 164 (d) as imposed on the purchaser, and

(2) There shall be taken into account amounts representing real property taxes which are treated under section 164 (d) as imposed on the taxpayer if such taxes are to be paid by the purchaser.

(c) Recognition of gain or loss. In the case of a sale or exchange of property, the extent to which the gain or loss determined under this section shall be recognized for purposes of this subtitle shall be determined under section 1002.

(d) Installment sales. Nothing in this section shall be construed to prevent (in the case of property sold under contract providing for payment in installments) the taxation of that portion of any installment payment representing gain or profit in the year in which such payment is received.

§ 1.1001-1 Computation of gain or loss—(a) General rule. Except as otherwise provided in subtitle A, the gain or loss realized from the conversion of property into cash, or from the exchange of property for other property differing materially either in kind or in extent, is treated as income or as loss sustained. The amount realized from a sale or other disposition of property is the sum of any money received plus the fair market value of any property (other than money) received. The fair market value of property is a question of fact, but only in rare and extraordinary cases will property be considered to have no fair market value. The general method of computing such gain or loss is prescribed by section 1001, which contemplates that from the amount realized upon the sale or exchange there shall be withdrawn a sum sufficient to restore the adjusted basis prescribed by section 1011 and regulations thereunder (i. e., the cost or other basis adjusted for receipts, expenditures, losses, allowances, and other items chargeable against and applicable to such cost or other basis). The amount which remains after the adjusted basis has been restored to the taxpayer constitutes the realized gain. If the amount realized upon the sale or exchange is insufficient to restore to the taxpayer the adjusted basis of the property, a loss is sustained to the extent of the difference between such adjusted basis and the amount realized. The basis may be different depending upon whether gain or loss is being computed. For example, see section 1015 (a) and the regulations thereunder.

(b) Real estate taxes as amounts received. (1) Section 1001 (b) and section 1012 state rules applicable in making an adjustment upon a sale of real property with respect to the real property taxes apportioned between seller and purchaser under section 164 (d). Thus, if the seller pays (or agrees to pay) real property taxes attributable to the real property tax year in which the sale oc-

curs, he shall not take into account, in determining the amount realized from the sale under section 1001 (b), any amount received as reimbursement for taxes which are treated under section 164 (d) as imposed upon the purchaser. Similarly, in computing the cost of the property under section 1012, the purchaser shall not take into account any amount paid to the seller as reimbursement for real property taxes which are treated under section 164 (d) as imposed upon the purchaser. These rules apply whether or not the contract of sale calls for the purchaser to reimburse the seller for such real property taxes paid or to be paid by the seller.

(2) On the other hand, if the purchaser pays (or is to pay) an amount representing real property taxes which are treated under section 164 (d) as imposed upon the seller, that amount shall be taken into account both in determining the amount realized from the sale under section 1001 (b) and in computing the cost of the property under section 1012. It is immaterial whether or not the contract of sale specifies that the sale price has been reduced by, or is in any way intended to reflect, the taxes allocable to the seller. See also § 1.1012-1 (b).

(3) Subparagraphs (1) and (2) shall not apply to a taxpayer who elects to capitalize real property taxes in accordance with section 266 and the regulations thereunder (relating to election to capitalize certain carrying charges and taxes).

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

Example (1). Assume that the contract price on the sale of a parcel of real estate is \$50,000 and that real property taxes thereon in the amount of \$1,000 for the real property tax year in which occurred the date of sale were previously paid by the seller. Assume further that \$750 of the taxes are treated under section 164 (d) as imposed upon the purchaser and that he reimburses the seller in that amount in addition to the contract price. The amount realized by the seller is \$50,000. Similarly, \$50,000 is the purchaser's cost. If, in this example, the purchaser made no payment other than the contract price of \$50,000, the amount realized by the seller would be \$49,250, since the sales price would be deemed to include \$750 paid to the seller in reimbursement for real property taxes imposed upon the purchaser. Similarly, \$49,250 would be the purchaser's cost.

Example (2). Assume that the purchaser in example (1) above, paid all of the real property taxes. Assume further that \$250 of the taxes are treated under section 164 (d) as imposed upon the seller. The amount realized by the seller is \$50,250. Similarly, \$50,250 is the purchaser's cost, regardless of the taxable year in which the purchaser makes actual payment of the taxes.

Example (3). Assume that the seller described in the first part of example (1), above, elected under section 266 to capitalize the real property taxes of \$1,000 which he paid. In such a case, the amount realized is \$50,750. Moreover, the purchaser in that case could also elect under section 266 to capitalize the \$750 of taxes treated under section 164 (d) as imposed upon him in which case his adjusted basis would be \$50,750 (cost of \$50,000 plus capitalized taxes of \$750).

(c) *Other rules.* (1) Even though property is not sold or otherwise disposed of, gain is realized if the sum of all the amounts received which are required by section 1016 and other applicable provisions of subtitle A of the Internal Revenue Code of 1954 to be applied against the basis of the property exceeds such basis. Except as otherwise provided in section 301 (c) (3) (B) with respect to distributions out of increase in value of property accrued prior to March 1, 1913, such gain is includible in gross income under section 61 as "income from whatever source derived". On the other hand, a loss is not ordinarily sustained prior to the sale or other disposition of the property, for the reason that until such sale or other disposition occurs there remains the possibility that the taxpayer may recover or recoup the adjusted basis of the property. Until some identifiable event fixes the actual sustaining of a loss and the amount thereof, it is not taken into account.

(2) The provisions of subparagraph (1) of this paragraph may be illustrated by the following example:

Example. A, an individual on a calendar year basis, purchased certain shares of stock subsequent to February 28, 1913, for \$10,000. On January 1, 1954, A's adjusted basis for the stock had been reduced to \$1,000 by reason of receipts and distributions described in sections 1016 (a) (1) and 1016 (a) (4). He received in 1954 a further distribution of \$5,000, being a distribution covered by section 1016 (a) (4), other than a distribution out of increase of value of property accrued prior to March 1, 1913. This distribution applied against the adjusted basis as required by section 1016 (a) (4) exceeds that basis by \$4,000. The \$4,000 excess is a gain realized by A in 1954 and is includible in gross income in his return for that calendar year. In computing gain from the stock, as in adjusting basis, no distinction is made between items of receipts or distributions described in section 1016. If A sells the stock in 1955 for \$5,000, he realizes in 1955 a gain of \$5,000, since the adjusted basis of the stock for the purpose of computing gain or loss from the sale is zero.

(d) *Installment sales.* In the case of property sold on the installment plan, special rules for the taxation of the gain are prescribed in section 453.

(e) *Transfers in part a sale and in part a gift.* (1) Where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property. However, no loss is sustained on such a transfer if the amount realized is less than the adjusted basis. For determination of basis of the property in the hands of the transferee see § 1.1015-4.

(2) *Examples.* The provisions of subparagraph (1) may be illustrated by the following examples:

Example (1). A transfers property to his son for \$60,000. Such property in the hands of A has an adjusted basis of \$30,000 (and a fair market value of \$90,000). A's gain is \$30,000, the excess of \$60,000, the amount realized, over the adjusted basis, \$30,000. He has made a gift of \$30,000, the excess of \$90,000, the fair market value, over the amount realized, \$60,000.

Example (2). A transfers property to his son for \$30,000. Such property in the hands of A has an adjusted basis of \$60,000 (and a

fair market value of \$90,000). A has no gain or loss, and has made a gift of \$60,000, the excess of \$90,000, the fair market value, over the amount realized, \$30,000.

Example (3). A transfers property to his son for \$30,000. Such property in A's hands has an adjusted basis of \$30,000 (and a fair market value of \$60,000). A has no gain and has made a gift of \$30,000, the excess of \$60,000, the fair market value, over the amount realized, \$30,000.

Example (4). A transfers property to his son for \$30,000. Such property in A's hands has an adjusted basis of \$90,000 (and a fair market value of \$60,000). A has sustained no loss, and has made a gift of \$30,000, the excess of \$60,000, the fair market value, over the amount realized, \$30,000.

§ 1.1002 Statutory provisions; recognition of gain or loss.

SEC. 1002. *Recognition of gain or loss.* Except as otherwise provided in this subtitle, on the sale or exchange of property the entire amount of the gain or loss, determined under section 1001, shall be recognized.

§ 1.1002-1 *Sales or exchanges—(a) General rule.* The general rule with respect to gain or loss realized upon the sale or exchange of property as determined under section 1001 is that the entire amount of such gain or loss is recognized except in cases where specific provisions of subtitle A of the Internal Revenue Code of 1954 provide otherwise.

(b) *Strict construction of exceptions from general rule.* The exceptions from the general rule requiring the recognition of all gains and losses, like other exceptions from a rule of taxation of general and uniform application, are strictly construed and do not extend either beyond the words or the underlying assumptions and purposes of the exception. Nonrecognition is accorded by the Internal Revenue Code of 1954 only if the exchange is one which satisfies both (1) the specific description in the Code of an excepted exchange, and (2) the underlying purpose for which such exchange is excepted from the general rule. The exchange must be germane to, and a necessary incident of, the investment or enterprise in hand. The relationship of the exchange to the venture or enterprise is always material, and the surrounding facts and circumstances must be shown. As elsewhere, the taxpayer claiming the benefit of the exception must show himself within the exception.

(c) *Certain exceptions to general rule.* Exceptions to the general rule are made, for example, by sections 351 (a), 354, 361 (a), 371 (a) (1), 371 (b) (1), 721, 1031, 1035 and 1036. These sections describe certain specific exchanges of property in which at the time of the exchange particular differences exist between the property parted with and the property acquired, but such differences are more formal than substantial. As to these, the Internal Revenue Code of 1954 provides that such differences shall not be deemed controlling, and that gain or loss shall not be recognized at the time of the exchange. The underlying assumption of these exceptions is that the new property is substantially a continuation of the old investment still unliquidated; and, in the case of reorganizations, that the new enterprise, the new corporate structure, and the new

property are substantially continuations of the old still unliquidated.

(d) *Exchange.* Ordinarily, to constitute an exchange, the transaction must be a reciprocal transfer of property, as distinguished from a transfer of property for a money consideration only.

BASIS RULES OF GENERAL APPLICATION

§ 1.1011 Statutory provisions; adjusted basis for determining gain or loss.

SEC. 1011. *Adjusted basis for determining gain or loss.* The adjusted basis for determining the gain or loss from the sale or other disposition of property, whenever acquired, shall be the basis (determined under section 1012 or other applicable sections of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses)), adjusted as provided in section 1016.

§ 1.1011-1 *Adjusted basis.* The adjusted basis for determining the gain or loss from the sale or other disposition of property is the cost or other basis prescribed in section 1012 or other applicable provisions of subtitle A of the Internal Revenue Code of 1954, adjusted to the extent provided in sections 1016, 1017, and 1018 or as otherwise specifically provided for under applicable provisions of internal revenue laws.

§ 1.1012 Statutory provisions; basis of property—cost.

SEC. 1012. *Basis of property—cost.* The basis of property shall be the cost of such property, except as otherwise provided in this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses). The cost of real property shall not include any amount in respect of real property taxes which are treated under section 164 (d) as imposed on the taxpayer.

§ 1.1012-1 *Basis of property—(a) General rule.* In general, the basis of property is the cost thereof. The cost is the amount paid for such property in cash or other property. This general rule is subject to exceptions stated in subchapter O (relating to gain or loss on the disposition of property), subchapter C (relating to corporate distributions and adjustments), subchapter K (relating to partners and partnerships), and subchapter P (relating to capital gains and losses) of chapter 1 of the Internal Revenue Code of 1954.

(b) *Real estate taxes as part of cost.* In computing the cost of real property, the purchaser shall not take into account any amount paid to the seller as reimbursement for real property taxes which are treated under section 164 (d) as imposed upon the purchaser. This rule applies whether or not the contract of sale calls for the purchaser to reimburse the seller for such real estate taxes paid or to be paid by the seller. On the other hand, where the purchaser pays (or assumes liability for) real estate taxes which are treated under section 164 (d) as imposed upon the seller, such taxes shall be considered part of the cost of the property. It is immaterial whether or not the contract of sale specifies that the sale price has been reduced by, or is in any way intended to reflect, real

estate taxes allocable to the seller under section 164 (d). For illustrations of the application of this paragraph, see § 1.1001-1 (b).

(c) *Sale of stock*—(1) *In general.* If shares of stock in a corporation are sold or transferred by a taxpayer who purchased or acquired lots of stock on different dates or at different prices, and the lot from which the stock was sold or transferred cannot be adequately identified, the stock sold or transferred shall be charged against the earliest purchased of such lots in order to determine the cost or other basis of such stock under this section, and in order to determine the holding period of such stock for purposes of subchapter P of chapter 1 of the Internal Revenue Code of 1954. If, on the other hand, the lot from which the stock is sold or transferred can be adequately identified, the rule stated in the preceding sentence is not applicable. As to what constitutes "adequate identification", see subparagraphs (2), (3), and (4) of this paragraph.

(2) *Identification of stock.* An adequate identification is made if it is shown that certificates representing shares of stock from a lot which was purchased or acquired on a certain date or for a certain price were delivered to the taxpayer's transferee. Except as otherwise provided in subparagraph (3) of this paragraph, the stock certificates delivered to the transferee constitute the stock sold or transferred by the taxpayer. Thus, unless the requirements of subparagraph (3) of this paragraph are met, the stock sold or transferred is charged to the lot to which the certificates delivered to the transferee belong, whether or not the taxpayer intends, or instructs his broker or other agent, to sell or transfer stock from a lot purchased or acquired on a different date or for a different price.

(3) *Identification on confirmation document.* (i) Where the stock is left in the custody of a broker or other agent, an adequate identification is made if, at the time of the sale or transfer, the taxpayer—

(a) Specifies to such broker or other agent having custody of the stock, through whom the sale or transfer of such stock is made, the particular stock to be sold or transferred, and

(b) Confirmation of such specification is set forth in a written document from such broker or other agent.

Stock identified pursuant to this subdivision is the stock sold or transferred by the taxpayer, even though stock certificates from a different lot are delivered to the taxpayer's transferee.

(ii) Where a single stock certificate represents stock from different lots, where such certificate is held by the taxpayer rather than his broker or other agent, and where the taxpayer sells a part of the stock represented by such certificate through a broker or other agent, an adequate identification is made if, at the time of the delivery of the certificate to the broker or other agent, the taxpayer—

(a) Specifies to such broker or other agent the particular stock to be sold or transferred, and

(b) Confirmation of such specification is set forth in a written document from such broker or agent.

Where part of stock represented by a single certificate is sold or transferred directly by the taxpayer to the purchaser instead of through a broker or other agent, an adequate identification is made if the taxpayer maintains a record of the particular stock which he intended to sell or transfer.

(4) *Stock held by a fiduciary; identification by books.* In the case of a distribution of stock by a fiduciary, an adequate identification is made if the fiduciary—

(i) Clearly specifies, in its books or other appropriate records, the particular stock distributed, and

(ii) Furnishes the distributee with a written document setting forth such information in full.

The rule of this subparagraph does not apply where an adequate identification can be made under subparagraph (2) or where stock is sold by a fiduciary.

(5) *Subsequent sales.* If stock identified under subparagraph (3) or (4) of this paragraph as belonging to a particular lot is sold or transferred, the stock so identified shall be deemed to have been sold or transferred and such sale or transfer will be taken into consideration in identifying stock remaining in the taxpayer's hands which is subsequently sold or transferred.

(6) *Example.* The provisions of this paragraph may be illustrated by the following example:

Example. (1) The corpus of Trust A consists in part of 480 shares of the common stock of X Corporation, purchased by the trust on the following dates and for the following prices:

Number of shares	Date purchased	Price
114-----	Jan. 1, 1947	\$14/share.
40-----	June 15, 1949	\$19/share.
250-----	July 1, 1953	\$12/share.
76-----	Feb. 1, 1956	\$15/share.

On March 15, 1956, the trust terminates. Under the trust instrument, the corpus is to be divided between 8 remaindermen in equal shares. For the purpose of making an "adequate identification", the trustee may turn in its stock in X Corporation for 8 certificates of 60 shares each and distribute one certificate to each remainderman, making the following designation on its books or other appropriate records and in a written document furnished to each distributee:

REMAINDERMAN B

Number of shares	Date purchased	Price
14 1/4-----	Jan. 1, 1947	\$14/share.
5-----	June 15, 1949	\$19/share.
31 1/4-----	July 1, 1953	\$12/share.
9 1/2-----	Feb. 1, 1956	\$15/share.

(ii) If, following the termination of Trust A, Remainderman B desires to sell 5 shares of stock purchased on June 15, 1949, he may so specify to his broker and deliver to the latter the stock certificate representing 60 shares of stock, receiving in return the proceeds of sale plus a certificate (or certificates) for 55 shares of stock. If the requirements of subparagraph (3) (ii) of this paragraph are met, an "adequate identification" of the stock sold has been made.

(d) *Special rules.* For special rules for determining the basis for gain or loss in

the case of vessels acquired through the Maritime Commission (or its successor), see sections 510 and 511 of the Merchant Marine Act of 1936 (46 U. S. C. 1160, 1161). For special rules for determining the unadjusted basis of property recovered in respect of war losses, see section 1336. For special rules for determining the basis for gain or loss in the case of the disposition of a share of stock acquired pursuant to the timely exercise of a restricted stock option where the option price was between 85 percent and 95 percent of the fair market value of the stock at the time the option was granted, see section 421 (b). For special rules for determining the basis and adjusted basis of property acquired or improved with the proceeds of a grant or loan made to a taxpayer by the United States for the encouragement of exploration, development, or mining of critical and strategic minerals or metals, see section 621.

§ 1.1012-2 *Transfers in part a sale and in part a gift.* For rule relating to basis of property acquired in a transfer which is in part a gift and in part a sale, see § 1.1015-4.

§ 1.1013 *Statutory provisions; basis of property included in inventory.*

SEC. 1013. *Basis of property included in inventory.* If the property should have been included in the last inventory, the basis shall be the last inventory value thereof.

§ 1.1013-1 *Property included in inventory.* The basis of property required to be included in inventory is the last inventory value of such property in the hands of the taxpayer. The requirements with respect to the valuation of an inventory are stated in sections 471, 472, and the regulations thereunder.

§ 1.1014 *Statutory provisions; basis of property acquired from a decedent.*

SEC. 1014. *Basis of property acquired from a decedent*—(a) *In general.* Except as otherwise provided in this section, the basis of property in the hands of a person acquiring the property from a decedent or to whom the property passed from a decedent shall, if not sold, exchanged, or otherwise disposed of before the decedent's death by such person, be the fair market value of the property at the date of the decedent's death, or, in the case of an election under either section 2032 or section 811 (j) of the Internal Revenue Code of 1939 where the decedent died after October 21, 1942, its value at the applicable valuation date prescribed by those sections.

(b) *Property acquired from the decedent.* For purposes of subsection (a), the following property shall be considered to have been acquired from or to have passed from the decedent:

(1) Property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent;

(2) Property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust;

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust;

(4) Property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will;

(5) In the case of decedents dying after August 26, 1937, property acquired by bequest, devise, or inheritance or by the decedent's estate from the decedent, if the property consists of stock or securities of a foreign corporation, which with respect to its taxable year next preceding the date of the decedent's death was, under the law applicable to such year, a foreign personal holding company. In such case, the basis shall be the fair market value of such property at the date of the decedent's death or the basis in the hands of the decedent, whichever is lower;

(6) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in such property was includible in determining the value of the decedent's gross estate under chapter 11 of subtitle B (section 2001 and following, relating to estate tax) or section 811 of the Internal Revenue Code of 1939;

(7) In the case of decedents dying after October 21, 1942, and on or before December 31, 1947, such part of any property, representing the surviving spouse's one-half share of property held by a decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, as was included in determining the value of the gross estate of the decedent, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable on the transfer of the net estate of the decedent. In such case, nothing in this paragraph shall reduce the basis below that which would exist if the Revenue Act of 1948 had not been enacted;

(8) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of such interest was required to be included in determining the value of decedent's gross estate under section 811 of the Internal Revenue Code of 1939;

(9) In the case of decedents dying after December 31, 1953, property acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), if by reason thereof the property is required to be included in determining the value of the decedent's gross estate under chapter 11 of subtitle B or under the Internal Revenue Code of 1939. In such case, if the property is acquired before the death of the decedent, the basis shall be the amount determined under subsection (a) reduced by the amount allowed to the taxpayer as deductions in computing taxable income under this subtitle or prior income tax laws for exhaustion, wear and tear, obsolescence, amortization, and depletion on such property before the death of the decedent. Such basis shall be applicable to the property commencing on the death of the decedent. This paragraph shall not apply to—

(A) Annuities described in section 72;

(B) Property to which paragraph (5) would apply if the property had been acquired by bequest; and

(C) Property described in any other paragraph of this subsection.

(c) *Property representing income in respect of a decedent.* This section shall not apply to property which constitutes a right to receive an item of income in respect of a decedent under section 691.

(d) *Employee stock options.* This section shall not apply to restricted stock options described in section 421 which the employee has not exercised at death.

§ 1.1014-1 *Basis of property acquired from a decedent—(a) General rule.* The purpose of section 1014 is, in general, to provide a basis for property acquired from a decedent which is equal to the value placed upon such property for purposes of the Federal estate tax. Accordingly, the general rule is that the basis of property acquired from a decedent is the fair market value of such property at the date of the decedent's death, or, if the decedent's executor so elects, at the alternate valuation date prescribed in section 2032, or in section 811 (j) of the Internal Revenue Code of 1939. Property acquired from a decedent includes, principally, property acquired by bequest, devise, or inheritance, and, in the case of decedents dying after December 31, 1953, property required to be included in determining the value of the decedent's gross estate under any provision of the Internal Revenue Code of 1954 or the Internal Revenue Code of 1939. The general rule governing basis of property acquired from a decedent, as well as other rules prescribed elsewhere in this section, shall have no application if the property is sold, exchanged, or otherwise disposed of before the decedent's death by the person who acquired the property from the decedent. For general rules on the applicable valuation date where the executor of a decedent's estate elects under section 2032, or under section 811 (j) of the Internal Revenue Code of 1939, to value the decedent's gross estate at the alternate valuation date prescribed in such sections, see § 1.1014-3 (e).

(b) *Scope and application.* With certain limitations, the general rule described in paragraph (a) of this section is applicable to the classes of property described in paragraphs (a) and (b) of § 1.1014-2. Special basis rules with respect to the basis of certain other property acquired from a decedent are set forth in § 1.1014-2 (c). These special rules concern certain stock or securities of a foreign personal holding company and the surviving spouse's one-half share of community property held with a decedent dying after October 21, 1942, and on or before December 31, 1947. In this section and §§ 1.1014-2 to 1.1014-6, inclusive, whenever the words "property acquired from a decedent" are used they shall also mean "property passed from a decedent" and the phrase "person who acquired it from the decedent" shall include the "person to whom it passed from the decedent."

(c) *Property to which section 1014 does not apply.* Section 1014 shall have no application to the following classes of property:

(1) Property which constitutes a right to receive an item of income in respect of a decedent under section 691; and

(2) Restricted stock options described in section 421 which the employee has not exercised at death, regardless of the date on which the employee died.

§ 1.1014-2 *Property acquired from a decedent—(a) In general.* The following

property, except where otherwise indicated, is considered to have been acquired from a decedent and the basis thereof is determined in accordance with the general rule in § 1.1014-1:

(1) Without regard to the date of the decedent's death, property acquired by bequest, devise, or inheritance, or by the decedent's estate from the decedent, whether the property was acquired under the decedent's will or under the law governing the descent and distribution of the property of decedents. However, see paragraph (c) (1) of this section if the property was acquired by bequest or inheritance from a decedent dying after August 26, 1937, and if such property consists of stock or securities of a foreign personal holding company.

(2) Without regard to the date of the decedent's death, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent, with the right reserved to the decedent at all times before his death to revoke the trust.

(3) In the case of decedents dying after December 31, 1951, property transferred by the decedent during his lifetime in trust to pay the income for life to or on the order or direction of the decedent with the right reserved to the decedent at all times before his death to make any change in the enjoyment thereof through the exercise of a power to alter, amend, or terminate the trust.

(4) Without regard to the date of the decedent's death, property passing without full and adequate consideration under a general power of appointment exercised by the decedent by will. (See section 2041 (b) for definition of general power of appointment.)

(5) In the case of decedents dying after December 31, 1947, property which represents the surviving spouse's one-half share of community property held by the decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, if at least one-half of the whole of the community interest in that property was includible in determining the value of the decedent's gross estate under part III of chapter 11 (relating to the estate tax) or section 811 of the Internal Revenue Code of 1939. It is not necessary for the application of this subparagraph that an estate tax return be required to be filed for the estate of the decedent or that an estate tax be payable.

(6) In the case of decedents dying after December 31, 1950, and before January 1, 1954, property which represents the survivor's interest in a joint and survivor's annuity if the value of any part of that interest was required to be included in determining the value of the decedent's gross estate under section 811 of chapter 3 of the Internal Revenue Code of 1939. It is necessary only that the value of a part of the survivor's interest in the annuity be includible in the gross estate under section 811. It is not necessary for the application of this subparagraph that an estate tax return be required to be filed for the estate of

the decedent or that an estate tax be payable.

(b) *Property acquired from a decedent dying after December 31, 1953*—(1) *In general.* In addition to the property described in paragraph (a) of this section, and except as otherwise provided in subparagraph (3) of this paragraph, in the case of a decedent dying after December 31, 1953, property shall also be considered to have been acquired from the decedent to the extent that both of the following conditions are met: (i) the property was acquired from the decedent by reason of death, form of ownership, or other conditions (including property acquired through the exercise or non-exercise of a power of appointment), and (ii) the property is includible in the decedent's gross estate under the provisions of the Internal Revenue Code of 1954, or 1939, because of such acquisition. The basis of such property in the hands of the person who acquired it from the decedent shall be determined in accordance with the general rule in § 1.1014-1. See, however, § 1.1014-6 for special adjustments if such property is acquired before the death of the decedent. See also subparagraph (3) for a description of property not within the scope of this paragraph.

(2) *Rules for the application of subparagraph (1).* Except as provided in subparagraph (3), this paragraph generally includes all property acquired from a decedent, which is includible in the gross estate of the decedent if the decedent died after December 31, 1953. It is not necessary for the application of this paragraph that an estate tax return be required to be filed for the estate of the decedent or that an estate tax be payable. Property acquired prior to the death of a decedent which is includible in the decedent's gross estate, such as property transferred by a decedent in contemplation of death, and property held by a taxpayer and the decedent as joint tenants or as tenants by the entireties is within the scope of this paragraph. Also, this paragraph includes property acquired through the exercise or non-exercise of a power of appointment where such property is includible in the decedent's gross estate. It does not include property not includible in the decedent's gross estate such as property not situated in the United States acquired from a nonresident who is not a citizen of the United States.

(3) *Exceptions to application of paragraph (b).* The rules in paragraph (b) are not applicable to the following property:

- (i) Annuities described in section 72;
- (ii) Stock or securities of a foreign personal holding company as described in section 1014 (b) (5) (see paragraph (c) (1) of this section);
- (iii) Property described in any paragraph other than paragraph (9) of section 1014 (b). See paragraphs (a) and (c) of this section.

In illustration of subdivision (ii), assume that A acquired by gift stock of a character described in paragraph (c) (1) of this section from a donor and upon the death of the donor the stock was includible in the donor's estate as being a

gift in contemplation of death. A's basis in the stock would not be determined by reference to its fair market value at the donor's death under the general rule in section 1014 (a). Furthermore, the special basis rules prescribed in paragraph (c) (1) are not applicable to such property acquired by gift in contemplation of death. It will be necessary to refer to the rules in section 1015 (a) to determine the basis.

(c) *Special basis rules with respect to certain property acquired from a decedent*—(1) *Stock or securities of a foreign personal holding company.* The basis of certain stock or securities of a foreign corporation which was a foreign personal holding company with respect to its taxable year next preceding the date of the decedent's death is governed by a special rule. If such stock was acquired from a decedent dying after August 26, 1937, by bequest or inheritance, or by the decedent's estate from the decedent, the basis of the property in the hands of the person who so acquired it (notwithstanding any other provision of section 1014) shall be the fair market value of such property at the date of the decedent's death or the adjusted basis of the stock in the hands of the decedent, whichever is lower.

(2) *Spouse's interest in community property of decedent dying after October 21, 1942, and on or before December 31, 1947.* In the case of a decedent dying after October 21, 1942, and on or before December 31, 1947, a special rule is provided for determining the basis of such part of any property, representing the surviving spouse's one-half share of property held by the decedent and the surviving spouse under the community property laws of any State, Territory, or possession of the United States or any foreign country, as was included in determining the value of the decedent's gross estate, if a tax under chapter 3 of the Internal Revenue Code of 1939 was payable upon the decedent's net estate. In such case the basis shall be the fair market value of such part of the property at the date of death (or the optional valuation elected under section 811 (j) of the Internal Revenue Code of 1939) or the adjusted basis of the property determined without regard to this subparagraph, whichever is the higher.

§ 1.1014-3 *Other basis rules*—(a) *Fair market value.* For purposes of this section and § 1.1014-1, the value of property as of the date of the decedent's death as appraised for the purpose of the Federal estate tax or the alternate value as appraised for such purpose, whichever is applicable, shall be deemed to be its fair market value. If no estate tax return is required to be filed under section 6018 (or under section 821 or 864 of the Internal Revenue Code of 1939) the value of the property appraised as of the date of the decedent's death for the purpose of State inheritance or transmission taxes shall be deemed to be its fair market value and no alternate valuation date shall be applicable.

(b) *Property acquired from a decedent dying before March 1, 1913.* If the decedent died before March 1, 1913, the fair market value on that date is taken in

lieu of the fair market value on the date of death, but only to the same extent and for the same purposes as the fair market value on March 1, 1913, is taken under section 1053.

(c) *Reinvestments by a fiduciary.* The basis of property acquired after the death of the decedent by a fiduciary as an investment is the cost or other basis of such property to the fiduciary, and not the fair market value of such property at the death of the decedent. For example, the executor of an estate purchases stock of X company at a price of \$100 per share with the proceeds of the sale of property acquired from a decedent. At the date of the decedent's death the fair market value of such stock was \$98 per share. The basis of such stock to the executor or to a legatee, assuming the stock is distributed, is \$100 per share.

(d) *Reinvestments of property transferred during life.* Where property is transferred by a decedent during life and the property is sold, exchanged, or otherwise disposed of before the decedent's death by the person who acquired the property from the decedent, the general rule stated in § 1.1014-1 (a) shall not apply to such property. However, in such a case, the basis of any property acquired by such donee in exchange for the original property, or of any property acquired by the donee through reinvesting the proceeds of the sale of the original property, shall be the fair market value of the property thus acquired at the date of the decedent's death (or applicable alternate valuation date) if the property thus acquired is properly included in the decedent's gross estate for Federal estate tax purposes. These rules also apply to property acquired by the donee in any further exchanges or in further reinvestments. For example, on January 1, 1956, the decedent made a gift of real property to a trust for the benefit of his children, reserving to himself the power to revoke the trust at will. Prior to the decedent's death the trustee sold the real property and invested the proceeds in stock of the Y company at \$50 per share. At the time of the decedent's death the value of such stock was \$75 per share. The corpus of the trust was required to be included in the decedent's gross estate owing to his reservation of the power of revocation. The basis of the Y company stock following the decedent's death is \$75 per share. Moreover, if the trustee sold the Y company stock before the decedent's death for \$65 a share and reinvested the proceeds in Z company stock which increased in value to \$85 per share at the time of the decedent's death, the basis of the Z company stock following the decedent's death would be \$85 per share.

(e) *Alternate valuation dates.* Section 1014 (a) provides a special rule applicable in determining the basis of property described in § 1.1014-2 where—

(1) The property is includible in the gross estate of a decedent who died after October 21, 1942, and

(2) The executor elects for estate tax purposes under section 2032, or section 811 (j) of the Internal Revenue Code of 1939, to value the decedent's gross estate

at the alternate valuation date prescribed in such sections.

In those cases, the value applicable in determining the basis of the property is not the value at the date of the decedent's death but (with certain limitations) the value at the date one year after his death if not distributed, sold, exchanged, or otherwise disposed of in the meantime. If such property was distributed, sold, exchanged, or otherwise disposed of within one year after the date of the decedent's death by the person who acquired it from the decedent, the value applicable in determining the basis is its value as of the date of such distribution, sale, exchange, or other disposition. For illustrations of the operation of this paragraph, see the estate tax regulations under section 2032.

§ 1.1014-4 Uniformity of basis; adjustment to basis—(a) In general. (1) The basis of property acquired from a decedent, as determined under section 1014 (a), is uniform in the hands of every person having possession or enjoyment of the property at any time under the will or other instrument or under the laws of descent and distribution. The principle of uniform basis means that the basis of the property (to which proper adjustments must, of course, be made) will be the same, or uniform, whether the property is possessed or enjoyed by the executor or administrator, the heir, the legatee or devisee, or the trustee or beneficiary of a trust created by a will or an inter vivos trust. In determining the amount allowed or allowable to a taxpayer in computing taxable income as deductions for depreciation or depletion under section 1016 (a) (2), the uniform basis of the property shall at all times be used and adjusted. The sale, exchange, or other disposition by a life tenant or remainderman of his interest in property will, for purposes of this section, have no effect upon the uniform basis of the property in the hands of those who acquired it from the decedent. Thus, gain or loss on sale of trust assets by the trustee will be determined without regard to the prior sale of any interest in the property. Moreover, any adjustment for depreciation shall be made to the uniform basis of the property without regard to such prior sale, exchange, or other disposition.

(2) Under the law governing wills and the distribution of the property of decedents, all titles to property acquired by bequest, devise, or inheritance relate back to the death of the decedent, even though the interest of the person taking the title was, at the date of death of the decedent, legal, equitable, vested, contingent, general, specific, residual, conditional, executory, or otherwise. Accordingly, there is a common acquisition date for all titles to property acquired from a decedent within the meaning of section 1014, and, for this reason, a common or uniform basis for all such interests. For example, if distribution of personal property left by a decedent is not made until one year after his death, the basis of such property in the hands of the legatee is its fair market value at the time when the decedent died, and not when the legatee

actually received the property. If the bequest is of the residue to trustees in trust, and the executors do not distribute the residue to such trustees until five years after the death of the decedent, the basis of each piece of property left by the decedent and thus received, in the hands of the trustees, is its fair market value at the time when the decedent dies. If the bequest is to trustees in trust to pay to A during his lifetime the income of the property bequeathed, and after his death to distribute such property to the survivors of a class, and upon A's death the property is distributed to the taxpayer as the sole survivor, the basis of such property, in the hands of the taxpayer, is its fair market value at the time when the decedent died. The purpose of the Internal Revenue Code in prescribing a general uniform basis rule for property acquired from a decedent is, on the one hand, to tax the gain, in respect of such property, to him who realizes it (without regard to the circumstance that at the death of the decedent it may have been quite uncertain whether the taxpayer would take or gain anything); and, on the other hand, not to recognize as gain any element of value resulting solely from the circumstance that the possession or enjoyment of the taxpayer was postponed. Such postponement may be, for example, until the administration of the decedent's estate is completed, until the period of the possession or enjoyment of another has terminated, or until an uncertain event has happened. It is the increase or decrease in the value of property reflected in a sale or other disposition which is recognized as the measure of gain or loss.

(3) The principles stated in subparagraphs (1) and (2) of this paragraph do not apply to property transferred by an executor, administrator or trustee, to an heir, legatee, devisee or beneficiary under circumstances such that the transfer constitutes a sale or exchange. In such a case, gain or loss must be recognized by the transferor to the extent required by the revenue laws, and the transferee acquires a basis equal to the fair market value of the property on the date of the transfer. Thus, for example, if the trustee of a trust created by will transfers to a beneficiary, in satisfaction of a specific bequest of \$10,000, securities which had a fair market value of \$9,000 on the date of the decedent's death and \$10,000 on the date of the transfer, the trust realizes a taxable gain of \$1,000 and the basis of the securities in the hands of the beneficiary would be \$10,000. As a further example, if the executor of an estate transfers to a trust property worth \$200,000, which had a fair market value of \$175,000 on the date of the decedent's death, in satisfaction of the decedent's bequest in trust for the benefit of his wife of cash or securities to be selected by the executor in an amount sufficient to utilize the marital deduction to the maximum extent authorized by law (after taking into consideration any other property qualifying for the marital deduction), capital gain in the amount of \$25,000 would be realized by the estate and the basis of the property in the hands of the trustees would be \$200,000. If, on the other hand, the decedent bequeathed a fraction of his

residuary estate to a trust for the benefit of his wife, which fraction will not change regardless of any fluctuations in value of property in the decedent's estate after his death, no gain or loss would be realized by the estate upon transfer of property to the trust, and the basis of the property in the hands of the trustee would be its fair market value on the date of the decedent's death or on the alternate valuation date.

(b) *Multiple interests.* Where more than one person has an interest in property acquired from a decedent, the basis of such property shall be determined and adjusted without regard to the multiple interests. The basis for computing gain or loss on the sale of any one of such multiple interests shall be determined under § 1.1014-5. Thus, the deductions for depreciation and for depletion allowed or allowable, under sections 167 and 611, to a legal life tenant as if the life tenant were the absolute owner of the property, constitute an adjustment to the basis of the property not only in the hands of the life tenant, but also in the hands of the remainderman and every other person to whom the same uniform basis is applicable. Similarly, the deductions allowed or allowable under sections 167 and 611, both to the trustee and to the trust beneficiaries, constitute an adjustment to the basis of the property not only in the hands of the trustee, but also in the hands of the trust beneficiaries and every other person to whom the uniform basis is applicable. See, however, section 262. Similarly, adjustments in respect of capital expenditures or losses, tax-free distributions, or other distributions applicable in reduction of basis, or other items for which the basis is adjustable are made without regard to which one of the persons to whom the same uniform basis is applicable makes the capital expenditures or sustains the capital losses, or to whom the tax-free or other distributions are made, or to whom the deductions are allowed or allowable. See § 1.1014-6 for adjustments in respect of property acquired from a decedent prior to his death.

(c) *Records.* The executor or other legal representative of the decedent, the fiduciary of a trust under a will, the life tenant and every other person to whom a uniform basis under this section is applicable, shall maintain records showing in detail all deductions, distributions, or other items for which adjustment to basis is required to be made by sections 1016 and 1017, and shall furnish to the district director such information with respect to those adjustments as he may require.

§ 1.1014-5 Gain or loss—(a) Sale or other disposition of a life interest, remainder interest, or other interest in property acquired from a decedent. (1) The gain or loss from a sale or other disposition of a life interest, remainder interest, or other interest in property acquired from a decedent is determined by comparing the amount of the proceeds with the amount of that part of the adjusted uniform basis which is assignable to the interest sold or otherwise disposed of. The adjusted uniform

basis is the uniform basis of the entire property adjusted to the time of sale or other disposition of any such interest as required by sections 1016 and 1017. The uniform basis is the unadjusted basis of the entire property determined immediately after the decedent's death under the applicable sections of part II of subchapter O of chapter 1 of the Internal Revenue Code of 1954. The proper measure of gain or loss resulting from a sale or other disposition of an interest in property acquired from a decedent is so much of the increase or decrease in the value of the entire property as is reflected in such sale or other disposition. Hence, in ascertaining the basis of a life interest, remainder interest, or other interest which is sold or otherwise disposed of, the uniform basis rule contemplates that proper adjustments will be made to reflect the change in relative value of the interests on account of the passage of time. Where a remainder interest is subject to a life interest in one person only, the factors set forth in the table which appears at the end of this subparagraph shall be used in determining the basis of the life interest or the remainder interest in the property at the time such interest is sold. The basis of the life interest or the remainder interest is computed by multiplying the uniform basis (adjusted to the time of the sale) by the appropriate factor. In the case of the sale of a life interest or a remainder interest, the factor used is the factor which appears in the life interest or the remainder interest column of the table opposite the age (at the time of the sale) of the person at whose death the life interest will terminate.

TABLE OF FACTORS

These factors are taken from Table I of the Estate Tax Regulations. See Table I in § 20.2031-7 (f) of those regulations for remainder and life factors for ages not shown here.

Age of measuring life	Factor for life interest	Factor for remainder interest
21	.78203	0.21797
22	.77576	.22424
23	.76930	.23070
24	.76266	.23734
25	.75582	.24418
26	.74880	.25120
27	.74157	.25843
28	.73416	.26584
29	.72653	.27347
30	.71871	.28129
31	.71068	.28932
32	.70245	.29755
33	.69401	.30599
34	.68536	.31464
35	.67650	.32350
36	.66743	.33257
37	.65815	.34185
38	.64867	.35133
39	.63908	.36102
40	.62938	.37092
41	.61959	.38101
42	.60969	.39131
43	.59960	.40180
44	.58931	.41249
45	.57884	.42336
46	.56819	.43441
47	.55736	.44564
48	.54636	.45703
49	.53511	.46859
50	.52361	.48030
51	.51186	.49215
52	.49987	.50413
53	.48764	.51623
54	.47517	.52843
55	.46246	.54074
56	.44951	.55312
57	.43632	.56558
58	.42291	.57809

Age of measuring life	Factor for life interest	Factor for remainder interest
59	.40636	.59064
60	.39679	.60321
61	.38422	.61578
62	.37165	.62835
63	.35911	.64089
64	.34663	.65337
65	.33420	.66580
66	.32186	.67814
67	.30962	.69038
68	.29750	.70250
69	.28552	.71448
70	.27370	.72630
71	.26205	.73795
72	.25059	.74941
73	.23934	.76066
74	.22831	.77169
75	.21752	.78248
76	.20698	.79302
77	.19670	.80330
78	.18671	.81329
79	.17700	.82300
80	.16759	.83241

In cases in which the value of an interest cannot be determined from the above table, for example, cases in which 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, the factor is to be computed upon the basis of the Makehamized mortality table and interest at the rate of $3\frac{1}{2}$ percent a year, compounded annually. This table appears as Table 38 of United States Life Tables and Actuarial Tables 1939-1941, published by the United States Department of Commerce, Bureau of the Census. 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," which may be purchased from the Superintendent of Documents, United States Government Printing Office, Washington 25, D. C.; or a case requiring a special factor (provided the transaction is completed and not merely proposed or hypothetical) may be stated to the Commissioner who will furnish such factor. 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.

(2) The application of this section may be illustrated by the following example:

Example. Improved realty having a fair market value of \$20,000 at the date of the decedent's death on January 1, 1954, is devised to A for life, with remainder over to B. On January 1, 1958, A sells his life interest for \$12,500. During each of the years 1954-57, inclusive, A was allowed a deduction of \$300 for depreciation. Thus, the adjusted uniform basis of the property is \$18,800 (\$20,000 minus \$1,200 depreciation). At the time of the sale, A was 39 years of age. The life factor to be used here is 0.63898. The portion of the uniform basis (adjusted to the time of the sale) assigned to A's life interest is \$12,012.82 ($0.63898 \times \$18,800$). A's gain on the sale is \$487.18 ($\$12,500 - \$12,012.82$).

§ 1.1014-6 *Special rule for adjustments to basis where property is acquired from a decedent prior to his death*—(a) In general. (1) The basis of property described in section 1014 (b) (9) which is acquired from a decedent prior to his death shall be adjusted for depreciation, obsolescence, amortization, and depletion allowed the taxpayer on

such property for the period prior to the decedent's death. Thus, in general, the adjusted basis of such property will be its fair market value at the decedent's death, or the applicable alternate valuation date, less the amount allowed (determined with regard to section 1016 (a) (2) (B)) to the taxpayer as deductions for exhaustion, wear and tear, obsolescence, amortization and depletion for the period held by the taxpayer prior to the decedent's death. The deduction allowed for a taxable year in which the decedent dies shall be an amount properly allocable to that part of the year prior to his death. For a discussion of the basis adjustment required by section 1014 (b) (9) where property is held in trust, see paragraph (c) of this section.

(2) Where property coming within the purview of subparagraph (1) of this paragraph was held by the decedent and his surviving spouse as tenants by the entirety or as joint tenants with right of survivorship, and joint income tax returns were filed by the decedent and the surviving spouse in which the deductions referred to in subparagraph (1) were taken, there shall be allocated to the surviving spouse's interest in the property that proportion of the deductions allowed for each period for which the joint returns were filed which her income from the property bears to the total income from the property. Each spouse's income from the property shall be determined in accordance with local law.

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

Example (1). The taxpayer acquired income-producing property by gift on January 1, 1954. The property had a fair market value of \$50,000 on the date of the donor's death, January 1, 1956, and was included in his gross estate at that amount for estate tax purposes as a transfer in contemplation of death. Depreciation in the amount of \$750 per year was allowable for each of the taxable years 1954 and 1955. However, the taxpayer claimed depreciation in the amount of \$500 for each of these years (resulting in a reduction in his taxes) and his income tax returns were accepted as filed. The adjusted basis of the property as of the date of the decedent's death is \$49,000 (\$50,000, the fair market value at the decedent's death, less \$1,000, the total of the amounts actually allowed as deductions).

Example (2). On July 1, 1952, H purchased for \$30,000 income-producing property which he conveyed to himself and W, his wife, as tenants by the entirety. Under local law each spouse was entitled to one-half of the income therefrom. H died on January 1, 1955, at which time the fair market value of the property was \$40,000. The entire value of the property was included in H's gross estate. H and W filed joint income tax returns for the years 1952, 1953, and 1954. The total depreciation allowance for the year 1952 was \$500 and for each of the other years 1953 and 1954 was \$1,000. One-half of the \$2,500 depreciation will be allocated to W. The adjusted basis of the property in W's hands of January 1, 1955, was \$38,750 (\$40,000, value on the date of H's death, less \$1,250, depreciation allocated to W for periods before H's death). However, if, under local law, all of the income from the property was allocable to H, no adjustment under this paragraph would be required and W's basis for the property as of the date of H's death would be \$40,000.

(b) *Multiple interests in property described in section 1014 (b) (9) and acquired from a decedent prior to his death.*

(1) Where more than one person has an interest in property described in section 1014 (b) (9) which was acquired from a decedent before his death, the basis of such property and of each of the several interests therein shall, in general, be determined and adjusted in accordance with the principles contained in §§ 1.1014-4 and 1.1014-5, relating to the uniformity of basis rule. Application of these principles to the determination of basis under section 1014 (b) (9) is shown in the remaining subparagraphs of this paragraph in connection with certain commonly encountered situations involving multiple interests in property acquired from a decedent before his death.

(2) Where property is acquired from a decedent before his death, and the entire property is subsequently included in the decedent's gross estate for estate tax purposes, the uniform basis of the property, as well as the basis of each of the several interests in the property, shall be determined by taking into account the basis adjustments required by section 1014 (a) owing to such inclusion of the entire property in the decedent's gross estate. For example, suppose that the decedent transfers property in trust, with a life estate to A, and the remainder to B or his estate. The transferred property consists of 100 shares of the common stock of X Corporation, with a basis of \$10,000 at the time of the transfer. At the time of the decedent's death the value of the stock is \$20,000. The transfer is held to have been made in contemplation of death and the entire value of the trust is included in the decedent's gross estate. Under section 1014 (a), the uniform basis of the property in the hands of the trustee, the life tenant, and the remainderman, is \$20,000. If immediately prior to the decedent's death, A's share of the uniform basis of \$10,000 was \$6,000, and B's share was \$4,000, then, immediately after the decedent's death, A's share of the uniform basis of \$20,000 is \$12,000, and B's share is \$8,000.

(3) (i) In cases where, due to the operation of the estate tax, only a portion of property acquired from a decedent before his death is included in the decedent's gross estate, as in cases where the decedent retained a reversion to take effect upon the expiration of a life estate in another, the uniform basis of the entire property shall be determined by taking into account any basis adjustments required by section 1014 (a) owing to such inclusion of a portion of the property in the decedent's gross estate. In such cases the uniform basis is the adjusted basis of the entire property immediately prior to the decedent's death increased (or decreased) by an amount which bears the same relation to the total appreciation (or diminution) in value of the entire property (over the adjusted basis of the entire property immediately prior to the decedent's death) as the value of the property included in the decedent's gross estate bears to the value of the entire property. For example, assume that the decedent creates a trust to pay the income to A for life,

remainder to B or his estate. The trust instrument further provides that if the decedent should survive A, the income shall be paid to the decedent for life. Assume that the decedent predeceases A, so that, due to the operation of the estate tax, only the present value of the remainder interest is included in the decedent's gross estate. The trust consists of 100 shares of the common stock of X Cor-

poration with an adjusted basis immediately prior to the decedent's death of \$10,000 (as determined under section 1015). At the time of the decedent's death the value of the stock is \$20,000, and the value of the remainder interest in the hands of B is \$8,000. The uniform basis of the entire property following the decedent's death is \$14,000, computed as follows:

Uniform basis prior to decedent's death	\$10,000
plus	
Increase in uniform basis (determined by the following formula)	4,000
Increase in uniform basis (to be determined) \$10,000 (total appreciation) $\frac{\\$8,000 \text{ (value of property included in gross estate)}}{\\$20,000 \text{ (value of entire property)}}$	
Uniform basis under section 1014 (a)	14,000

(ii) In cases of the type described in subdivision (i) of this subparagraph, the basis of any interest which is included in the decedent's gross estate may be ascertained by adding to (or subtracting from) the basis of such interest determined immediately prior to the decedent's death the increase (or decrease) in the uniform basis of the property attributable to the inclusion of the interest in the decedent's gross estate. Where the interest is sold or otherwise disposed of at any time after the decedent's death, proper adjustment must be made in order to reflect the change in value of the interest on account of the passage of time (see § 1.1014-5 (a) and the table included therein). For an illustration of the operation of this subdivision, see step 6 of the example in § 1.1014-7.

(iii) In cases of the type described in subdivision (i) (cases where, due to the operation of the estate tax, only a portion of the property is included in the decedent's gross estate), the basis for computing the depreciation, amortization, or depletion allowance shall be the uniform basis of the property determined under section 1014 (a). However, the manner of taking into account such allowance computed with respect to such uniform basis is subject to the following limitations:

(a) In cases where the value of the life interest is not included in the decedent's gross estate, the amount of such allowance to the life tenant under section 167 (g) (or section 611 (b)) shall not exceed the amount which would have been allowable to the life tenant if no portion of the basis of the property was determined under section 1014 (a). Proper adjustment shall be made for the amount allowable to the life tenant, as required by section 1016. Thus, an appropriate adjustment shall be made to the uniform basis of the property in the hands of the trustee, to the basis of the life interest in the hands of the life tenant, and to the basis of the remainder in the hands of the remainderman.

(b) The remaining allowance (that is, the increase in the amount of depreciation, amortization, or depletion allowable resulting from the increase in the uniform basis of the property under section 1014 (a)) shall not be allowed to the life tenant. The remaining allowance shall,

instead, be allowed to the trustee to the extent that the trustee both (1) is required or permitted, by the governing trust instrument (or under local law), to maintain a reserve for depreciation, amortization, or depletion, and (2) actually maintains such a reserve. If, in accordance with the preceding sentence, the trustee does maintain such a reserve, the remaining allowance shall be taken into account, under section 1016, in adjusting the uniform basis of the property in the hands of the trustee and in adjusting the basis of the remainder interest in the hands of the remainderman, but shall not be taken into account, under section 1016, in determining the basis of the life interest in the hands of the life tenant. For an example of the operation of this subdivision, see § 1.1014-7 (b).

(4) In cases where the basis of any interest in property is not determined under section 1014 (a), as where such interest (i) is not included in the decedent's gross estate, or (ii) is sold, exchanged or otherwise disposed of before the decedent's death, the basis of such interest shall be determined under other applicable provisions of the Internal Revenue Code. To illustrate, in the example shown in subdivision (i) of subparagraph (3) of this paragraph the basis of the life estate in the hands of A shall be determined under section 1015, relating to the basis of property acquired by gift. If, on the other hand, A had sold his life interest prior to the decedent's death, the basis of the life estate in the hands of A's transferee would be determined under section 1012.

(c) *Adjustments for deductions allowed prior to the decedent's death.* (1) As stated in paragraph (a), section 1014 (b) (9) requires a reduction in the uniform basis of property acquired from a decedent before his death for certain deductions allowed in respect of such property during the decedent's lifetime. In general, the amount of the reduction in basis required by section 1014 (b) (9) shall be the aggregate of the deductions allowed in respect of the property, but shall not include deductions allowed in respect of the property to the decedent himself. In cases where, owing to the operation of the estate tax, only a part of the value of the entire property is included in the decedent's gross estate,

the amount of the reduction required by section 1014 (b) (9) shall be an amount which bears the same relation to the total of all deductions (described in paragraph (a) of this section) allowed in respect of the property as the value of the property included in the decedent's gross estate bears to the value of the entire property.

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

Example (1). The decedent creates a trust to pay the income to A for life, remainder to B or his estate. The property transferred in trust consists of an apartment building with a basis of \$50,000 at the time of the transfer. The decedent dies 2 years after the transfer is made and the gift is held to have been made in contemplation of death. Depreciation on the property was allowed in the amount of \$1,000 annually. At the time of the decedent's death the value of the property is \$58,000. The uniform basis of the property in the hands of the trustee, the life tenant, and the remainderman, immediately after the decedent's death, is \$58,000, fair market value of the property immediately after the decedent's death, reduced by \$2,000, deductions for depreciation allowed prior to the decedent's death.

Example (2). Assume the same facts as in example (1), except that A sells his life

Uniform basis prior to decedent's death	\$100,000
plus	
Increase in uniform basis—before reduction (determined by the following formula)	33,333
Increase in uniform basis (to be determined)	133,333
\$50,000 (total appreciation of property since time of transfer)	133,333
less	
Deductions allowed prior to decedent's death—taken into account under section 1014 (b) (9) (determined by the following formula)	6,667
Prior deductions taken into account (to be determined)	6,667
\$10,000 (total deductions allowed prior to decedent's death)	126,666

Uniform basis under section 1014----- 126,666

§ 1.1014-7 *Example applying rules of §§ 1.1014-4 through 1.1014-6 to case involving multiple interests.* (a) On January 1, 1950, the decedent creates a trust to pay the income to A for life, remainder to B or his estate. The trust instrument provides that if the decedent should survive A, the income shall be paid to the decedent for life. The decedent, who died on January 1, 1955, predeceases A, so that, due to the operation of the estate tax, only the present value of the remainder

interest to C one year prior to the decedent's death. Assume further that C amortizes the cost of the life interest at a rate of \$1,200 annually. In such a case, the uniform basis of the property in the hands of the trustee and the remainderman immediately after the decedent's death would nevertheless be \$56,000. On the other hand, if C amortizes the cost of the life interest at the rate of \$900 annually, the uniform basis of the property in the hands of the trustee and the remainderman immediately after the decedent's death would be \$56,100.

Example (3). The decedent creates a trust to pay the income to A for life, remainder to B or his estate. The trust instrument provides that if the decedent should survive A, the income shall be paid to the decedent for life. The decedent predeceases A and the present value of the remainder interest is included in the decedent's gross estate for estate tax purposes. The property transferred consists of an apartment building with a basis of \$110,000 at the time of the transfer. Following the creation of the trust and during the balance of the decedent's life, deductions for depreciation were allowed on the property in the amount of \$10,000. At the time of decedent's death the value of the entire property is \$150,000, and the value of the remainder interest is \$100,000. Accordingly, the uniform basis of the property in the hands of the trustee, the life tenant, and the remainderman, as adjusted under section 1014 (b) (9), is \$126,666, computed as follows:

Uniform basis prior to decedent's death	\$100,000
plus	
Increase in uniform basis—before reduction (determined by the following formula)	33,333
Increase in uniform basis (to be determined)	133,333
\$50,000 (total appreciation of property since time of transfer)	133,333
less	
Deductions allowed prior to decedent's death—taken into account under section 1014 (b) (9) (determined by the following formula)	6,667
Prior deductions taken into account (to be determined)	6,667
\$10,000 (total deductions allowed prior to decedent's death)	126,666

Uniform basis under section 1014----- 126,666

§ 1.1014-7 *Example applying rules of §§ 1.1014-4 through 1.1014-6 to case involving multiple interests.* (a) On January 1, 1950, the decedent creates a trust to pay the income to A for life, remainder to B or his estate. The trust instrument provides that if the decedent should survive A, the income shall be paid to the decedent for life. The decedent, who died on January 1, 1955, predeceases A, so that, due to the operation of the estate tax, only the present value of the remainder

interest is included in the decedent's gross estate. The trust consists of an apartment building with a basis of \$30,000 at the time of transfer. Under the trust instrument the trustee is required to maintain a reserve for depreciation. During the decedent's lifetime depreciation is allowed in the amount of \$800 annually. At the time of the decedent's death the value of the apartment building is \$45,000. A, the life tenant, is 43 years of age at the time of the decedent's death. Immediately after the decedent's death, the uniform basis of the entire property under section 1014 (a) is \$32,027; A's basis for the life interest is \$15,553; and B's basis for the remainder interest is \$16,474, computed as follows:

Step 1. Uniform basis (adjusted) immediately prior to decedent's death:
Basis at time of transfer----- \$30,000
less

Depreciation allowed under section 1016 before decedent's death (\$800 × 5) ----- 4,000

Step 2. Value of property included in decedent's gross estate:
0.40180 (remainder factor, age 43) × \$45,000 (value of entire property) ----- \$18,081

Step 3. Uniform basis of property under section 1014 (a), before reduction required by section 1014 (b) (9):

Uniform basis (adjusted) prior to decedent's death----- \$26,000
Increase in uniform basis (determined by the following formula)----- 7,634

Increase in uniform basis (to be determined)----- \$18,081 (value of property included in gross estate)
\$19,000 (total appreciation, \$45,000—\$26,000)
less

\$45,000 (value of entire property)
----- 33,634

Step 4. Uniform basis reduced as required by section 1014 (b) (9) for deductions allowed prior to death:

Uniform basis before reduction----- \$33,634
less

Deductions allowed prior to decedent's death—taken into account under section 1014 (b) (9) (determined by the following formula)----- 1,607

Prior deductions taken into account (to be determined)----- \$18,081 (value of property included in gross estate)
less

\$4,000 (total deductions allowed prior to decedent's death)
----- 32,027

Step 5. A's basis for the life interest at the time of the decedent's death, determined under section 1015:

0.59820 (life factor, age 43) × \$26,000----- \$15,553

Step 6. B's basis for the remainder interest, determined under section 1014 (a):
Basis prior to the decedent's death:
0.40180 (remainder factor, age 43) × \$26,000----- \$10,447

plus
Increase in uniform basis owing to decedent's death:
Increase in uniform basis----- \$7,634

Reduction required by section 1014 (b) (9)----- 1,607

----- 16,474

(b) Assume the same facts as in (a). Assume further, that following the decedent's death depreciation is allowed in the amount of \$1,000 annually. As of January 1, 1964, when A's age is 52, the adjusted uniform basis of the entire property is \$23,027; A's basis for the life interest is \$9,323; and B's basis for the remainder interest is \$13,704, computed as follows:

Step 7. Uniform basis (adjusted) as of January 1, 1964:

Uniform basis determined under section 1014 (a), reduced as required by section 1014 (b) (9)-----	\$32,027
less	
Depreciation allowed since decedent's death (\$1,000×9)-----	9,000
	23,027

Step 8. Allocable share of adjustment for depreciation allowable in the nine years since the decedent's death:

<i>A's interest</i>	
0.49587 (life factor, age 52) × \$7,200 (800, depreciation attributable to uniform basis before increase under section 1014 (a), ×9)-----	\$3,570
<i>B's interest</i>	
0.50413 (remainder factor, age 52) × \$7,200 (800, depreciation attributable to uniform basis before increase under section 1014 (a), ×9)-----	3,630
plus	
\$200 (annual depreciation attributable to increase in uniform basis under section 1014 (a)) ×9-----	1,800
	5,430

Step 9. Tentative bases of A's and B's interests as of January 1, 1964 (before adjustment for depreciation).

<i>A's interest</i>	
0.49587 (life factor, age 52) × \$26,000 (adjusted uniform basis immediately before decedent's death)-----	\$12,893
<i>B's interest</i>	
0.50413 (remainder factor, age 52) × \$26,000 (adjusted uniform basis immediately before decedent's death)-----	\$13,107
plus	
Increase in uniform basis owing to inclusion of remainder in decedent's gross estate-----	6,027
	19,134

Step 10. Bases of A's and B's interests as of January 1, 1964:

<i>A</i>	
Tentative basis (Step 9)-----	\$12,893
less	
Allocable depreciation (Step 8)-----	3,570
	9,323
<i>B</i>	
Tentative basis (Step 9)-----	19,134
less	
Allocable depreciation (Step 8)-----	5,430
	13,704

§ 1.1014-8 *Bequest, devise, or inheritance of a remainder interest.* (a) Where property is transferred for life, with vested remainder in fee, and the remainderman dies before the life tenant, the basis of the remainderman's heir, legatee, or devisee for the remainder interest shall be determined in accordance with the principles set forth in §§ 1.1014-4 through 1.1014-6. However, if the transfer is in trust, no adjustment shall be made to the uniform basis of the property in the hands of the trustee upon the death of the remainderman (see § 1.1014-4 (a)). The basis of any property distributed to the heir, legatee, or devisee upon termination of a trust or at any other time (unless included in the gross income of the legatee or devisee) shall be determined by adding to (or subtracting from) the adjusted uniform basis of the property thus distributed the difference between—

- The value of the remainder interest in the property included in the remainderman's estate, and
- The basis of the remainder interest immediately prior to the remainderman's death.

(b) The provisions of paragraph (a) of this section are illustrated by the following examples:

Example (1). Assume that, under the will of a decedent, property consisting of common stock with a value of \$1,000 at the time of the decedent's death is transferred in trust, to pay the income to A for life, remainder to B or to B's estate. B predeceases A and bequeaths the remainder interest to C. Assume that B dies on January 1, 1956, and that the value of the stock originally transferred is \$1,600 at B's death. A's age at that time is 37. The value of the remainder interest included in B's estate is \$547 (0.34185, remainder factor age 37, × \$1,600), and hence \$547 is C's basis for the remainder interest immediately after B's death. Assume that C sells the remainder interest on January 1, 1961, when A's age is 42. C's basis for the remainder interest at the time of such sale is \$596, computed as follows:

Basis of remainder interest computed with respect to uniform basis of entire property (0.39131, remainder factor age 42, × \$1,000, uniform basis of entire property)-----	\$391
plus	
Value of remainder interest included in B's estate-----	\$547
less	
Basis of remainder interest immediately prior to B's death (0.34185, remainder factor age 37, × \$1,000)-----	342
	205
Basis of C's remainder interest at the time of sale-----	596

Example (2). Assume the same facts as in example (1), except that C does not sell the remainder interest. Upon A's death terminating the trust, C's basis for the stock distributed to him is computed as follows:

Uniform basis of the property, adjusted to date of termination of the trust-----	\$1,000
plus	
Value of remainder interests in the property at the time of B's death-----	\$547
less	
B's share of uniform basis of the property at the time of his death-----	342
	205
C's basis for the stock distributed to him upon the termination of the trust-----	1,205

Example (3). Assume the same facts as in example (2), except that the property transferred is depreciable. Assume further that \$100 of depreciation was allowed prior to B's death and that \$50 of depreciation is allowed between the time of B's death and the termination of the trust. Upon A's death terminating the trust, C's basis for the property distributed to him is computed as follows:

Uniform basis of the property, adjusted to date of termination of the trust-----	
Uniform basis immediately after decedent's death-----	\$1,000
Depreciation allowed following decedent's death-----	150
	\$850
plus	
Value of remainder interest in the property at the time of B's death-----	547
less	
B's share of uniform basis of the property at the time of his death (0.34185 × \$900, uniform basis at B's death)-----	308
	239
C's basis for the property distributed to him upon the termination of the trust-----	1,089

(c) The rules stated in paragraph (a) do not apply where the basis of the remainder interest in the hands of the remainderman's transferee is determined by reference to its cost to such transferee. See also, § 1.1014-4 (a). Thus, if, in example (1) of the preceding paragraph, B sold his remainder interest to C for \$547 in cash, C's basis for the stock distributed to him upon the death of A terminating the trust is \$547.

§ 1.1015 *Statutory provisions; basis of property acquired by gifts and transfers in trust.*

SEC. 1015. *Basis of property acquired by gifts and transfers in trust—(a) Gifts after December 31, 1920.* If the property was acquired by gift after December 31, 1920, the basis shall be the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift, except that if such basis (adjusted for the period before the date of the gift as provided in section 1016) is greater than the fair market value of the property at the time of the gift, then for the purpose of determining loss the basis shall be such fair market value. If the facts necessary to determine the basis in the hands of the donor or the last preceding owner are unknown to the donee, the Secretary or his delegate shall, if possible, obtain such facts from such donor or last preceding owner, or any other person

cognizant thereof. If the Secretary or his delegate finds it impossible to obtain such facts, the basis in the hands of such donor or last preceding owner shall be the fair market value of such property as found by the Secretary or his delegate as of the date or approximate date at which, according to the best information that the Secretary or his delegate is able to obtain, such property was acquired by such donor or last preceding owner.

(b) *Transfer in trust after December 31, 1920.* If the property was acquired after December 31, 1920, by a transfer in trust (other than by a transfer in trust by a gift, bequest, or devise), the basis shall be the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor on such transfer under the law applicable to the year in which the transfer was made.

(c) *Gift or transfer in trust before January 1, 1921.* If the property was acquired by gift or transfer in trust on or before December 31, 1920, the basis shall be the fair market value of such property at the time of such acquisition.

§ 1.1015-1 *Basis of property acquired by gift after December 31, 1920—(a) General rule.* (1) In the case of property acquired by gift after December 31, 1920 (whether by a transfer in trust or otherwise) the basis of the property for the purpose of determining gain is the same as it would be in the hands of the donor or the last preceding owner by whom it was not acquired by gift. The same rule applies in determining loss unless the basis (adjusted for the period prior to the date of gift in accordance with sections 1016 and 1017) is greater than the fair market value of the property at the time of the gift. In such case the basis for determining loss is the fair market value at the time of the gift.

(2) The provisions of subparagraph (1) may be illustrated by the following example:

Example. A acquires by gift income-producing property which has an adjusted basis of \$100,000 at the date of gift. The fair market value of the property at the date of gift is \$90,000. A later sells the property for \$95,000. In such case there is neither gain nor loss. The basis for determining loss is \$90,000; therefore, there is no loss. Furthermore, there is no gain, since the basis for determining gain is \$100,000.

(b) *Uniform basis; proportionate parts of.* Property acquired by gift has a single or uniform basis although more than one person may acquire an interest in such property. The uniform basis of the property remains fixed subject to proper adjustment for items under sections 1016 and 1017. However, the value of the proportionate parts of the uniform basis represented, for instance, by the respective interests of the life tenant and remainderman are adjustable to reflect the change in the relative values of such interest on account of the lapse of time. The portion of the basis attributable to an interest at the time of its sale or other disposition shall be determined under the rules provided in § 1.1014-5.

(c) *Time of acquisition.* The date that the donee acquires an interest in property by gift is when the donor relinquishes dominion over the property and not necessarily when title to the property is acquired by the donee. Thus,

the date that the donee acquires an interest in property by gift where he is a successor in interest, such as in the case of a remainderman of a life estate or a beneficiary of the distribution of the corpus of a trust, is the date such interests are created by the donor and not the date the property is actually acquired.

(d) *Property acquired by gift from a decedent dying after December 31, 1953.* If an interest in property was acquired by the taxpayer by gift from a donor dying after December 31, 1953, under conditions which require the inclusion of the property in the donor's gross estate for estate tax purposes, and the property had not been sold, exchanged, or otherwise disposed of by the taxpayer before the donor's death, see the rules prescribed in section 1014 and the regulations thereunder.

(e) *Fair market value.* For the purposes of this section, the value of property as appraised for the purpose of the Federal gift tax, or, if the gift is not subject to such tax, its value as appraised for the purpose of a State gift tax, shall be deemed to be the fair market value of the property at the time of the gift.

(f) *Reinvestments by fiduciary.* If the property is an investment by the fiduciary under the terms of the gift (as, for example, in the case of a sale by the fiduciary of property transferred under the terms of the gift, and the reinvestment of the proceeds), the cost or other basis to the fiduciary is taken in lieu of the basis specified in paragraph (a) of this section.

(g) *Records.* To insure a fair and adequate determination of the proper basis under section 1015, persons making or receiving gifts of property should preserve and keep accessible a record of the facts necessary to determine the cost of the property and, if pertinent, its fair market value as of March 1, 1913, or its fair market value as of the date of the gift.

§ 1.1015-2 *Transfer of property in trust after December 31, 1920—(a) General rule.* (1) In the case of property acquired after December 31, 1920, by transfer in trust (other than by a transfer in trust by a gift, bequest, or devise) the basis of property so acquired is the same as it would be in the hands of the grantor increased in the amount of gain or decreased in the amount of loss recognized to the grantor upon such transfer under the law applicable to the year in which the transfer was made. If the taxpayer acquired the property by a transfer in trust, this basis applies whether the property be in the hands of the trustee, or the beneficiary, and whether acquired prior to the termination of the trust and distribution of the property, or thereafter.

(2) The principles stated in § 1.1015-1 (b) concerning the uniform basis are applicable in determining the basis of property where more than one person acquires an interest in property by transfer in trust after December 31, 1920.

(b) *Reinvestment by fiduciary.* If the property is an investment made by the fiduciary (as, for example, in the

case of a sale by the fiduciary of property transferred by the grantor, and the reinvestment of the proceeds), the cost or other basis to the fiduciary is taken in lieu of the basis specified in paragraph (a) of this section.

§ 1.1015-3 *Gift or transfer in trust before January 1, 1921.* (a) In the case of property acquired by gift or transfer in trust before January 1, 1921, the basis of such property is the fair market value thereof at the time of the gift or at the time of the transfer in trust.

(b) The principles stated in § 1.1015-1 (b) concerning the uniform basis are applicable in determining the basis of property where more than one person acquires an interest in property by gift or transfer in trust before January 1, 1921. In addition, if an interest in such property was acquired from a decedent and the property had not been sold, exchanged, or otherwise disposed of before the death of the donor, the rules prescribed in section 1014 and the regulations thereunder are applicable in determining the basis of such property in the hands of the taxpayer.

§ 1.1015-4 *Transfers in part a gift and in part a sale—(a) General rule.* Where a transfer of property is in part a sale and in part a gift, the unadjusted basis of the property in the hands of the transferee is the sum of (1) the amount paid by the transferee for the property, and (2) any excess of the transferor's adjusted basis over such amount. Thus, the unadjusted basis of the property in the hands of the transferee is the greater of (1) the amount paid for the property, or (2) the transferor's adjusted basis at the time of the transfer. For determining loss, the unadjusted basis of the property in the hands of the transferee shall not be greater than the fair market value of the property at the time of such transfer. For determination of gain or loss of the transferor see § 1.1001-1 (e).

(b) *Examples.* The rule of paragraph (a) is illustrated by the following examples:

Example (1). If A transfers property to his son for \$30,000, and such property at the time of the transfer has an adjusted basis of \$30,000 in A's hands (and a fair market value of \$60,000), the unadjusted basis of the property in the hands of the son is \$30,000.

Example (2). If A transfers property to his son for \$60,000, and such property at the time of transfer has an adjusted basis of \$30,000 in A's hands (and a fair market value of \$90,000), the unadjusted basis of such property in the hands of the son is \$60,000.

Example (3). If A transfers property to his son for \$30,000, and such property at the time of transfer has an adjusted basis in A's hands of \$60,000 (and a fair market value of \$90,000), the unadjusted basis of such property in the hands of the son is \$60,000.

Example (4). If A transfers property to his son for \$30,000 and such property at the time of transfer has an adjusted basis of \$90,000 in A's hands (and a fair market value of \$60,000), the unadjusted basis of the property in the hands of the son is \$90,000. However, since the adjusted basis of the property in A's hands at the time of the transfer was greater than the fair market value at that time, for the purpose of determining any loss on a later sale or other disposition of the property by the son its unadjusted basis in his hands is \$60,000.

§ 1.1016 Statutory provisions; adjustments to basis.

SEC. 1016. *Adjustments to basis*—(a) *General rule.* Proper adjustment in respect of the property shall in all cases be made—

(1) For expenditures, receipts, losses, or other items, properly chargeable to capital account, but no such adjustment shall be made—

(A) For taxes or other carrying charges described in section 266, or

(B) For expenditures described in section 173 (relating to circulation expenditures),

for which deductions have been taken by the taxpayer in determining taxable income for the taxable year or prior taxable years;

(2) In respect of any period since February 28, 1913, for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent of the amount—

(A) Allowed as deductions in computing taxable income under this subtitle or prior income tax laws, and

(B) Resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under this subtitle (other than chapter 2, relating to tax on self-employment income), or prior income, war-profits, or excess-profits tax laws,

but not less than the amount allowable under this subtitle or prior income tax laws. Where no method has been adopted under section 167 (relating to depreciation deduction), the amount allowable shall be determined under section 167 (b) (1). Subparagraph (B) of this paragraph shall not apply in respect of any period since February 28, 1913, and before January 1, 1952, unless an election has been made under section 1020. Where for any taxable year before the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall be based on the depletion which would have been allowable for such year if computed without reference to discovery value or a percentage of income;

(3) In respect of any period—

(A) Before March 1, 1913, and

(B) Since February 28, 1913, during which such property was held by a person or an organization not subject to income taxation under this chapter or prior income tax laws,

for exhaustion, wear and tear, obsolescence, amortization, and depletion, to the extent sustained;

(4) In the case of stock (to the extent not provided for in the foregoing paragraphs) for the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax-free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 (40 Stat. 1057), or the Revenue Act of 1921 (42 Stat. 227), out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921);

(5) In the case of any bond (as defined in section 171 (d)) the interest on which is wholly exempt from the tax imposed by this subtitle, to the extent of the amortizable bond premium disallowable as a deduction pursuant to section 171 (a) (2), and in the case of any other bond (as defined in section 171 (d)) to the extent of the deductions allowable pursuant to section 171 (a) (1) with respect thereto;

(6) In the case of any short-term municipal bond (as defined in section 75 (b)), to the extent provided in section 75 (a) (2);

(7) In the case of a residence the acquisition of which resulted, under section 1034, in the nonrecognition of any part of the gain realized on the sale, exchange, or in-

voluntary conversion of another residence, to the extent provided in section 1034 (e);

(8) In the case of property pledged to the Commodity Credit Corporation, to the extent of the amount received as a loan from the Commodity Credit Corporation and treated by the taxpayer as income for the year in which received pursuant to section 77, and to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability;

(9) For amounts allowed as deductions as deferred expenses under section 616 (b) (relating to certain expenditures in the development of mines) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(10) For amounts allowed as deductions as deferred expenses under section 615 (b) (relating to certain exploration expenditures) and resulting in a reduction of the taxpayer's taxes under this subtitle but not less than the amounts allowable under such section for the taxable year and prior years;

(11) For deductions to the extent disallowed under section 268 (relating to sale of land with unharvested crops), notwithstanding the provisions of any other paragraph of this subsection;

(12) To the extent provided in section 28 (h) of the Internal Revenue Code of 1939 in the case of amounts specified in a shareholder's consent made under section 28 of such code;

(13) To the extent provided in section 551 (f) in the case of the stock of United States shareholders in a foreign personal holding company;

(14) For amounts allowed as deductions as deferred expenses under section 174 (b) (1) (relating to research and experimental expenditures) and resulting in a reduction of the taxpayer's taxes under this subtitle, but not less than the amounts allowable under such section for the taxable year and prior years;

(15) For deductions to the extent disallowed under section 272 (relating to disposal of coal), notwithstanding the provisions of any other paragraph of this subsection.

(b) *Substituted basis.* Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, then the adjustments provided in subsection (a) shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. A similar rule shall be applied in the case of a series of substituted bases. The term "substituted basis" as used in this section means a basis determined under any provision of this subchapter and subchapters C (relating to corporate distributions and adjustments), K (relating to partners and partnerships), and P (relating to capital gains and losses), or under any corresponding provision of a prior income tax law, providing that the basis shall be determined—

(1) By reference to the basis in the hands of a transferor, donor, or grantor, or

(2) By reference to other property held at any time by the person for whom the basis is to be determined.

(c) *Separate mineral interests treated as one property.* For treatment of separate mineral interests as one property, see section 614.

§ 1.1016-1 *Adjustments to basis; scope of section.* Section 1016 and §§ 1.1016-2 to 1016-10, inclusive, contain the rules relating to the adjustments to be made to the basis of property to determine the adjusted basis as defined in

section 1011. However, if the property was acquired from a decedent before his death, see § 1.1014-6 for adjustments on account of certain deductions allowed the taxpayer for the period between the date of acquisition of the property and the date of death of the decedent.

§ 1.1016-2 *Items properly chargeable to capital account.* (a) The cost or other basis shall be properly adjusted for any expenditure, receipt, loss, or other item, properly chargeable to capital account, including the cost of improvements and betterments made to the property. No adjustment shall be made in respect of any item which, under any applicable provision of law or regulation, is treated as an item not properly chargeable to capital account but is allowable as a deduction in computing net or taxable income for the taxable year. For example, in the case of oil and gas wells no adjustment may be made in respect of any intangible drilling and development expense allowable as a deduction in computing net or taxable income. See the regulations under section 263 (c).

(b) The application of the foregoing provisions may be illustrated by the following example:

Example. A, who makes his returns on the calendar year basis, purchased property in 1941 for \$10,000. He subsequently expended \$6,000 for improvements. Disregarding, for the purpose of this example, the adjustments required for depreciation, the adjusted basis of the property is \$16,000. If A sells the property in 1954 for \$20,000, the amount of his gain will be \$4,000.

(c) Adjustment to basis shall be made for carrying charges such as taxes and interest, with respect to property (whether real or personal, improved or unimproved, and whether productive or unproductive), which the taxpayer elects to treat as chargeable to capital account under section 266, rather than as an allowable deduction. The term "taxes" for this purpose includes duties and excise taxes but does not include income taxes.

(d) Expenditures described in section 173 to establish, maintain, or increase the circulation of a newspaper, magazine, or other periodical are chargeable to capital account only in accordance with and in the manner provided in the regulations under section 173.

§ 1.1016-3 *Exhaustion, wear and tear, obsolescence, amortization, and depletion for periods since February 28, 1913*—(a) *In general*—(1) *Adjustment where deduction is claimed.* (i) For taxable periods beginning on or after January 1, 1952, the cost or other basis of property shall be decreased for exhaustion, wear and tear, obsolescence, amortization, and depletion by the greater of the following two amounts: (a) the amount allowed as deductions in computing taxable income, to the extent resulting in a reduction of the taxpayer's income taxes, or (b) the amount allowable for the years involved. See paragraph (b) of this section. Where the taxpayer makes an appropriate election the above rule is applicable for periods since February 28, 1913, and before January 1, 1952. See paragraph (d) of this section. For rule

for such periods where no election is made, see paragraph (c) of this section.

(ii) The determination of the amount properly allowable for exhaustion, wear and tear, obsolescence, amortization, and depletion shall be made on the basis of facts reasonably known to exist at the end of the taxable year. A taxpayer is not permitted to take advantage in a later year of his prior failure to take any such allowance or his taking an allowance plainly inadequate under the known facts in prior years. In the case of depreciation, if in prior years the taxpayer has consistently taken proper deductions under one method, the amount allowable for such prior years shall not be increased even though a greater amount would have been allowable under another proper method. For rules governing losses on retirement of depreciable property, including rules for determining basis, see § 1.167 (a)-8 of the regulations under section 167. This subdivision may be illustrated by the following example:

Example. An asset was purchased January 1, 1950, at a cost of \$10,000. The useful life of the asset is 10 years. It has no salvage value. Depreciation was deducted and allowed for 1950 to 1954 as follows:

1950	-----	\$500
1951	-----	-----
1952	-----	1,000
1953	-----	1,000
1954	-----	1,000

Total amount allowed----- 3,500

The correct reserve as of December 31, 1954, is computed as follows:

Dec. 31:		
1950 (\$10,000 ÷ 10)	-----	\$1,000
1951 (\$9,000 ÷ 9)	-----	1,000
1952 (\$8,000 ÷ 8)	-----	1,000
1953 (\$7,000 ÷ 7)	-----	1,000
1954 (\$6,000 ÷ 6)	-----	1,000

Reserve Dec. 31, 1954----- 5,000

Depreciation for 1955 is computed as follows:

Cost	-----	\$10,000
Reserve as of December 31, 1954	-----	5,000
Unrecovered cost	-----	5,000
Depreciation allowable for 1955 (\$5,000 ÷ 5)	-----	1,000

(2) *Adjustment for amount allowable where no depreciation deduction claimed.*

(i) If the taxpayer has not taken a depreciation deduction either in the taxable year or for any prior taxable year, adjustments to basis of the property for depreciation allowable shall be determined by using the straight-line method of depreciation. (See § 1.1016-4 for adjustments in the case of persons exempt from income taxation.)

(ii) For taxable years beginning after December 31, 1953, and ending after August 16, 1954, if the taxpayer with respect to any property has taken a deduction for depreciation properly under one of the methods provided in section 167 (b) for one or more years but has omitted the deduction in other years, the adjustment to basis for the depreciation allowable in such a case will be the deduction under the method which was used by the taxpayer with respect to that property. Thus, if A acquired property in 1954 on which he properly computed his depreciation deduction under the

method described in section 167 (b) (2) (the declining-balance method) for the first year of its useful life but did not take a deduction in the second and third year of the asset's life, the adjustment to basis for depreciation allowable for the second and third year will be likewise computed under the declining-balance method.

(3) *Adjustment for depletion deductions with respect to taxable years before 1932.* Where for any taxable year before the taxable year 1932 the depletion allowance was based on discovery value or a percentage of income, then the adjustment for depletion for such year shall not exceed a depletion deduction which would have been allowable for such year if computed without reference to discovery value or a percentage of income.

(b) *Adjustment for periods beginning on or after January 1, 1952.* The decrease required by paragraph (a) of this section for deductions in respect of any period beginning on or after January 1, 1952, shall be whichever is the greater of the following amounts:

(1) The amount allowed as deductions in computing taxable income under subtitle A of the Internal Revenue Code of 1954 or prior income tax laws and resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under subtitle A (other than chapter 2, relating to tax on self-employment income) or prior income, war-profits, or excess-profits tax laws; or

(2) The amount properly allowable as deductions in computing taxable income under subtitle A or prior income tax laws (whether or not the amount properly allowable would have caused a reduction for any taxable year of the taxpayer's taxes).

(c) *Adjustment for periods since February 28, 1913, and before January 1, 1952, where no election made.* If no election has been properly made under section 1020, or under section 113 (d) of the Internal Revenue Code of 1939 (see paragraph (d)), the decrease required by paragraph (a) for deductions in respect of any period since February 28, 1913, and before January 1, 1952, shall be whichever of the following amounts is the greater:

(1) The amount allowed as deductions in computing net income under chapter 1 of the Internal Revenue Code of 1939 or prior income tax laws;

(2) The amount properly allowable in computing net income under chapter 1 of the Internal Revenue Code of 1939 or prior income tax laws.

For the purpose of determining the decrease required by this paragraph, it is immaterial whether or not the amount under subparagraph (1) of this paragraph or the amount under subparagraph (2) of this paragraph would have resulted in a reduction for any taxable year of the taxpayer's taxes.

(d) *Adjustment for periods since February 28, 1913, and before January 1, 1952, where election made.* If an election has been properly made under section 1020, or under section 113 (d) of the Internal Revenue Code of 1939, the de-

crease required by paragraph (a) of this section for deductions in respect of any period since February 28, 1913, and before January 1, 1952, shall be whichever is the greater of the following amounts:

(1) The amount allowed as deductions in computing net income under chapter 1 of the Internal Revenue Code of 1939 or prior income tax laws and resulting (by reason of the deductions so allowed) in a reduction for any taxable year of the taxpayer's taxes under such chapter 1 (other than subchapter E, relating to tax on self-employment income), subchapter E of chapter 2 of the Internal Revenue Code of 1939, or prior income, war-profits, or excess-profits tax laws;

(2) The amount properly allowable as deductions in computing net income under chapter 1 of the Internal Revenue Code of 1939 or prior income tax laws (whether or not the amount properly allowable would have caused a reduction for any taxable year of the taxpayer's taxes).

(e) *Determination of amount allowed which reduced taxpayer's taxes.* (1) As indicated in paragraphs (b) and (d) of this section, there are situations in which it is necessary to determine (for the purpose of ascertaining the basis adjustment required by paragraph (a) of this section) the extent to which the amount allowed as deductions resulted in a reduction for any taxable year of the taxpayer's taxes under subtitle A (other than chapter 2 relating to tax on self-employment income) of the Internal Revenue Code of 1954, or prior income, war-profits, or excess-profits tax laws. This amount (amount allowed which resulted in a reduction of the taxpayer's taxes) is hereinafter referred to as the "tax-benefit amount allowed." For the purpose of determining whether the tax-benefit amount allowed exceeded the amount allowable, a determination must be made of that portion of the excess of the amount allowed over the amount allowable which, if disallowed, would not have resulted in an increase in any such tax previously determined. If the entire excess of the amount allowed over the amount allowable could be disallowed without any such increase in tax, the tax-benefit amount allowed shall not be considered to have exceeded the amount allowable. In such a case (if paragraph (b) or (d) of this section is applicable) the reduction in basis required by paragraph (a) of this section would be the amount properly allowable as a deduction. If only part of such excess could be disallowed without any such increase in tax, the tax-benefit amount allowed shall be considered to exceed the amount allowable to the extent of the remainder of such excess. In such a case (if paragraph (b) or (d) of this section is applicable) the reduction in basis required by paragraph (a) of this section would be the amount of the tax-benefit amount allowed.

(2) For the purpose of determining the tax-benefit amount allowed the tax previously determined shall be determined under the principles of section 1314. The only adjustments made in determining whether there would be an increase in tax shall be those resulting

from the disallowance of the amount allowed. The taxable years for which the determination is made shall be the taxable year for which the deduction was allowed and any other taxable year which would be affected by the disallowance of such deduction. Examples of such other taxable years are taxable years to which there was a carryover or carryback of a net operating loss from the taxable year for which the deduction was allowed, and taxable years for which a computation under section 111 or section 1333 was made by reference to the taxable year for which the deduction was allowed. In determining whether the disallowance of any part of the deduction would not have resulted in an increase in any tax previously determined, proper adjustment must be made for previous determinations under section 1311, or section 3801 of the Internal Revenue Code of 1939, and for any previous application of section 1016 (a) (2) (B), or section 113 (b) (1) (B) (ii) of the Internal Revenue Code of 1939.

(3) If a determination under section 1016 (a) (2) (B) must be made with respect to several properties for each of which the amount allowed for the taxable year exceeded the amount allowable, the tax-benefit amount allowed with respect to each of such properties shall be an allocated portion of the tax-benefit amount allowed determined by reference to the sum of the amounts allowed and the sum of the amounts allowable with respect to such several properties.

(4) In the case of property held by a partnership or trust, the computation of the tax-benefit amount allowed shall take into account the tax benefit of the partners or beneficiaries, as the case may be, from the deduction by the partnership or trust of the amount allowed to the partnership or the trust. For this purpose, the determination of the amount allowed which resulted in a tax benefit to the partners or beneficiaries shall be made in the same manner as that provided above with respect to the taxes of the person holding the property.

(5) A taxpayer seeking to limit the adjustment to basis to the tax-benefit amount allowed for any period, in lieu of the amount allowed, must establish the tax-benefit amount allowed. A failure of adequate proof as to the tax-benefit amount allowed with respect to one period does not preclude the taxpayer from limiting the adjustment to basis to the tax-benefit amount allowed with respect to another period for which adequate proof is available. For example, a corporate transferee may have available adequate records with respect to the tax effect of the deduction of erroneous depreciation for certain taxable years, but may not have available adequate records with respect to the deduction of excessive depreciation for other taxable years during which the property was held by its transferor. In such case the corporate transferee shall not be denied the right to apply this section with respect to the erroneous depreciation for the period for which adequate proof is available.

(f) *Determination of amount allowable in prior taxable years.* (1) One of the factors in determining the adjustment to basis as of any date is the amount of depreciation, depletion, etc., allowable for periods prior to such date. The amount allowable for such prior periods is determined under the law applicable to such prior periods; all adjustments required by the law applicable to such periods are made in determining the adjusted basis of the property for the purpose of determining the amount allowable. Provisions corresponding to the rules in section 1016 (a) (2) (B) described in paragraphs (d) and (e) of this section, which limit adjustments to the "tax-benefit amount allowed" where an election is properly exercised, were first enacted by Public Law 539 (82d Congress) approved July 14, 1952. That law provided that corresponding rules are deemed to be includible in all revenue laws applicable to taxable years ending after December 31, 1931. Accordingly, those rules shall be taken into account in determining the amount of depreciation, etc., allowable for any taxable year ending after December 31, 1931. For example, if the adjusted basis of property held by the taxpayer since January 1, 1930, is determined as of January 1, 1955, and if an election was properly made under section 1020, or section 113 (d) of the 1939 Code, then the amount allowable which is taken into account in computing the adjusted basis as of January 1, 1955, shall be determined by taking those rules into account for all taxable years ending after December 31, 1931. Public Law 539 made no change in the law applicable in determining the amount allowable for taxable years ending before January 1, 1932. If there was a final decision of a court prior to the enactment of Public Law 539, determining the amount allowable for a particular taxable year, such determination shall be adjusted. In such case the adjustment shall be made only for the purpose of taking the provision of that law into account and only to the extent made necessary by such provisions.

(2) Although Public Law 539 amended the law applicable to all taxable years

ending after December 31, 1931, the amendment does not permit refund, credit, or assessment of a deficiency for any taxable year for which such refund, credit, or assessment was barred by any law or rule of law.

(g) *Property with transferred basis.* The following rules apply in the determination of the adjustments to basis of property in the hands of a transferee, donee, or grantee which are required by section 1016 (b), or section 113 (b) (2) of the Internal Revenue Code of 1939, with respect to the period the property was held by the transferor, donor, or grantor:

(1) An election or a revocation of an election under section 1020, or section 113 (d) of the Internal Revenue Code of 1939, by a transferor, donor, or grantor, which is made after the date of the transfer, gift, or grant of the property shall not affect the basis of such property in the hands of the transferee, donee, or grantee. An election or a revocation of an election made before the date of the transfer, gift, or grant of the property shall be taken into account in determining under section 1016 (b) the adjustments to basis of such property as of the date of the transfer, gift, or grant, whether or not an election or a revocation of an election under section 1020, or section 113 (d) of the Internal Revenue Code of 1939, was made by the transferee, donee, or grantee.

(2) An election by the transferee, donee, or grantee, or a revocation of such an election shall be applicable in determining the adjustments to basis for the period during which the property was held by the transferor, donor, or grantor, whether or not the transferor, donor, or grantor had made an election or a revocation of an election, provided that the property was held by the transferee, donee, or grantee at any time on or before the date on which the election or revocation was made.

(h) *Examples.* The application of section 1016 (a) (1) and (2) may be illustrated by the following examples:

Example (1). The case of Corporation A discloses the following facts:

(1) Year	(2) Amount allowed	(3) Amount allowed which reduced taxpayer's taxes	(4) Amount allowable	(5) Amount allowable but not less than amount allowed	(6) Amount allowable but not less than amount allowed which reduced taxpayer's taxes
1949	\$6,000	\$5,500	\$5,000	\$6,000	\$5,500
1950	7,000	7,000	6,500	7,000	7,000
1951	5,000	4,000	6,500	6,500	6,500
Total, 1949-51				19,500	19,000
1952	6,500	6,500	6,000		6,500
1953	5,000	4,000	4,000		4,000
1954	4,500	4,500	6,000		6,000
Total, 1952-54					16,500

The cost or other basis is to be adjusted by \$16,500 with respect to the years 1952-54, that is, by the amount allowable but not less than the amount allowed which reduced the taxpayer's taxes. An adjustment must also be made with respect to the years 1949-1951,

the amount of such adjustment depending upon whether an election was properly made under section 1020, or section 113 (d) of the Internal Revenue Code of 1939. If no such election was made, the amount of the adjustment with respect to the years 1949-51

is \$19,500, that is, the amount allowed but not less than the amount allowable. If an election was properly made, the amount of the adjustment with respect to the years 1949-51 is \$19,000, that is, the amount allowable but not less than the amount allowed which reduced the taxpayer's taxes.

Example (2). Corporation A, which files its returns on the basis of a calendar year, purchased a building on January 1, 1950, at a cost of \$100,000. On the basis of the facts reasonably known to exist at the end of 1950, a period of 50 years should have been used as the correct useful life of the building; nevertheless, depreciation was computed by Corporation A on the basis of a useful life of 25 years, and was allowed for 1950 through 1953 as a deduction in an annual amount of \$4,000. The building was sold on January 1, 1954. Corporation A did not make an election under section 1020, or section 113 (d) of the Internal Revenue Code of 1939. No part of the amount allowed Corporation A for any of the years 1950 through 1953 resulted in a reduction of Corporation A's taxes. The adjusted basis of the building as of January 1, 1954, is \$88,166, computed as follows:

Taxable year	Adjustments to basis as of beginning of taxable year	Adjusted basis on Jan. 1	Remaining life on Jan. 1	Depreciation allowable	Depreciation allowed
1950		\$100,000	50	\$2,000	\$4,000
1951	\$4,000	96,000	49	1,959	4,000
1952	8,000	92,000	48	1,917	4,000
1953	9,917	90,083	47	1,917	4,000
1954	11,834	88,166			

Example (3). The facts are the same as in example (2), except that Corporation A made a proper election under section 1020. In such case, the adjusted basis of the building as of January 1, 1954, is \$92,000 computed as follows:

Taxable year	Adjustments to basis as of beginning of taxable year	Adjusted basis on Jan. 1	Remaining life on Jan. 1	Depreciation allowable	Depreciation allowed
1950		\$100,000	50	\$2,000	\$4,000
1951	\$2,000	98,000	49	2,000	4,000
1952	4,000	96,000	48	2,000	4,000
1953	6,000	94,000	47	2,000	4,000
1954	8,000	92,000			

Example (4). If it is assumed that in example (2), or in example (3), all of the deduction allowed Corporation A for 1953 had resulted in a reduction of A's taxes, the adjustment to the basis of the building for depreciation for 1953 would reflect the entire \$4,000 deduction. In such case, the adjusted basis of the building as of January 1, 1954, would be \$86,083 in example (2), and \$90,000 in example (3).

Example (5). The facts are the same as in example (2) except that for the year 1950 all of the \$4,000 amount allowed Corporation A as a deduction for depreciation for that year resulted in a reduction of A's taxes. In such case, the adjustments to the basis of the building remain the same as those set forth in example (2).

Example (6). The facts are the same as in example (3) except that for the year 1950 all of the \$4,000 amount allowed Corporation A as a deduction for depreciation resulted in a reduction of A's taxes. In such case, the adjusted basis of the building as of January 1, 1954, is \$90,123, computed as follows:

Taxable year	Adjustments to basis as of beginning of taxable year	Adjusted basis on Jan. 1	Remaining life on Jan. 1	Depreciation allowable	Depreciation allowed
1950		\$100,000	50	\$2,000	\$4,000
1951	\$4,000	96,000	49	1,959	4,000
1952	5,959	94,041	48	1,959	4,000
1953	7,918	92,082	47	1,959	4,000
1954	9,877	90,123			

§ 1.1016-4 Exhaustion, wear and tear, obsolescence, amortization, and depletion; periods during which income was not subject to tax. Adjustments to basis must be made for exhaustion, wear and tear, obsolescence, amortization, and depletion to the extent actually sustained in respect of:

(a) Any period before March 1, 1913, and

(b) Any period since February 28, 1913, during which the property was held by a person or an organization not subject to income taxation under chapter 1 of the Internal Revenue Code of 1954 or prior income tax laws.

The amount of the aforescribed deductions actually sustained is that amount charged off on the books of the taxpayer where such amount is considered by the Commissioner to be reasonable. Otherwise the amount actually sustained will be the amount that would have been allowable as a deduction had the taxpayer been subject to income tax during such period. In the case of depreciation, such deduction will be determined by using the straight line method.

§ 1.1016-5 Miscellaneous adjustments to basis—(a) Certain stock distributions.

(1) In the case of stock, the cost or other basis must be diminished by the amount of distributions previously made which, under the law applicable to the year in which the distribution was made, either were tax free or were applicable in reduction of basis (not including distributions made by a corporation which was classified as a personal service corporation under the provisions of the Revenue Act of 1918 or 1921, out of its earnings or profits which were taxable in accordance with the provisions of section 218 of the Revenue Act of 1918 or 1921). For adjustments to basis in the case of certain corporate distributions, see section 301 and the regulations thereunder.

(2) The application of subparagraph (1) may be illustrated by the following example:

Example. A, who makes his returns upon the calendar year basis, purchased stock in 1923 for \$5,000. He received in 1924 a distribution of \$2,000 paid out of earnings and profits of the corporation accumulated before March 1, 1913. The adjusted basis for determining the gain or loss from the sale or other disposition of the stock in 1954 is \$5,000 less \$2,000, or \$3,000, and the amount of the gain or loss from the sale or other disposition of the stock is the difference between \$3,000 and the amount realized from the sale or other disposition.

(b) **Amortizable bond premium.** In the case of a tax-exempt bond, basis shall be reduced by the amount of the amor-

tizable bond premium disallowable as a deduction under section 171 (a) (2), or under section 125 (a) (2) of the Internal Revenue Code of 1939 and, in the case of any other bond (as defined in section 171 (d)), basis shall be reduced by the amount of the deductions allowable under section 171 (a) (1), or under section 125 (a) (1) of the Internal Revenue Code of 1939.

(c) **Short-term municipal bonds.** In the case of a short-term municipal bond (as defined in section 75 (b)), basis shall be adjusted to the extent provided in section 75 or as provided in section 22 (o) of the Internal Revenue Code of 1939, and the regulations thereunder.

(d) **Sale or exchange of residence.** Where the acquisition of a new residence results in the nonrecognition of any part of the gain on the sale, exchange, or involuntary conversion of the old residence, the basis of the new residence shall be reduced by the amount of the gain not so recognized pursuant to section 1034 (a), or section 112 (n) of the Internal Revenue Code of 1939, and regulations thereunder. See section 1034 (e) and regulations thereunder.

(e) **Loans from Commodity Credit Corporation.** In the case of property pledged to the Commodity Credit Corporation, the basis of such property shall be increased by the amount received as a loan from such corporation and treated by the taxpayer as income for the year in which received under section 77, or under section 123 of the Internal Revenue Code of 1939. The basis of such property shall be reduced to the extent of any deficiency on such loan with respect to which the taxpayer has been relieved from liability.

(f) **Deferred development and exploration expenses.** Expenditures for development and exploration of mines or mineral deposits treated as deferred expenses under sections 615 and 616, or under the corresponding provisions of prior income tax laws, are chargeable to capital account and shall be an adjustment to the basis of the property to which they relate. The basis so adjusted shall be reduced by the amount of such expenditures allowed as deductions which results in a reduction for any taxable year of the taxpayer's taxes under subtitle A (other than chapter 2 relating to tax on self-employment income) of the Internal Revenue Code of 1954, or prior income, war-profits, or excess-profits tax laws, but not less than the amounts allowable under such provisions for the taxable year and prior years. This amount is considered as the "tax-benefit amount allowed" and shall be determined in accordance with paragraph (e) of § 1.1016-3. For example, if a taxpayer purchases unexplored and undeveloped mining property for \$1,000,000 and at the close of the development stage has incurred exploration and development costs of \$9,000,000 treated as deferred expenses, the basis of such property at such time for computing gain or loss will be \$10,000,000. Assuming that the taxpayer in this example has operated the mine for several years and has deducted allowable percentage depletion in the

amount of \$2,000,000 and has deducted allowable deferred exploration and development expenditures of \$2,000,000, the basis of the property in the taxpayer's hands for purposes of determining gain or loss from a sale will be \$6,000,000.

(g) *Sale of land with unharvested crop.* In the case of an unharvested crop which is sold, exchanged, or involuntarily converted with the land and which is considered as property used in the trade or business under section 1231, the basis of such crop shall be increased by the amount of the items which are attributable to the production of such crop and which are disallowed, under section 268, as deductions in computing taxable income. The basis of any other property shall be decreased by the amount of any such items which are attributable to such other property, notwithstanding any provisions of section 1016 or of this section to the contrary. For example, if the items attributable to the production of an unharvested crop consist only of fertilizer costing \$100 and \$50 depreciation on a tractor used only to cultivate such crop, and such items are disallowed under section 268, the adjustments to the basis of such crop shall include an increase of \$150 for such items and the adjustments to the basis of the tractor shall include a reduction of \$50 for depreciation.

(h) *Consent dividends.* (1) In the case of amounts specified in a shareholder's consent to which section 28 of the Internal Revenue Code of 1939 applies, the basis of the consent stock shall be increased to the extent provided in subsection (h) of such section.

(2) In the case of amounts specified in a shareholder's consent to be treated as a consent dividend to which section 565 applies, the basis of the consent stock shall be increased by the amount which, under section 565 (c) (2), is treated as contributed to the capital of the corporation.

(i) *Stock in foreign personal holding company.* In the case of the stock of a United States shareholder in a foreign personal holding company, basis shall be adjusted to the extent provided in section 551 (f) or corresponding provisions of prior income tax laws.

(j) *Research and experimental expenditures.* Research and experimental expenditures treated as deferred expenses under section 174 (b) are chargeable to capital account and shall be an adjustment to the basis of the property to which they relate. The basis so adjusted shall be reduced by the amount of such expenditures allowed as deductions which results in a reduction for any taxable year of the taxpayer's taxes under subtitle A (other than chapter 2 relating to tax on self-employment income) of the Internal Revenue Code of 1954, or prior income, war-profits, or excess-profits tax laws, but not less than the amounts allowable under such provisions for the taxable year and prior years. This amount is considered as the "tax-benefit amount allowed" and shall be determined in accordance with paragraph (e) of § 1.1016-3.

(k) *Deductions disallowed in connection with disposal of coal.* Basis shall be

adjusted by the amount of the deductions disallowed under section 272 with respect to the disposal of coal covered by section 631.

(l) *Expenditures attributable to grants or loans covered by section 621.* In the case of expenditures attributable to a grant or loan made to a taxpayer by the United States for the encouragement of exploration for, or development or mining of, critical and strategic minerals or metals, basis shall be adjusted to the extent provided in section 621, or in section 22 (b) (15) of the Internal Revenue Code of 1939.

§ 1.1016-6 *Other applicable rules.* (a) Adjustments must always be made to eliminate double deductions or their equivalent. Thus, in the case of the stock of a subsidiary company, the basis thereof must be properly adjusted for the amount of the subsidiary company's losses for the years in which consolidated returns were made.

(b) In determining basis, and adjustments to basis, the principles of estoppel apply, as elsewhere under the Internal Revenue Code of 1954, and prior internal revenue laws.

§ 1.1016-7 *Adjusted basis; cancellation of indebtedness under Bankruptcy Act.* (a) In addition to the adjustments provided in section 1016, further adjustment is required in the case of a cancellation or reduction of indebtedness in any proceeding under chapters X, XI, or XII of the Bankruptcy Act (11 U. S. C. c. 10, 11, and 12) and under sections 12, 74, or 77B of the Bankruptcy Act of 1898 as amended. For exceptions to the above rule see sections 372, 373, 374, and 1018. Furthermore, no such further adjustment will be made in the case of a "wage earner" as that term is defined in section 606 (8) of the Bankruptcy Act (11 U. S. C. 1006 (8)). The further adjustments required by this section shall be made in the following manner and order:

(1) In the case of indebtedness incurred to purchase specific property (other than inventory or notes or accounts receivable) whether or not a lien is placed against such property securing the payment of all or part of such indebtedness, which indebtedness shall have been canceled or reduced in any such proceeding, the cost or other basis of such property shall be decreased (but not below its fair market value) by the amount by which the indebtedness so incurred with respect to such property shall have been canceled or reduced;

(2) In the case of specific property (other than inventory or notes or accounts receivable) against which, at the time of the cancellation or reduction of the indebtedness, there is a lien (other than a lien securing indebtedness incurred to purchase such property) the cost or other basis of such property shall be decreased (but not below its fair market value) by the amount by which the indebtedness secured by such lien shall have been canceled or reduced;

(3) Any excess of the total amount by which the indebtedness shall have been so canceled or reduced in such proceeding over the sum of the adjustments

made under subparagraphs (1) and (2) of this paragraph shall next be applied to reduce the cost or other basis of the property of the debtor (other than inventory and notes and accounts receivable, but including property covered by such subparagraphs) as follows: the cost or other basis of each unit of property shall be decreased (but not below its fair market value) in an amount equal to such proportion of such excess as the adjusted basis (after adjustment under subparagraphs (1) and (2) of this paragraph) of each such unit of property bears to the sum of the adjusted bases (after adjustment under such subparagraphs) of all the property of the debtor other than inventory and notes and accounts receivable;

(4) Any excess of the total amount by which such indebtedness shall have been so canceled or reduced over the sum of the adjustments made under subparagraphs (1), (2), and (3), of this paragraph shall next be applied to reduce the cost or other basis of any units of property covered by such subparagraphs which have a remaining basis (after adjustment under such subparagraphs) greater than their fair market value, as follows: the cost or other basis of each such unit of property shall be decreased (but not below its fair market value) in an amount equal to such proportion of such excess as the remaining basis of each such unit bears to the sum of the remaining bases of such units. The process shall be repeated until the cost or other basis of each unit of the property covered by subparagraphs (1), (2), and (3) of this paragraph is reduced to its fair market value or the amount by which the indebtedness shall have been canceled or reduced is exhausted, taking into account in the successive steps only those units of property having, after the preceding adjustment, a remaining basis greater than their fair market value; and

(5) Any excess of the total amount by which the indebtedness shall have been so canceled or reduced over the sum of the adjustments made under subparagraphs (1), (2), (3), and (4) of this paragraph shall next be applied to reduce the cost or other basis of inventory and notes and accounts receivable as follows: the cost or other basis of inventory or notes or accounts receivable, as the case may be, shall be decreased (but not below its fair market value) in an amount equal to such proportion of such excess as the adjusted basis of inventory, notes receivable or accounts receivable, as the case may be, bears to the sum of the adjusted bases of such inventory and notes and accounts receivable. The process shall be repeated until the adjusted bases of inventory, notes receivable, and accounts receivable are reduced to their fair market value or the amount by which the indebtedness shall have been canceled or reduced is exhausted, taking into account in the successive steps only those units of property having, after the preceding adjustment, a remaining basis greater than their fair market value.

(b) For the purposes of this section:

(1) Basis shall be determined as of the dates of entry of the order confirming the plan, composition, or arrangement

under which such indebtedness shall have been canceled or reduced;

(2) Except where the context otherwise requires, property means all of the debtor's property, other than money;

(3) No adjustment shall be made by virtue of the cancellation or reduction of any accrued interest unpaid which shall not have resulted in a tax benefit in any income tax return;

(4) The phrase "indebtedness incurred to purchase" includes (i) indebtedness for money borrowed and applied in the purchase of property and (ii) an existing indebtedness secured by a lien against the property which the debtor, as purchaser of such property, has assumed to pay; and

(5) The term "fair market value" has reference to such value as of the date of entry of the order confirming the plan, composition, or arrangement under which such indebtedness shall have been canceled or reduced.

(c) Any determination of value in a proceeding under the Bankruptcy Act (11 U. S. C. 1 et seq.), shall not constitute a determination of fair market value for the purpose of this section.

(d) The basis of any of the debtor's property which shall have been transferred to a person required to use the debtor's basis in whole or in part shall be determined in accordance with the provisions of this section.

§ 1.1016-8 Adjusted basis; cancellation of indebtedness; special cases. If the taxpayer and the Commissioner of Internal Revenue agree, the basis of the taxpayer's property may be adjusted in a manner different from that set forth in § 1.1016-7. Variations from such rule may, for example, involve adjusting the basis of any part of the taxpayer's property or adjusting the basis of all the taxpayer's property, according to a fixed allocation. Agreement between the taxpayer and the Commissioner of Internal Revenue as to any variation from such general rule shall be effected only by a closing agreement entered into under the provisions of section 7121.

§ 1.1016-9 Adjusted basis; mutual savings banks, building and loan associations, and cooperative banks. (a) The adjustments to the cost or other basis of property provided in section 1016 and §§ 1.1016-1 to 1.1016-8, inclusive, are applicable in the case of a mutual savings bank not having capital stock represented by shares, a domestic building and loan association, and a cooperative bank without capital stock organized and operated for mutual purposes and without profit, although such institutions were exempt from tax for taxable years beginning before January 1, 1952. Proper adjustment must be made under section 1016 for the entire period since the acquisition of property. Thus, adjustment to basis must be made for depreciation sustained for all prior taxable years although such institution may have been exempt from tax during such years. Similarly, in the case of tax-exempt and partially taxable bonds purchased at a premium and subject to amortization under section 171, proper adjustment to basis must be made to reflect amortiza-

tion with respect to such premium from the date of acquisition of the bond (or in the case of bonds not issued with interest coupons, or in registered form, from the date such bonds are subject to amortization under section 171).

(b) The application of paragraph (a) of this section may be illustrated by the following example:

Example. On January 1, 1954, Z, a mutual savings bank, which keeps its books on a calendar year basis, owns a tax-exempt \$1,000 noncallable bond maturing on January 1, 1964. Such bond was acquired by Z on January 1, 1934, for \$1,300. It was sold by Z on December 31, 1954, for \$1,250. The yearly rate of amortization of the premium, determined by dividing the total premium of \$300 by the life of the bond (30 years) is \$10. Z realizes a gain of \$80 from such sale computed as follows:

(1) Cost of bond.....	\$1,300
(2) Amount of bond premium attributable to years 1942 through 1951, during which Z was exempt from tax (\$10 times 10 years) ..	\$100
(3) Amount of bond premium amortized from Jan. 1, 1952, through Dec. 31, 1954 (\$10 times 3 years) ..	30
(4) Total amount of adjustments to basis (aggregate of (2) and (3))	130
(5) Adjusted basis of bond at close of 1954 ((1) reduced by (4))	1,170
(6) Gain realized upon sale—excess of sale price over adjusted basis (\$1,250 minus \$1,170)	80

The basis of a fully taxable bond purchased at a premium shall be adjusted from the date to which the election applies to amortize such premium in accordance with the provisions of section 171, except that no adjustment shall be allowable for such portion of the premium attributable to the period prior to the election.

(c) In the case of a mortgage (not within the definition of section 171 (d)) purchased, acquired, or originated at a premium, where the principal of such mortgage is payable in installments, adjustments to the basis of the premium must be made for all taxable years (whether or not the institution was exempt from tax during such years) in which installment payments are received. Such adjustments may be made on an individual mortgage basis or on a composite basis by reference to the average period of payments of the mortgage loans of such institution. For the purpose of this adjustment, the term "premium" includes the excess of the acquisition value of the mortgage over its maturity value. The acquisition value of the mortgage is the cost including buying commissions, attorneys' fees, or brokerage fees, but such value does not include amounts paid for accrued interest. For the method of amortization in the case of corporate mortgages purchased, acquired or originated at a premium see § 1.171-2 (e) of the regulations under section 171.

§ 1.1016-10 Substituted basis. (a) Whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, as defined in section 1016 (b), the adjustments indicated

in §§ 1.1016-1 to 1.1016-6, inclusive, shall be made after first making in respect of such substituted basis proper adjustments of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor, or during which the other property was held by the person for whom the basis is to be determined. In addition, whenever it appears that the basis of property in the hands of the taxpayer is a substituted basis, as defined in section 1016 (b) (1), the adjustments indicated in §§ 1.1016-7 to 1.1016-9, inclusive, and in section 1017 shall also be made, whenever necessary, after first making in respect of such substituted basis a proper adjustment of a similar nature in respect of the period during which the property was held by the transferor, donor, or grantor. Similar rules shall also be applied in the case of a series of substituted bases.

(b) The application of this section may be illustrated by the following example:

Example. A, who makes his returns upon the calendar year basis, in 1935 purchased the X Building and subsequently gave it to his son B. B exchanged the X Building for the Y Building in a tax-free exchange, and then gave the Y Building to his wife C. C, in determining the gain from the sale or disposition of the Y Building in 1954, is required to reduce the basis of the building by deductions for depreciation which were successively allowed (but not less than the amount allowable) to A and B upon the X Building and to B upon the Y Building, in addition to the deductions for depreciation allowed (but not less than the amount allowable) to herself during her ownership of the Y Building.

§ 1.1018 Statutory provisions; adjustment of capital structure before September 22, 1938.

Sec. 1018. Adjustment of capital structure before September 22, 1938. Where a plan of reorganization of a corporation, approved by the court in a proceeding under section 77B of the National Bankruptcy Act, as amended (48 Stat. 912), is consummated by adjustment of the capital or debt structure of such corporation without the transfer of its assets to another corporation, and a final judgment or decree in such proceeding has been entered before September 22, 1938, then the provisions of section 270 of the Bankruptcy Act, as amended (54 Stat. 709; 11 U. S. C. 670), shall not apply in respect of the property of such corporation. For the purposes of this section, the term "reorganization" shall not be limited by the definition of such term in section 112 (g) of the Internal Revenue Code of 1939.

§ 1.1018-1 Adjusted basis; exception to section 270 of the Bankruptcy Act, as amended. The adjustment to basis provided by section 270 of the Bankruptcy Act, as amended (11 U. S. C. 670), and by §§ 1.1016-7 and 1.1016-8 shall not be made if, in a proceeding under section 77B of such Act, as amended (11 U. S. C. 207; 48 Stat. 912), indebtedness was canceled in pursuance of a plan of reorganization which was consummated by adjustment of the capital or debt structure of the insolvent corporation, and the final judgment or decree in such proceeding was entered before September 22, 1938. Section 1018 and this section do not apply if the plan of reorganization under such section 77B was consummated by the transfer of assets of the insolvent corporation to another corporation.

§ 1.1019 Statutory provisions; property on which lessee has made improvements.

SEC. 1019. *Property on which lessee has made improvements.* Neither the basis nor the adjusted basis of any portion of real property shall, in the case of the lessor of such property, be increased or diminished on account of income derived by the lessor in respect of such property and excludable from gross income under section 109 (relating to improvements by lessee on lessor's property). If an amount representing any part of the value of the real property attributable to buildings erected or other improvements made by a lessee in respect of such property was included in gross income of the lessor for any taxable year beginning before January 1, 1942, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income.

§ 1.1019-1 Property on which lessee has made improvements. In any case in which a lessee of real property has erected buildings or made other improvements upon the leased property and the lease is terminated by forfeiture or otherwise resulting in the realization by such lessor of income which, were it not for the provisions of section 109, would be includible in gross income of the lessor, the amount so excluded from gross income shall not be taken into account in determining the basis or the adjusted basis of such property or any portion thereof in the hands of the lessor. If, however, in any taxable year beginning before January 1, 1942, there has been included in the gross income of the lessor an amount representing any part of the value of such property attributable to such buildings or improvements, the basis of each portion of such property shall be properly adjusted for the amount so included in gross income. For example, A leased in 1930 to B for a period of 25 years unimproved real property and in accordance with the terms of the lease B erected a building on the property. It was estimated that upon expiration of the lease the building would have a depreciated value of \$50,000, which value the lessor elected to report (beginning in 1931) as income over the term of the lease. This method of reporting was used until 1942. In 1952 B forfeits the lease. The amount of \$22,000 reported as income by A during the years 1931 to 1941, inclusive, shall be added to the basis of the property represented by the improvements in the hands of A. If in such case A did not report during the period of the lease any income attributable to the value of the building erected by the lessee and the lease was forfeited in 1940 when the building was worth \$75,000, such amount, having been included in gross income under the law applicable to that year, is added to the basis of the property represented by the improvements in the hands of A. As to treatment of such property for the purposes of capital gains and losses, see subchapter P (sections 1201-1241, inclusive).

§ 1.1022 Statutory provisions; cross references.

SEC. 1022. *Cross references.* (1) For certain distributions by a corporation which are applied in reduction of basis of stock, see section 301 (c) (2).

(2) For basis of property in case of certain reorganizations and arrangements under the Bankruptcy Act, see sections 270, 396, and 522 of that Act, as amended (11 U. S. C. 670, 796, 922).

(3) For basis in case of construction of new vessels, see section 511 of the Merchant Marine Act, 1936, as amended (46 U. S. C. 1161).

(4) For rules applicable in case of payments in violation of Defense Production Act of 1950, as amended, see section 405 of that Act.

[F. R. Doc. 57-1; Filed, Jan. 2, 1957; 8:45 a. m.]

[26 CFR (1954) Part 25]

GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

NOTICE OF PROPOSED RULE MAKING

Notice is hereby given, pursuant to the Administrative Procedure Act, approved June 11, 1946, that the regulations set forth in tentative form below are proposed to be prescribed by the Commissioner of Internal Revenue, with the approval of the Secretary of the Treasury or his delegate. Prior to the final adoption of such regulations, consideration will be given to any data, views, or arguments pertaining thereto which are submitted in writing, in duplicate, to the Commissioner of Internal Revenue, Attention: T:P, Washington 25, D. C., within the period of 30 days from the date of publication of this notice in the FEDERAL REGISTER. The proposed regulations are to be issued under the authority contained in section 7805 of the Internal Revenue Code of 1954 (68A Stat. 917; 26 U. S. C. 7805).

[SEAL]

O. GORDON DELK,
Acting Commissioner,
of Internal Revenue.

The following regulations relating to the gift tax are hereby prescribed 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. The regulations are applicable to gifts made after December 31, 1954:

GIFT TAX

DETERMINATION OF TAX LIABILITY

- Sec.
- 25.2501 Statutory provisions; imposition of tax.
 - 25.2501-1 Imposition of tax.
 - 25.2501-2 Residence and citizenship.
 - 25.2502 Statutory provisions; rate of tax.
 - 25.2502-1 Rate of tax.
 - 25.2502-2 Donor liable for tax.
 - 25.2503 Statutory provisions; taxable gifts.
 - 25.2503-1 General definition of "taxable 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.

Sec.

- 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 interest in business.
- 25.2512-4 Valuation of notes.
- 25.2512-5 Valuation of annuities, 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.
- 25.2514-1 Transfers under power of appointment.
- 25.2514-2 Powers of appointment created on or before October 21, 1942.
- 25.2514-3 Powers of appointment created after October 21, 1942.
- 25.2515 Statutory provisions; tenancies by the entirety.
- 25.2515-1 Tenancies by the entirety; in general.
- 25.2515-2 Tenancies by the entirety; transfers treated as gifts; manner of election and valuation.
- 25.2515-3 Termination of tenancy by the entirety; cases in which entire value of gift is determined under section 2515 (b).
- 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).
- 25.2516 Statutory provisions; certain property settlements.
- 25.2516-1 Certain property settlements.

DEDUCTIONS

- 25.2521 Statutory provisions; specific exemption.
- 25.2521-1 Specific exemption.
- 25.2522 (a) Statutory provisions; charitable and similar gifts; citizens or residents.
- 25.2522 (a)-1 Charitable and similar gifts; citizens or residents.
- 25.2522 (a)-2 Transfers not exclusively for charitable, etc., purposes.
- 25.2522 (b) Statutory provisions; charitable and similar gifts; nonresidents.
- 25.2522 (b)-1 Charitable and similar gifts; nonresidents not citizens.
- 25.2522 (c) Statutory provisions; charitable and similar gifts; disallowance of deductions in certain cases.
- 25.2522 (c)-1 Disallowance of charitable, etc., deductions because of prohibited transactions.
- 25.2522 (d) Statutory provisions; charitable and similar gifts; other cross references.
- 25.2523 (a) Statutory provisions; gift to spouse; in general.
- 25.2523 (a)-1 Gift to spouse; in general.
- 25.2523 (b) Statutory provisions; gift to spouse; life estate or other terminable interest.
- 25.2523 (b)-1 Life estate or other terminable interest.
- 25.2523 (c) Statutory provisions; gift to spouse; interest in unidentified assets.
- 25.2523 (c)-1 Interest in unidentified assets.
- 25.2523 (d) Statutory provisions; gift to spouse; joint interests.

Sec.

- 25.2523 (d)-1 Joint interests.
 25.2523 (e) Statutory provisions; gift to spouse; life estate with power of appointment in donee spouse.
 25.2523 (e)-1 Marital deduction; life estate with power of appointment in donee.
 25.2523 (f) Statutory provisions; community property.
 25.2523 (f)-1 Marital deduction in cases involving community property.
 25.2524 Statutory provisions; extent of deductions.
 25.2524-1 Extent of deductions.

PROCEDURE AND ADMINISTRATION

- 25.6001 Statutory provisions; notice or regulations requiring records, statements and special returns.
 25.6001-1 Records required to be kept.
 25.6001-2 Donees and trustees required to file information return.
 25.6011 Statutory provisions; general requirement of return, statement or list.
 25.6011-1 Form of information return, gift tax return, and certain evidence.
 25.6011-2 Use of prescribed forms.
 25.6019 Statutory provisions; gift tax returns.
 25.6019-1 Persons required to file returns.
 25.6019-2 Returns required in case of consent under section 2513.
 25.6019-3 Contents of return.
 25.6019-4 Description of property listed on return.
 25.6061 Statutory provisions; signing of returns and other documents.
 25.6061-1 Signing of returns and other documents.
 25.6065 Statutory provisions; verification of returns.
 25.6065-1 Verification of returns.
 25.6071 Statutory provisions; time for filing returns and other documents.
 25.6071-1 Time for filing donee's and trustee's information return of gifts.
 25.6075 Statutory provisions; time for filing gift tax returns.
 25.6075-1 Time for filing gift tax returns.
 25.6081 Statutory provisions; extension of time for filing returns.
 25.6081-1 Extension of time for filing returns.
 25.6091 Statutory provisions; place for filing returns and other documents.
 25.6091-1 Place for filing returns and other documents.
 25.6151 Statutory provisions; time and place for paying tax shown on returns.
 25.6151-1 Time and place for paying tax shown on return.
 25.6161 Statutory provisions; extension of time for paying tax.
 25.6161-1 Extension of time for paying tax shown on return.
 25.6165 Statutory provisions; bonds where time to pay tax or deficiency has been extended.
 25.6165-1 Bonds where time to pay tax or deficiency has been extended.
 25.6311 Statutory provisions; payment by check or money order.
 25.6311-1 Payment by check or money order.
 25.6313 Statutory provisions; fractional parts of a cent.
 25.6313-1 Fractional parts of a cent.
 25.6601 Statutory provisions; interest on underpayment, nonpayment, or extensions of time for payment of tax.
 25.6601-1 Interest on underpayment, nonpayment, or extensions of time for payment of tax.
 25.7101 Statutory provisions; form of bonds.
 25.7101-1 Form of bonds.
 25.7701 Statutory provisions; definitions.
 25.7701-1 Definitions.
 25.7805 Statutory provisions; rules and regulations.
 25.7805-1 Rules and regulations.
 25.7806 Statutory provisions; construction of title.

Sec.

- 25.7851 Statutory provisions; applicability of revenue laws.

GIFT TAX

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*. Sections 2501 through 2524 of the Internal Revenue Code of 1954 (Chapter 12) subject to tax the transfer of property by gift by individuals in the calendar year 1955 and subsequent calendar years. The tax is not imposed on property as such, nor is it applicable to transfers by corporations or other persons than individuals, but it is applicable to transfers by individuals to corporations or other persons (see, however, § 25.2511-1 (g) (1) with respect to the extent to which a transfer by or to a corporation is considered a transfer by or to its shareholders). 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 (see § 25.2503-1). See §§ 25.2501-2 and 25.2511-3 with respect to transfers by nonresident aliens. For the purposes of these regulations the term "nonresident alien" means a person who is a nonresi-

dent not a citizen of the United States at the time of the gift. For the Federal gift tax imposed upon transfers by gift prior to January 1, 1955, see the corresponding provisions of prior laws.

§ 25.2501-2 *Residence and citizenship*.

(a) In certain respects the rules which apply to the taxation of gifts by a donor who is a citizen or resident of the United States differ from the rules which apply to the taxation of gifts by a donor who is a nonresident alien. If the donor is a citizen of the United States, whether or not a resident, or a resident of the United States, whether or not a citizen, the tax applies regardless of where the property is situated. See § 25.2511-3 for special rules applicable in the case of a gift by a nonresident alien.

(b) A resident is one 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 others 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 an 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:

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 interven-

ing 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 that year, the rate of tax is determined by the total of all gifts made by the donor during the 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)	(B)	(C)	(D)
Amount of taxable gifts equal to or more than—	Amount of taxable gifts less than—	Tax on amount in column (A)	Rate of tax on excess over amount in column (A)
			Percent
\$5,000	\$5,000	\$112.50	2 1/4
10,000	10,000	375.00	5 3/4
20,000	20,000	1,200.00	8 3/4
30,000	30,000	2,250.00	10 1/2
40,000	40,000	3,600.00	16 1/2
50,000	50,000	5,250.00	18 3/4
60,000	60,000	7,125.00	21
100,000	100,000	15,525.00	22 1/4
250,000	250,000	49,275.00	24
500,000	500,000	109,275.00	26 1/4
750,000	750,000	174,900.00	27 1/4
1,000,000	1,000,000	244,275.00	29 1/4
1,250,000	1,250,000	317,400.00	31 1/4
1,500,000	1,500,000	396,150.00	33 1/4
2,000,000	2,000,000	564,900.00	36 1/4
2,500,000	2,500,000	748,650.00	39 1/4
3,000,000	3,000,000	947,400.00	42
3,500,000	3,500,000	1,157,400.00	44 1/4
4,000,000	4,000,000	1,378,650.00	47 1/4
5,000,000	5,000,000	1,851,150.00	50 1/4
6,000,000	6,000,000	2,353,650.00	52 1/4
7,000,000	7,000,000	2,878,650.00	54 1/4
8,000,000	8,000,000	3,426,150.00	57
10,000,000	10,000,000	4,566,150.00	57 3/4

(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 this sum, 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 § 25.2504-1 (b).) The computation of the tax for the calendar year 1955 (following the steps set forth in paragraph (a)) 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)—(1) Facts. During the calendar year 1955, H makes the following gifts:

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.....62,000
(4) Tax computed on item 3 (using rate schedule in paragraph (b) of this section).....7,545
(5) Tax computed on item 2 (using rate schedule in paragraph (b) of this section).....5,250
(6) Tax for calendar year.....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)—(1) 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	64,000
(4) Tax computed on item 3	7,965
(5) Tax computed on item 2	5,250
(6) Tax for year	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 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 inheritance, bequests, devises or distributive shares of the donor's estate. If a husband and wife effectively signify consent, under section 2513, to have the gifts made during any calendar year considered as made one-half by each, the liability with respect to the gift tax for that calendar year is joint and several. As to the personal liability of the donee, see section 6324 (b) and the regulations thereunder. 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 Revised Statutes section 3467, the word "debt" includes a beneficiary's distributive share of an estate.

§ 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."* 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). For the valuation of present and future interests, see § 25.2512-5. If a gift is made of an interest which does not commence immediately or is not unrestricted, or the value of which is not ascertainable by accepted actuarial methods, no exclusion is allowable. However, 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 below). For a further 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 is 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 in-

come 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 is not disregarded to the extent that the trustee during F's life can 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 of which (including the right to surrender the policy) are vested in M. The payment of premiums 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 (1) will pass to the donee when he attains the age of 21 years.

(3) Any portion of the property and its income not disposed of under (1) 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 § 25.2523 (e)-1 (g) (4)), either by law or by the terms of the instrument of transfer, on the exercise of the power by the donee. For example, if under the applicable local law, a minor is incapable of executing a will, the condition in paragraph (a) (3) cannot be satisfied by merely giving a minor donee a power exercisable only by will. Similarly, unless under the local law (by reason of a direction in the governing instrument or otherwise) a minor can effectively exercise an inter-vivos power of appointment, the condition cannot be satisfied by merely giving a minor donee such a power. A transfer does not fail to satisfy the conditions of section 2503 (c) by reason of the mere fact that—

(1) The amount expended by or for the benefit of the donee during minority may be limited to an amount necessary (determinable within the discretion of any person) for his support, health or education, provided such discretionary authority may not be exercised so as to deny the donee the right to the property or income in case of need.

(2) The donee, upon reaching age 21, is given the right to extend the term of the trust.

(3) The governing instrument may contain 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 taxable years. (See § 25.2502-1 (a) (2).) The words "aggregate sum of the taxable gifts for each of the preceding 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 a total of \$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 in his returns for those years the donor claimed deductions totaling \$40,000 for the specific exemption and reported taxable gifts totaling \$110,000, nevertheless, in determining the aggregate sum of the taxable gifts for preceding years, the deductions for the specific exemption cannot exceed a total of \$30,000, and the aggregate sum of his 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 years before 1936, \$40,000 for the 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) In the case of interpretations of the gift tax law in prior calendar years, which resulted in the erroneous inclusion of property for gift tax which should have been excluded, or the erroneous exclusion of property which should have been included, the necessary 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 only question in issue is the valuation of a transfer for gift tax purposes with respect to a gift or gifts made in a preceding calendar year, and if the statutory period within which an assessment may be made has expired and a tax was actually assessed or paid for such prior calendar year, then the value of the earlier gift or gifts 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 where no tax was paid or assessed for the prior year and, in any case, will not prevent adjustment if issues other than valuation of property are involved.

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 assign-

ment 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 § 25.2501-2 (b)) 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 §§ 25.2501-2 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. The renunciation of a vested property interest, such as the interest of an heir or next-of-kin, or devisee in whom title immediately vests upon a decedent's death under local law, constitutes a gift to those persons who receive the property interest by means of the renunciation. On the other hand the renunciation of a gift, bequest, or inheritance, if under local law title does not immediately vest, is not a gift if the renunciation is complete, and is made within a reasonable time after knowledge of the existence of the interest. The renunciation must be unequivocal and effective under local law. A renunciation is a complete and unqualified refusal to accept the property to which one is entitled. There can be no renunciation of property after its acceptance. A renunciation of only a portion of the property is not a complete and unqualified refusal to accept the property to which one is entitled. In the absence of acts to the contrary, the failure to renounce within a reasonable time after learning of the transfer to him will be presumed to constitute an acceptance of the property. 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.

(d) 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 prop-

erty 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.

(e) 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 25.2512-8. 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.

(f) (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 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. Further, current expenditures by an individual on behalf of his spouse or minor child in satisfaction of his legal obligation to provide for their support are not taxable gifts. The extent of the donor's legal obligation to support his spouse or minor child must be ascertained from the facts and circumstances of the individual case. See section 2516 and the regulations thereunder with respect to property settlements incident to a divorce.

(2) A transfer of property by a 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 readily ascertainable standard which is set forth in the trust instrument, even though the trustee has a beneficial interest in the trust property. 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 reason-

ably definite standard. For example, if a trust instrument provides that the termination 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 a standard exists.

(g) In the following examples of transactions resulting in taxable gifts it will be understood 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 to the extent it is not a distribution from earnings or in liquidation to which B is entitled as a stockholder. A transfer of property by B to a corporation represents gifts by B to the other individual shareholders of the corporation to the extent of their proportionate interests. However, a transfer made by an individual to a charitable, public, political or similar organization 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. 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 § 25.2512-5 (d) 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, transfers property in trust whereby B is to receive the income for life and at his death the trust is to terminate and the corpus is to be returned to A, provided A survives, but if A predeceases B the corpus is to pass to C, A has made a gift equal to the total value of the property less the value of his retained interest. See § 25.2512-5 (e) 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 vest 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 a taxable gift.

§ 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 readily ascertainable standard, 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 readily 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. Nor is a person considered as having an adverse interest in the property or income solely by reason of his standing as a spouse or relative of the donor.

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

(i) [Reserved.]

(j) If the donor contends that the 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 § 25.2501-2 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, 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 stock 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 should be considered. Any property not specifically referred to in §§ 25.2512-2 to 25.2512-6, inclusive, should be valued in accordance with the general rules set forth in this paragraph.

§ 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 valuation dates. 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 $\left(\frac{(3 \times 10) + (2 \times 15)}{5}\right)$. 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 $\left(\frac{(3 \times 15) + (2 \times 10)}{5}\right)$. 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, the donor should preserve in his files the letters furnishing such quotations or other evidence of sale for inspection when the return is verified by an investigating officer.

(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 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 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 value of the business; the economic outlook in the particular industry; the company's position in the industry and its management; 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 in any case in which examinations of the company have been made by accountants, engineers, or any technical experts as of or near the date of the gift.

§ 25.2512-3 *Valuation of interest in business.* (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 a net value equal to the 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. The net value shall be 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 § 25.2512-2 (f) 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 in any case in which examinations of the business have been 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, and
- 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 paragraph 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, and
- 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 non-income-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, Table II should be used. The application of this para-

graph 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 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, or a life interest, and of a remainder interest)

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
0	23.9685	0.83890	0.16110
1	24.9035	.87162	.12838
2	24.8920	.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	.84600	.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	.18378
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	.25130
27	21.1878	.74157	.25863
28	20.9759	.73416	.26619
29	20.7581	.72653	.27399
30	20.5345	.71871	.28199
31	20.3052	.71068	.28995
32	20.0699	.70245	.29795
33	19.8288	.69401	.30599
34	19.5816	.68536	.31404
35	19.3285	.67650	.32209
36	19.0695	.66743	.33017
37	18.8044	.65815	.33815

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 the property to the extent, and only to the extent, that it affects the price at which the property would change hands between a willing buyer and a willing seller, as provided in § 25.2512-1.

§ 25.2512-8 *Transfers for insufficient consideration.* Transfers reached by the gift tax are not confined to those only which, being without a valuable consideration, accord with the common law concept of gifts, but embrace as well sales, exchanges, and other dispositions of property for a consideration to the extent that the value of the property transferred by the donor exceeds the value in money or money's worth of the consideration given therefor. However, a sale, exchange, or other transfer of property made in the ordinary course of business (a transaction which is bona fide, at arm's length, and free from any donative intent), will be considered as made for an adequate and full consideration in money or money's worth. A consideration not reducible to a value in money or money's worth, as love and affection, promise of marriage, etc., is to be wholly disregarded, and the entire value of the property transferred constitutes the amount of the gift. See, however, section 2515 and the regulations thereunder with respect to tenancies by the entirety and joint tenancies in real estate between husband and wife. A relinquishment of dower or curtesy or of any other marital rights is not consideration in money or money's worth, and the transfer of property in return for such a relinquishment constitutes a gift of the entire value of the property transferred. See, however, section 2516 and the regulations thereunder with respect to transfers incident to a divorce. A transfer of property which, or the income from which, is to be used in the future to discharge a donor's obligation to support a dependent is not a

(b) 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

TABLE II

(Table showing the present worth at 3½ percent of an annuity 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	.069489	.930511
3-----	2.8016	.106367	.893633
4-----	3.6731	.125368	.868632
5-----	4.5351	.139127	.844873
6-----	5.3886	.149469	.821404
7-----	6.1145	.157088	.799316
8-----	6.8077	.162929	.778487
9-----	7.4737	.167161	.758826
10-----	8.1016	.170007	.740219
11-----	8.6933	.171817	.722572
12-----	9.2507	.172818	.705884
13-----	9.7765	.173024	.690056
14-----	10.2731	.172494	.675089
15-----	10.7430	.171284	.660984
16-----	11.1898	.169344	.647740
17-----	11.6161	.166724	.635256
18-----	12.0244	.163474	.623522
19-----	12.4183	.159644	.612438
20-----	12.7998	.155284	.601994
21-----	13.1707	.150454	.592190
22-----	13.5328	.145224	.582916
23-----	13.8879	.139654	.574162
24-----	14.2378	.133804	.565918
25-----	14.5843	.127744	.558174
26-----	14.9283	.121454	.550930
27-----	15.2716	.114914	.544186
28-----	15.6151	.108204	.537942
29-----	15.9596	.101314	.532198
30-----	16.3059	.094244	.526954

§ 25.2512-6 *Valuation of certain life insurance and annuity contracts.* (a)

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 valuation 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.

TABLE I—Continued

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

(1) Age	(2) Annuity	(3) Life estate	(4) Remainder
38-----	18.5334	0.64807	0.35193
39-----	18.2566	.63808	.36192
40-----	17.9738	.62808	.37192
41-----	17.6853	.61809	.38191
42-----	17.3911	.60809	.39191
43-----	17.0913	.59820	.40180
44-----	16.7860	.58851	.41249
45-----	16.4754	.57864	.42336
46-----	16.1596	.56866	.43441
47-----	15.8388	.55866	.44564
48-----	15.5133	.54867	.45703
49-----	15.1831	.53867	.46859
50-----	14.8486	.52867	.48030
51-----	14.5101	.51867	.49215
52-----	14.1678	.50867	.50413
53-----	13.8221	.49877	.51623
54-----	13.4734	.48877	.52843
55-----	13.1218	.47877	.54074
56-----	12.7679	.46888	.55312
57-----	12.4120	.45898	.56558
58-----	12.0546	.44908	.57809
59-----	11.6960	.43918	.59064
60-----	11.3369	.42928	.60321
61-----	10.9776	.41938	.61578
62-----	10.6186	.40948	.62835
63-----	10.2594	.39958	.64089
64-----	9.9006	.38968	.65337
65-----	9.5416	.37978	.66580
66-----	9.1826	.36988	.67814
67-----	8.8236	.35998	.69048
68-----	8.4646	.35008	.70282
69-----	8.1056	.34018	.71516
70-----	7.7466	.33028	.72750
71-----	7.3876	.32038	.73984
72-----	7.0286	.31048	.75218
73-----	6.6696	.30058	.76452
74-----	6.3106	.29068	.77686
75-----	5.9516	.28078	.78920
76-----	5.5926	.27088	.80154
77-----	5.2336	.26098	.81388
78-----	4.8746	.25108	.82622
79-----	4.5156	.24118	.83856
80-----	4.1566	.23128	.85090
81-----	3.7976	.22138	.86324
82-----	3.4386	.21148	.87558
83-----	3.0796	.20158	.88792
84-----	2.7206	.19168	.90026
85-----	2.3616	.18178	.91260
86-----	1.9996	.17188	.92494
87-----	1.6386	.16198	.93728
88-----	1.2776	.15208	.94962
89-----	1.0916	.14218	.96196
90-----	0.9056	.13228	.97430
91-----	0.7196	.12238	.98664
92-----	0.5336	.11248	.99898
93-----	0.3476	.10258	.10000
94-----	0.1616	.09268	.10000
95-----	0.0756	.08278	.10000
96-----	0.0896	.07288	.10000
97-----	0.1036	.06298	.10000
98-----	0.1176	.05308	.10000
99-----	0.1316	.04318	.10000
100-----	0.1456	.03328	.10000
101-----	0.1596	.02338	.10000
102-----	0.1736	.01348	.10000
103-----	0.1876	.00358	.10000
104-----	0.2016	.00368	.10000
105-----	0.2156	.00378	.10000

transfer for a consideration in money or money's worth, unless under local law the transfer operates completely to discharge the donor's obligation.

§ 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 only if both spouses signify their consent to treat all gifts made to third parties during the 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 (or her) 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).

(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)), 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 made 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.

(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.

(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 the consent of both spouses is signified on one of the returns, or if 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. 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. 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 § 25.2511-1 (c).

§ 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 as a taxable gift the exercise of a general power of appointment created on or before October 21, 1942. That section also treats as a taxable gift 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 created after October 21, 1942, by the creation of another power of appointment. See § 25.2514-3 (d). 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 taxable gift. 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 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, the trustee or his successor has the power to appoint the principal of the trust for the benefit of individuals including himself, and another person has the unrestricted power to remove or discharge the trustee at any time and appoint any other person or class which could include himself, such other person 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 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 in-

terests 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 of 1954 or of these regulations. The power of the owner of a property interest already possessed by him to dispose of his interest 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 of 1954. For example, if a trust created by S provides for payment of the income to A for life with power in A to appoint the entire trust property by deed during her lifetime to a class consisting of her children, and a further power to dispose of the entire corpus by will to anyone, including her estate, and A exercises the inter vivos power in favor of her children, she has necessarily made a transfer of her income interest which constitutes a taxable gift under section 2511 (a), without regard to section 2514. This transfer also results in a relinquishment of her general power to appoint by will, which constitutes a transfer under section 2514 if the power was created after October 21, 1942.

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

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

(b) Expressly not exercisable in favor of the possessor, his creditors, his 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). The words "support" and "maintenance" are synonymous. While their meaning is not limited to the bare necessities of life, and includes other reasonable living expenses, it does not necessarily extend to all expenditures that might be considered customary in the possessor's position in 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," "reasonable comfort and support," "maintenance in health and reasonable comfort," "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 a power can be exercised. The fact that the governing instrument gives the holder of a power discretion to determine amounts to be distributed under the power is not in itself an indication that the power is not limited by the requisite standard.

(3) *Certain powers under wills of decedents dying between January 1 and April 2, 1948.* Section 210 of the Techni-

cal 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 § 81.47a (h) 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 on 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 exercise 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) *Definition of power created on or before October 21, 1942.* A power of appointment created by will is in general considered as created on the date of the testator's death. However, section 2514 (f) provides that a power of appointment created by a will executed on or before October 21, 1942, is considered a power created on or before that date if the testator dies before July 1, 1949, without having republished the will, by codicil or otherwise, after October 21, 1942. A power of appointment created by an inter vivos instrument executed on or before October 21, 1942, is considered as created after that date if on that date the instrument was revocable, or was amendable in a manner which could substantially affect the terms of the power or the identity of its holders, other than by or with the consent of the possessor of the power.

However, 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. On the other hand, if the power is acquired by the possessor by reason of the failure of some other person to exercise a power of appointment in such other person, or upon the happening of some event, contingency, or condition within the unrestricted control of some other person, including the settlor of a trust or the trustee, the power is not deemed to be created until the event, condition or contingency takes place or becomes fixed. However, where an irrevocably fixed power of appointment is acquired only by reason of the exercise of a right in the trustee, or his successor (other than the settlor), to appoint a successor or additional trustee (not consisting of a right to establish a power of appointment or to change the extent or quality of a previously existing power) the power will be deemed to be created when the power is fixed.

§ 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 the power, as distinguished from the reduction of a power to a lesser power. Thus, if the possessor completely relinquished a power over one-half of the property subject to the power, the power is completely released as to that half. However, if at or before the time the power 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 C, and further amended the trust in 1955 by deleting his power to amend the trust, and if the 1948 amendment remained in effect the 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 a 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;

(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. However, if the exercise of a power creates or changes any beneficial interest in a portion subject to the power, the power is considered as exercised with respect to the entire portion. For example, if the possessor of a general power of appointment under a trust created on or before October 21, 1942, exercised his power to the extent of directing the income from the trust property be paid to his wife for her life, and did not otherwise exercise his power, it would be considered as exercised as to the entire trust property.

§ 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 below) 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 ap-

pointment 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 below). See § 20.2041-1 (c) above 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) 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 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 unless its value in relation to the total value of the property subject to the power is 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 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 additional examples (in each of which it is assumed that the value of the interest in question is substantial):

Example (i). 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 (ii). 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 (iii). The taxpayer and L are trustees of a trust under which the income is to be paid to L. 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 release and lapses 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 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 by § 25.2514-1 (c), 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 the 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 such a lapse during any calendar year is considered as a release so as to be subject to the gift tax only to the extent that the property which could have been appointed by exercise of the lapsed power of appointment exceeds the greater of \$5,000, or 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 the power, such as the 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. 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. There can be no disclaimer or renunciation of a power after its acceptance. A disclaimer of a power over only a portion of the property subject to the power is not a complete and unqualified refusal to accept the rights to which one is entitled. 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 for the imposition of the gift tax on the value of property (or property right or interest) with respect to which a power of appointment (whether or not a general power) 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 this section, the value of the property subject to the second power is considered to be its value unreduced by any precedent or subsequent interest which is not subject to such 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 this section. 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 such property, or can 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.

(e) *Examples.* The following examples further illustrate the application of this section. They also illustrate the difference between a power of appointment and a right of disposition which adds nothing to the rights which a person otherwise has of disposing of his income or property. In any case where a person has a beneficial interest in income or property and a fiduciary power to dispose of the income or property to another person measurable by a fixed or readily ascertainable standard, as defined

in § 25.2511-1 (f) (2), the disposition by the former of the income or property does not constitute the making of a gift to the extent that the disposition is pursuant to the exercise of such power. Further, in each instance in which it is indicated that the donor has a power of appointment, its exercise, release or lapse would not constitute a taxable gift unless it is a general power of appointment, and for this purpose a power, limited by an ascertainable standard relating to health, etc., as defined in § 25.2514-1 (c) (2) is not a general power of appointment. In each of the following examples 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. L has the power to cause the income to be paid to R. The exercise of the right constitutes the making of a taxable gift 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. L has a general power of appointment over the income, the lapse or release of which during his life may constitute a taxable transfer. For example, if his power in any year extends only to the income of that year, so that his power lapses at the end of the year as to that year's income, the accumulation for the year will constitute a transfer to the extent that the year's accumulation which he could have caused to be paid to himself (in excess of the value of his power to receive income on the accumulation) exceeds the greater of \$5,000 or 5 percent of the income for that year.

Example (3). The income is to be paid to L. L has the right to have the income accumulated and added to corpus. The result is the same as in example (1) (except that no gift is made of the value of L's right to receive income from the accumulations) at the time L's power over the accumulations ceases. Thus, if L's power in any year extends only to that year's income, any accumulation of the income of any one year constitutes a taxable transfer (with the same exception) at the end of the year.

Example (4). The income is to be paid to L. L has a power, exercisable at any time, to cause corpus to be distributed to himself. L has a general power of appointment over the remainder interest, the release of which constitutes the making of a taxable gift to the extent of the value of the remainder.

Example (5). The income is payable to L. L has the power to cause the corpus to be distributed to R at any time. To the extent that L's income interest is affected, the result is the same as in example (1). L's power over the value of the remainder interest after his death does not constitute a general power of appointment and the exercise thereof does not constitute the making of a taxable gift.

Example (6). The income is to be accumulated and added to corpus. R has a right to appoint the income to L. R has a power to dispose of his remainder interest in the income, the exercise of which constitutes the making of a taxable gift under section 2511 of the value, if any, of the interest. See § 25.2511-1 (e).

Example (7). The income is payable to L. 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 taxable transfer under section 2511 of the value, if any, of his remainder interest. See § 25.2511-1 (e).

Example (8). 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 a taxable transfer. For example, if the income in any year is paid to L, R's power lapses at the end of the year as to that year's income, and the amounts paid to L during the year will constitute a transfer to the extent they exceed the greater of \$5,000 or 5 percent of the income for that year. R's right to take the remainder interest is not a power of appointment, but merely a power to accelerate the receipt of his own property. The result is therefore the same as if R had only a power during L's lifetime to appoint the income to himself for the duration of L's life.

Example (9). S transfers property in trust. So much of each year's income as is needed to support, educate, and maintain R shall be applied for his benefit; the balance of the yearly income is to be paid to L. L transfers his rights in the income to R. L's disposition of his income interest to R is a gift to R to the extent the value of L's interest in the income exceeds the value of R's right to support, education, and maintenance.

§ 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 to 25.2515-4, inclusive, 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 under section 2515 (c) to treat such event as a gift in the calendar year in which the transaction is effected. See § 25.2515-2. The creation of a tenancy by the entirety takes place if either a husband or his wife purchases property and causes the title thereto to be conveyed to themselves as tenants by the entirety, or both join in such a purchase, or if 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 below, 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 were 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), 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. For the purpose of the preceding sentence, 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 ($10,000/15,000 \times \$6,000$) by H, and an additional contribution by W of \$2,000 ($5,000/15,000 \times \$6,000$). 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), 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 their respective interests in the property formerly held by them as tenants by the entirety.

(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.

(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 to its value made thereto, 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 extension of time granted pursuant to law for the filing of the return. See sections 6075 and 6081 and 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 the contribution by such spouse to such tenancy less the value of the donor's 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 multiplying the value of the property by the appropriate actuarial factor for the donor spouse at his attained age 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, or readily computed with the use of the tables contained in the actuarial pamphlet referred to in § 25.2512-5 (e). State law may provide that the husband only is entitled to all of the income or other enjoyment of the real property held as tenants by the entirety, and the wife's interest consists only of the right of survivorship with no right of severance. In such a case, a special factor may be needed to determine the value of the interests of the respective spouses. See § 25.2512-5 (e) relative to 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 his 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 § 25.2515-1 (c) (1) (ii)).

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 § 25.2515-1 (c) 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 § 25.2515-1 (d) (2) 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 § 25.2515-1 (c)) 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. Neither spouse elected 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:

$$\begin{aligned} & \$30,000 \text{ (consideration furnished by husband)} \\ & \$40,000 \text{ (total consideration furnished by both spouses)} \times \$60,000 \text{ (proceeds of termination)} = \$45,000 \\ & \$45,000 - \$35,000 \text{ (proceeds received by husband)} = \$10,000 \text{ gift by husband to wife.} \end{aligned}$$

Example (2). In 1950 the husband purchased shares of X Company for \$10,000. In 1955 when these 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 sell the real property for \$60,000, and divide \$24,000 (each taking \$12,000) and reinvest the remaining \$36,000 in other real property under circumstances that satisfy the conditions set forth in § 25.2515-1 (d) (2) (ii). The tenancy is terminated only with respect to the \$24,000 divided between them. This termination of the tenancy results in a gift of \$6,000 by the husband to the wife, computed as follows:

$$\begin{aligned} & \$30,000 \text{ (consideration furnished by husband)} \\ & \$40,000 \text{ (total consideration furnished by both spouses)} \times \$24,000 \text{ (proceeds of termination)} = \$18,000 \\ & \$18,000 - \$12,000 \text{ (proceeds received by husband)} = \$6,000 \text{ gift by husband to wife.} \end{aligned}$$

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 § 25.2515-1 (c). The consideration furnished by the husband for the reduced tenancy is \$27,000, computed as follows:

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

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

§ 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 relative to 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 consideration therefor was 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 § 25.2515-2 (c) 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 § 25.2515-3 (a) (consideration furnished by the spouses after 1954, are not treated as a gift in the year furnished) and in part of the type described in paragraph (a) of this sec-

tion (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 § 25.2515-3 (b) to that portion of the total proceeds of termination which the consideration described in § 25.2515-3 (a) 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 in 1954; and that in 1955 the husband contributed \$12,000 and the wife \$8,000, the husband's contribution not being treated as a gift. 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 § 25.2515-3 (b) are applied to \$36,000 ($20,000/50,000 \times \$90,000$) in arriving at the amount which is compared with the proceeds of termination received by a spouse. Applying the principles set forth in § 25.2515-3 (b), this amount in the case of the husband is \$19,800 ($12,000/20,000 \times \$36,000$). 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 so determined in the case of the husband would be \$27,000 ($1/2$ of \$54,000). The total of the two amounts which are to be compared with the proceeds of termination received by the husband is \$46,800 ($\$19,800 + \$27,000$). This sum of \$46,800 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 \$6,800 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 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 prop-

erty 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 are 45 and 40, respectively, on their birthdays nearest the date of sale. The value of the gift made by Y to Z is \$19,842, computed as follows:

Amount determined under principles set forth in § 25.2515-3:	
\$50,000 (consideration not treated as gift in year furnished)	
\$150,000 (total consideration furnished)	$\times \$300,000$ (proceeds of termination)
= \$100,000 (Proceeds of termination to which principles set forth in § 25.2513 apply)	
\$40,000 (consideration furnished by H and not treated as gift)	
\$50,000 (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) $\times$ \$200,000 = \$89,842	
Amount of gift:	
Amount determined under § 25.2515-3	\$80,000
Amount determined under paragraph (b)	89,842
Total	169,842
Less: Proceeds received by Y	150,000
Amount of gift made by Y to Z	19,842

§ 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) Under the general rule of section 2512 a transfer in settlement of a spouse's dower, curtesy or other property rights arising out of a marriage is not deemed to be for an adequate and full consideration in money or money's worth and is, therefore, subject to a gift tax on the full value of the property transferred. See § 25.2512-8. However, such a transfer is excepted from the general rule, and is not subject to gift tax, either if it qualifies under section 2516 (see paragraph (b) of this section) or if it is effected by a court decree as provided in paragraph (c) of this section.

(b) 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.

(c) When a transfer of property between spouses in settlement of their

dower, curtesy or other property rights arising out of the marriage does not qualify under section 2516, it may nevertheless be exempt from gift tax, but only if the transfer is effected by a court decree rather than by a promise or agreement between the spouses. A transfer is deemed to be effected by a decree if: (1) The transfer is pursuant to an agreement which is binding only upon the entry of a decree of divorce, separate maintenance, or annulment, and such decree is subsequently granted incorporating the terms of the agreement, or (2) the transfer is solely pursuant to a divorce, separation, maintenance, or annulment decree as, for example, where there has been no prior out-of-court agreement between the spouses.

(d) See § 25.6019-3 (b) 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. See also §§ 25.2511-1 (f) and 25.2512-8, relating to transfers for the support of dependents.

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, or her, 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, or her, 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 (or the wife makes a gift to which the husband consents), 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 § 25.2504-1 (b).

§ 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 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.

(b) The deduction is not limited, in the case of donors who were citizens or residents of the United States at the time the gifts were made to gifts for use within the United States, or to gifts to or for the use of domestic corporations, community chests, funds or foundations, or fraternal societies, orders or associations operating under the lodge system.

(c) 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).

(d) 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 limited 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 § 25.2512-5 (e)), a request for a specific factor accompanied by a statement of the date of birth of each person, the duration of whose life may affect the value of the remainder, and by copies of the relevant instruments may be submitted to the Commissioner, who 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 worth 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. The deduction is not allowed in the case of a transfer in trust conveying 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 consist of stock in a corporation the fiscal policies of which are controlled by the donor and his family, that the trustees and re-

maindermen 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 were not members of the donor's family but had 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 would 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 organization, 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 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 gift is 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 gift is made to or for the use of a trust, community chest, fund or foundation, or a fraternal order or association operating under the lodge system, the gift must be for use within the

United States exclusively for religious, charitable, scientific, literary or educational purposes, including 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 631 (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 the 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 and nondeductible interests.* The property interest 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 paragraph). 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 interest":

(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, in a case to which § 25.2512-5 is applicable, 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 § 25.2512-5 (d).) 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 to the Commissioner who, if conditions permit, may supply the factor requested. If the Commissioner does not furnish the factor, the claim for deduction must be supported by a full statement of the computation of the present worth, made in accordance with the principles set forth in § 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 contingency to occur.

An exercise or release at any time by the donor, either alone or in conjunction with any person, of a power to appoint an interest in property, even though not otherwise a transfer, shall, for 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).

Under these circumstances, 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, no marital deduction may be taken with respect to the transfer to the donee spouse.

(3) For the 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 retest 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 retest 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,

shall, 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, be considered as a transfer by him.

(6) The following examples illustrate the application of this paragraph. In each of them it is assumed that the property interest which the donor transferred to a person other than the donee spouse was not for an adequate and full consideration in money or money's worth:

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

(ii) H transferred 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. The terms of the transfer satisfy the conditions prescribed in § 25.2523 (e)-1, so that the interest transferred is considered as transferred solely to W. However, 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 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 taken with respect to such transfer, the interest transferred to the donee spouse may be taken 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 \$49,573.93 ($70,000 \times .708199$). The value of the property qualifying for the marital deduction, therefore, is \$49,573.93, and a marital deduction is allowed for one-half of that amount, or \$24,786.97.

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

Sec. 2523. Gift to spouse. * * *
(d) *Joint interests.* If the interest is transferred to the donee spouse as sole joint tenant with the donor or as tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, shall not be considered for 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 § 25.2523 (b)-1 (c), 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—(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) extend over a smaller share of the property interest than the share with respect to which the power of appointment require-

ments set forth in paragraph (a) (3) through (5) 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) above 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 $100/250$ 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 constitutes 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 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 is also 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 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 paragraph (f) 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, where the State law does not provide for amortization of bond premium, a provision in the trust instrument for amortization by appropriate periodic charges to interest will not disqualify the interest transferred in trust.

(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 trans-

ferred 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 charges which shall be made against 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 the 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 her personal use will not disqualify 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 the spouse is entitled to the income until the trust terminates.

(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 above) 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 conditions 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 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 donor's death 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 co-ownership by them), the separate property so acquired by the donor and any property acquired at any time by the donor in exchange therefor (by one exchange or a series of exchanges) shall, for 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 such transfer can be shown to represent a gift of property which was not, at the time of the gift, held as "community property", as defined in paragraph (b) of this section. The burden of establishing the extent to which a transfer represents a gift of property not so held rests upon the donor.

(b) *Definition of community property.* (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 post-nuptial) 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 the 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 property 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)

$\times \frac{\$200,000}{\$160,000} = \$80,000$. 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.* (a) Under the provisions of section 2524, the charitable deduction (see section 2522) and the marital deduction (see 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, that is, the total gifts less exclusions. (See § 25.2503-1.) The limitation under section 2524 is effective with respect to the marital deduction when less than one-half of the gifts with respect to which the deduction is authorized is included in the "total amount of gifts." 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.

(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 di-

rector, the insurance company shall file this statement direct with the district director.

§ 25.6001-2 *Donees and trustees required to file information return.* An information return on Form 710 must be filed by every donee or trustee (except in the case of an organization receiving a gift for a public, charitable, etc., purpose as hereinafter explained) to whom is transferred in any one calendar year property by gift for which, as set forth in § 25.6019-1, the donor is required to file a gift tax return. An organization which has been held by the district director to come within the purview of section 2522 (a), or the corresponding provision of prior law, need not file such information return if the gift was made by a citizen or resident of the United States. An organization which has been held by the district director to come within the purview of section 2522 (b), or the corresponding provision of prior law, need not file such information return if the gift was made by a nonresident not a citizen of the United States. When a gift is made in trust the information return should be filed by either the beneficiary of the trust or the trustee, but only one information return is required. If the donor retains a power over transferred property, the information return (which is for information purposes only) should be filed even though it is considered that the retention of the power renders the transfer wholly incomplete as a gift within the meaning of the statute. The information return shall disclose the following information: (1) name and address of donor, (2) date of transfer, (3) a general description of the property transferred, and (4) the approximate value thereof at the date of the transfer. When a husband and wife consent (or contemplate consenting) that gifts made by either of them to third-party donees shall be considered as made one-half by each spouse, as provided by section 2513, the information return shall, nevertheless, identify the actual donor. If the donee dies or becomes legally incompetent, his executor, administrator, guardian or committee, as the case may be, shall file such information return as would be required of the donee. See §§ 25.6071-1 and 25.6091-1 for the time and place for the filing of the information return.

§ 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 *Form of information return, gift tax return, and certain evidence.*—(a) *Information return.* The donee's or trustee's information return of gifts shall be made on Form 710. See § 25.6001-2 for the circumstances under which the filing of a donee's or trustee's information return of gifts is required.

(b) *Gift tax return.* The gift tax return shall be made on Form 709, regardless of whether the donor was a citizen or resident of the United States or was a nonresident not a citizen. See §§ 25.6019-1 and 25.6019-2 for the circumstances under which the filing of a gift tax return is required.

(c) *Life insurance statement.* The life insurance statement shall be made on Form 938. See § 25.6001-1 (b) for the circumstances under which furnishing of a life insurance statement is required.

§ 25.6011-2 *Use of prescribed forms.* Copies of the forms prescribed by § 25.6011-1 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 an information return or a gift tax return, or from the furnishing of the evidence for which the forms specified in § 25.6011-1 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 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 2522 (specific exemption), 2523 (charitable, etc., deduction), and 2524 (marital deduction) no tax may be payable. Individuals only are required to file returns and not trusts, estates, partnerships or corporations. See §§ 25.6011-1, 25.6075-1, and 25.6091-1 for the form on which the return shall be made, and for the time and place for filing. The filing of only one copy of the gift tax return is required.

(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 cases, 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 that of the consideration received by the donor. If a donor contends that his retained power over property is of such nature as to render 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, should be submitted with the return. The instructions printed on the return should be carefully followed. All documents and vouchers used in preparing the return should be retained by the donor so as to be available for inspection by representatives of the Internal Revenue Service whenever required. A certified or verified copy of each document required by the instructions printed on the return form, or any documents the donor may desire to submit, should be filed with the return.

(b) *Disclosure of transfers coming within provisions of section 2516.* Section 2516 provides that certain written agreements between husband and wife relative to their marital and property rights are deemed to be 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 (see § 25.6075-1 (b)) for the filing of a gift tax return for the calendar year in which the agreement became effective, 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 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 one made for full and adequate consideration in money or money's worth.

§ 25.6019-4 *Description of property listed on return.* In listing upon the return the property comprising the gifts made during the calendar year, the description of it should be such that the property 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 street and number. Description of bonds should

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 corporation, if unlisted. Description of stocks should 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 should 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 should be separately set forth. Description of the seller's interest in land contracts transferred should 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 should show the name of the insurer and the number of the policy. In describing an annuity, the name and address of the issuing company should 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 should be given, and if payable for the life of any person, the date of birth of that person should be stated. Judgments should 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.

§ 25.6061 *Statutory provisions; signing of returns and other documents.*

Sec. 6061. *Signing of returns and other documents.* Except as otherwise provided by sections 6062 and 6063, any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be signed in accordance with forms or regulations prescribed by the Secretary or his delegate.

§ 25.6061-1 *Signing of returns and other documents.* For regulations with respect to the signing of returns and other documents, see the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 25.6065 *Statutory provisions; verification of returns.*

Sec. 6065. *Verification of returns—(a) Penalties of perjury.* Except as otherwise provided by the Secretary or his delegate, any return, declaration, statement, or other docu-

ment required to be made under any provision of the internal revenue laws or regulations shall contain or be verified by a written declaration that it is made under the penalties of perjury.

(b) *Oath.* The Secretary or his delegate may by regulations require that any return, statement, or other document required to be made under any provision of the internal revenue laws or regulations shall be verified by an oath. This subsection shall not apply to returns and declarations with respect to income taxes made by individuals.

§ 25.6065-1 *Verification of returns.* For regulations with respect to the verification of returns, see the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 25.6071 *Statutory provisions; time for filing returns and other documents.*

Sec. 6071. *Time for filing returns and other documents—(a) General rule.* When not otherwise provided for by this title, the Secretary or his delegate shall by regulations prescribe the time for filing any return, statement, or other document required by this title or by regulations.

§ 25.6071-1 *Time for filing donee's and trustee's information return of gifts.* The information return required by § 25.6001-2 shall be filed on or before the 15th day of April following the close of the calendar year in which the transfer was made. See § 25.6011-1 for the form on which the information return shall be made, and § 25.6091-1 for the place for filing.

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

Sec. 6075. *Time for filing . . . 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 *Time for filing gift tax returns—(a) In general.* Gift tax returns required by section 6019 must be filed on or before the 15th day of April following the close of the calendar year in which gifts are made, unless an extension of time is granted pursuant to the provisions of section 6081, and except as otherwise provided in paragraph (b) of this section. However, for provisions relating to postponement of the time for filing the gift tax returns 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.

(b) *Due date of return.* The due date is the date on or before which a return is required to be filed (see paragraph (a) of this section). However, when the due date falls on a Saturday, Sunday, or a legal holiday, the due date shall be the next day succeeding which is not a Saturday, Sunday, or a legal holiday. For definition of a legal holiday see § 301.7503-1 of the Procedure and Administration Regulations (Part 301 of this chapter). If the return is placed in the mails, it should be posted in ample time to reach the office of the district director under ordinary handling of the mails, on or before the date on which the return is required to be filed. If a return is made and placed in the mails in due course, properly addressed and post-

age paid, in ample time to reach the office of the district director on or before the due date, no penalty will attach should the return not actually be received by the district director until after that date. If a question may be raised as to whether the return was posted in ample time to reach the office of the district director on or before the due date, the envelope in which the return was transmitted will be preserved by the district director and attached to the return. As to additions to the tax in the case of failure to file a return within the prescribed time, see section 6651.

§ 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 on 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 should be addressed to the district director of internal revenue for the internal revenue 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 otherwise must 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 information return required by § 25.6001-2 and the gift tax return required by section 6019 shall be filed with the district director for the internal revenue district in which is located the legal residence of the donor. If the donor is a nonresident (whether a citizen or not a citizen), the information return and 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. For provisions relating to payment of the tax by check or money order, see § 25.6311-1.

§ 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 shown on return*—(a) *In general.* If it is shown to the satisfaction of the district director that the payment of all or any part of the amount determined as the tax by the donor upon the due date will result in undue hardship to the donor, the district director, at the written request of the donor, may grant an extension of time for the payment of all or any part of the tax. The period of the extension shall not exceed 6 months from the date fixed for payment thereof except in the case of a donor who is abroad. The granting of an extension of time for paying the tax does not relieve the donor from the duty of filing the return on or before the date provided in § 25.6075-1, nor will it operate to prevent the running of interest. The granting of an extension of time for the payment of part of the tax does not extend the time for the payment of the balance of the tax. Nor does an extension of time for filing a return operate to extend the time for payment of all or any part of the tax unless so specified in the extension. The amount for which an extension has been granted (together with interest thereon as provided in section 6601), shall be paid on or before the expiration of the period of extension without the necessity of notice and demand being made by the district director.

(b) *Definition of undue hardship.* An extension will not be granted upon a general statement of hardship. The term "undue hardship" means more than an inconvenience to the donor. It must appear that substantial financial loss, for example due to the sale of property at a sacrifice price, will result to the donor from making payment of the amount at the due date. If a market exists, the sale of 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 time for the payment of all or any part of gift tax shown, or required to be shown on the return must be accompanied or supported by evidence showing the undue hardship that would result to the donor if the extension were refused. A statement, executed under the penalties of perjury, showing the assets and liabilities

of the donor, together with a record of all receipts and disbursements for each of the three months immediately preceding the month in which falls the date prescribed for the payment of the tax, is required and should accompany the application. The application, with the supporting information, must be filed with the district director on or before the date prescribed for payment of the tax and, upon its receipt, the application will be examined by the district director and, if possible, within 30 days, will be denied, granted, or tentatively granted subject to certain conditions of which the donor will be notified. The district director will not consider an application for such an extension unless the application is received by him on or before the due date. If an additional extension is desired by the donor, request must be made to the district director on or before the expiration of the prior extension granted.

(d) *Condition.* As a condition to the granting of such an extension the taxpayer will usually be required by the district director to furnish a bond as provided in section 6165 and the regulations thereunder, or to furnish such other security as is permitted by section 7101 and the regulations thereunder.

§ 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 the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 25.6311 Statutory provisions; payment by check or money order.

SEC. 6311. *Payment by check or money order—(a) Authority to receive.* It shall be lawful for the Secretary or his delegate to receive for internal revenue taxes, or in payment for internal revenue stamps, checks or money orders, to the extent and under the conditions provided in regulations prescribed by the Secretary or his delegate.

(b) *Check or money order unpaid—(1) Ultimate liability.* If a check or money order so received is not duly paid, the person by whom such check or money order has been tendered shall remain liable for the payment of the tax or for the stamps, and for all legal penalties and additions, to the same extent as if such check or money order had not been tendered.

(2) *Liability of banks and others.* If any certified, treasurer's, or cashier's check or any money order so received is not duly paid, the United States shall, in addition to its right to exact payment from the party originally indebted therefor, have a lien for the amount of such check upon all the assets of the bank or trust company on which drawn or for the amount of such money order upon all the assets of the issuer thereof; and such amount shall be paid out of such assets in preference

to any other claims whatsoever against such bank or issuer except the necessary costs and expenses of administration and the reimbursement of the United States for the amount expended in the redemption of the circulating notes of such bank.

§ 25.6311-1 Payment by check or money order. District directors may accept checks drawn on any bank or trust company incorporated under the laws of the United States or under the laws of any State, Territory, or possession of the United States, or money orders in payment of the tax, provided the checks are collectible in United States currency at par. For complete regulations under this section, see the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 25.6313 Statutory provisions; fractional parts of a cent.

SEC. 6313. *Fractional parts of a cent.* In the payment of any tax imposed by this title not payable by stamp, a fractional part of a cent shall be disregarded unless it amounts to one-half cent or more, in which case it shall be increased to 1 cent.

§ 25.6313-1 Fractional parts of a cent. For regulations concerning fractional parts of a cent, see § 301.6313-1 of the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 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, see the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 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 the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 25.7701 Statutory provisions; definitions.

SEC. 7701. *Definitions.* (a) When used in this title, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof—

(1) *Person.* The term "person" shall be construed to mean and include an individual, a trust, estate, partnership, association, company or corporation.

(2) *Partnership and partner.* The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not, within the meaning of this title, a trust or estate or a corporation; and the term "partner" includes a member in such a syndicate, group, pool, joint venture, or organization.

(3) *Corporation.* The term "corporation" includes associations, joint-stock companies, and insurance companies.

(4) *Domestic.* The term "domestic" when applied to a corporation or partnership means created or organized in the United States or under the law of the United States or of any State or Territory.

(5) *Foreign.* The term "foreign" when applied to a corporation or partnership means a corporation or partnership which is not domestic.

(6) *Fiduciary.* The term "fiduciary" means a guardian, trustee, executor, administrator, receiver, conservator, or any person acting in any fiduciary capacity for any person.

(7) *Stock.* The term "stock" includes shares in an association, joint-stock company, or insurance company.

(8) *Shareholder.* The term "shareholder" includes a member in an association, joint-stock company, or insurance company.

(9) *United States.* The term "United States" when used in a geographical sense includes only the States, the Territories of Alaska and Hawaii, and the District of Columbia.

(10) *State.* The term "State" shall be construed to include the Territories and the District of Columbia, where such construction is necessary to carry out provisions of this title.

(11) *Secretary.* The term "Secretary" means the Secretary of the Treasury.

(12) *Delegate.* The term "Secretary or his delegate" means the Secretary of the Treasury, or any officer, employee, or agency of the Treasury Department duly authorized by the Secretary (directly, or indirectly by one or more redelegations of authority) to perform the function mentioned or described in the context, and the term "or his delegate" when used in connection with any other official of the United States shall be similarly construed.

(13) *Commissioner.* The term "Commissioner" means the Commissioner of Internal Revenue.

(14) *Taxpayer.* The term "taxpayer" means any person subject to any internal revenue tax.

(15) *Military or naval forces and Armed Forces of the United States.* The term "military or naval forces of the United States" and the term "Armed Forces of the United States" each includes all regular and reserve components of the uniformed services which are subject to the jurisdiction of the Secretary of Defense, the Secretary of the Army, the Secretary of the Navy, or the Secretary of the Air Force, and each term also includes the Coast Guard. The members of such forces include commissioned officers and personnel below the grade of commissioned officers in such forces.

(26) *Trade or business.* The term "trade or business" includes the performance of the functions of a public office.

(27) *Tax Court.* The term "Tax Court" means the Tax Court of the United States.

(28) *Other terms.* Any term used in this subtitle with respect to the application of, or in connection with, the provisions of any other subtitle of this title shall have the same meaning as in such provisions.

(29) *Internal Revenue Code.* The term "Internal Revenue Code of 1954" means this title, and the term "Internal Revenue Code of 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

(b) *Includes and including.* The terms "includes" and "including" when used in a definition contained in this title shall not be deemed to exclude other things otherwise within the meaning of the term defined.

(c) *Commonwealth of Puerto Rico.* Where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, references in this title to possessions of the United States shall be treated as also referring to the Commonwealth of Puerto Rico.

(d) *Cross references.*—(1) *Other definitions.* For other definitions, see the following sections of Title 1 of the United States Code:

- (1) Singular as including plural, section 1.
- (2) Plural as including singular, section 1.
- (3) Masculine as including feminine, section 1.
- (4) Officer, section 1.
- (5) Oath as including affirmation, section 1.
- (6) County as including parish, section 2.
- (7) Vessel as including all means of water transportation, section 3.
- (8) Vehicle as including all means of land transportation, section 4.
- (9) Company or association as including successors and assigns, section 5.
- (2) *Effect of cross references.* For effect of cross references in this title, see section 7806 (a).

§ 25.7701-1 *Definitions.* For regulations concerning definitions, see the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 25.7805 *Statutory provisions; rules and regulations.*

SEC. 7805. *Rules and regulations.*—(a) *Authorization.* Except where such authority is expressly given by this title to any person other than an officer or employee of the Treasury Department, the Secretary or his delegate shall prescribe all needful rules and regulations for the enforcement of this title, including all rules and regulations as may be necessary by reason of any alteration of law in relation to internal revenue.

(b) *Retroactivity of regulations or rulings.* The Secretary or his delegate may prescribe the extent, if any, to which any ruling or regulation, relating to the internal revenue laws, shall be applied without retroactive effect.

(c) *Preparation and distribution of regulations, forms, stamps, and other matters.* The Secretary or his delegate shall prepare and distribute all the instructions, regulations, directions, forms, blanks, stamps, and other matters pertaining to the assessment and collection of internal revenue.

§ 25.7805-1 *Rules and regulations.* For regulations concerning rules and regulations, see the Regulations on Procedure and Administration (Part 301 of this chapter).

§ 25.7806 *Statutory provisions; construction of title.*

SEC. 7806. *Construction of title.*—(a) *Cross references.* The cross references in this title to other portions of the title, or other provisions of law, where the word "see" is used, are made only for convenience, and shall be given no legal effect.

(b) *Arrangement and classification.* No inference, implication, or presumption of legislative construction shall be drawn or made by reason of the location or grouping of any particular section or provision or portion of this title, nor shall any table of contents, table of cross references, or similar

outline, analysis, or descriptive matter relating to the contents of this title be given any legal effect. The preceding sentence also applies to the sidenotes and ancillary tables contained in the various prints of this Act before its enactment into law.

§ 25.7851 *Statutory provisions; applicability of revenue laws.*

SEC. 7851. *Applicability of revenue laws.*—(a) *General rules.* Except as otherwise provided in any section of this title. . . .

(2) *Subtitle B.*
(B) Chapter 12 of this title shall apply with respect to the calendar year 1955 and all calendar years thereafter, and with respect to such years chapter 4 of the Internal Revenue Code of 1939 is hereby repealed.

(6) *Subtitle F.*—(A) *General rule.* The provisions of subtitle F shall take effect on the day after the date of enactment of this title and shall be applicable with respect to any tax imposed by this title. . . .

[F. R. Doc. 57-2; Filed, Jan. 2, 1957; 8:45 a. m.]

DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

Food and Drug Administration

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

NOTICE OF PROPOSAL TO ESTABLISH TOLERANCES FOR RESIDUES OF INORGANIC BROMIDES IN OR ON CERTAIN RAW AGRICULTURAL COMMODITIES AFTER FUMIGATION WITH ETHYLENE DIBROMIDE

On September 22, 1956, an order was published in the FEDERAL REGISTER (21 F. R. 6045) which established tolerances of 10 parts per million for residues of inorganic bromides (calculated as Br) in or on the following commodities that have been fumigated with ethylene dibromide in accordance with the Mediterranean Fruit Fly Program or the Quarantine Program of the U. S. Department of Agriculture: Beans (string), bitter melon (*Mormodica charantia*), Cavendish bananas, citrus fruits, cucumbers, guavas, mangoes, papayas, peppers (bell), pineapples, zucchini squash.

The U. S. Department of Agriculture has requested that action be taken to permit the use of ethylene dibromide as a fumigant on cantaloups and litchi nuts.

The U. S. Department of Agriculture states that the residues from the use of ethylene dibromide in the Mediterranean Fruit Fly Control Program or the Quarantine Program do not exceed 10 parts per million of inorganic bromide. These residues on the crops involved will not constitute a hazard to man.

By virtue of the authority vested in the Secretary of Health, Education, and Welfare by the Federal Food, Drug, and Cosmetic Act (sec. 408 (b) and (c), 68 Stat. 514; 21 U. S. C. 346a (b) and (c)) and delegated to the Commissioner of Food and Drugs by the Secretary (21 CFR 20.129 (a)), it is proposed by the Commissioner of Food and Drugs, on his own initiative, that the regulations for tolerances for pesticide chemicals in or on raw agricultural commodities (21 CFR

120.146; 21 F. R. 5620, 7212) be amended by changing § 120.146 (b) to read as follows:

§ 120.146 *Tolerances for residues of inorganic bromides resulting from fumigation with ethylene dibromide.*

(b) Tolerances of 10 parts per million are established for residues of inorganic bromides (calculated as Br) in or on the following raw agricultural commodities that have been fumigated with ethylene dibromide in accordance with the Mediterranean Fruit Fly Control Program or the Quarantine Program of the U. S. Department of Agriculture: Beans (string), bitter melon (*Mormodica charantia*), cantaloups, Cavendish bananas, citrus fruits, cucumbers, guavas, litchi nuts, mangoes, papayas, peppers (bell), pineapples, zucchini squash.

A person who has registered or who has submitted an application for the registration of an economic poison under the Federal Insecticide, Fungicide, and Rodenticide Act containing ethylene dibromide, may request, within 30 days from publication of this proposal, that the proposal be referred to an advisory committee in accordance with section 408 (e) of the Federal Food, Drug, and Cosmetic Act.

Any interested person is invited at any time prior to the thirtieth day from the date of publication of this notice in the FEDERAL REGISTER to file with the Hearing Clerk, Department of Health, Education, and Welfare, Room 5440, 330 Independence Avenue SW., Washington 25, D. C., written comments on the proposal. Comments may be accompanied by a memorandum or brief in support thereof. All documents shall be filed in quintuplicate.

Dated: December 27, 1956.

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

[F. R. Doc. 57-21; Filed, Jan. 2, 1957; 8:49 a. m.]

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

NOTICE CONCERNING PETITION FOR ESTABLISHMENT OF EXEMPTION FROM THE REQUIREMENT OF TOLERANCES FOR RESIDUES OF DIPHENYL

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (1), 68 Stat. 512; 21 U. S. C. 346a (d) (1)), the following notice is issued:

A petition was filed by Crown Zellerbach Corporation, 343 Sansome Street, San Francisco 19, California, proposing that the pesticide chemical diphenyl (biphenyl) be exempted from the requirement of a tolerance when it is applied as a postharvest treatment to grapefruit, lemons, and oranges. The notice of filing, which included references and descriptions of the analytical methods proposed in the petition for determining residues of diphenyl, appeared in the FEDERAL REGISTER of July 6, 1956 (21 F. R. 5016).

On July 26, 1956, an order appeared in the FEDERAL REGISTER (21 F. R. 5619) establishing a tolerance of 110 parts per million for residues of diphenyl in or on grapefruit, lemons, and oranges. The order stated that the method of applying diphenyl to citrus has undergone material changes in recent years and that the petition did not show what residues of diphenyl will occur in citrus treated by methods other than the one proposed in the petition.

It was concluded to be in the interest of public health to provide tolerances of 110 parts per million for postharvest use of diphenyl on grapefruit, lemons, and oranges rather than an exemption.

After the order was published but within the time limit specified in section 408 (d) (3) of the Federal Food, Drug, and Cosmetic Act, the petitioner requested that an advisory committee be appointed to consider the petition for an exemption and make recommendations to the Commissioner. The petitioner also requested a public hearing to take evidence on the objection to the establishment of the tolerances in lieu of the exemption.

The National Academy of Sciences was requested to appoint an advisory committee and the petitioner was notified that the action on the public hearing would be deferred until the report from the advisory committee had been received. Before the advisory committee could be activated, the petitioner requested that activation be withheld and submitted a substantive amendment consisting of data on residues from additional methods of application of diphenyl to grapefruit, lemons, and oranges. Following consideration of this substantive amendment, the Commissioner will publish an order acting upon the renewed request for an exemption

from the requirement of tolerances which accompanied the substantive amendment.

Dated: December 27, 1956.

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

[F. R. Doc. 57-22; Filed, Jan. 2, 1957; 8:49 a. m.]

[21 CFR Part 120]

TOLERANCES AND EXEMPTIONS FROM TOLERANCES FOR PESTICIDE CHEMICALS IN OR ON RAW AGRICULTURAL COMMODITIES

NOTICE OF FILING OF PETITION FOR ESTABLISHMENT OF TOLERANCE FOR RESIDUES OF MANEB

Pursuant to the provisions of the Federal Food, Drug, and Cosmetic Act (sec. 408 (d) (1), 68 Stat. 512; 21 U. S. C. 346a (d) (1)), the following notice is issued:

A petition has been filed by E. I. du Pont de Nemours and Company, Inc., Wilmington, Delaware, proposing the establishment of a tolerance of 7 parts per million for residues of maneb (manganese ethylenedisithiocarbamate) in or on apricots.

The analytical method proposed in the petition for determining residues of maneb is the method described in "Analysis of Manganese Ethylenedisithiocarbamate Compositions and Residues," by W. K. Lowen, published in the Journal of the Association of Official Agricultural Chemists, Volume 36, pages 484-492, May 1953.

Dated: December 27, 1956.

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

[F. R. Doc. 57-23; Filed, Jan. 2, 1957; 8:49 a. m.]

NOTICES

DEPARTMENT OF JUSTICE

Office of Alien Property

[Bar Order No. SA-1A]

CERTAIN BULGARIAN, HUNGARIAN, AND RUMANIAN DEBTORS

ORDER FIXING BAR DATE FOR FILING DEBT CLAIMS

In accordance with section 208 (b) of the International Claims Settlement Act of 1949, as amended, and by virtue of the authority vested in the Attorney General by said Act and Executive Order No. 10644, March 11, 1957, is hereby fixed as the date after which the filing of debt claims shall be barred in respect of Bulgarian, Hungarian, and Rumanian debtors, any of whose property was first vested in or transferred to the Attorney General on March 12, 1956.

(69 Stat. 252; 22 U. S. C. 1631 et seq.; E. O. 10644, 20 F. R. 8363, 3 CFR, 1955 Supp.)

Executed at Washington, D. C., this 28th day of December 1956.

For the Attorney General.

[SEAL] DALLAS S. TOWNSEND,
Assistant Attorney General,
Director, Office of Alien Property.

[F. R. Doc. 57-28; Filed, Jan. 2, 1957; 8:51 a. m.]

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[70214]

RIVERTON PROJECT, WYOMING

ORDER OF REVOCATION: AMENDMENT

DECEMBER 26, 1956.

The text of Federal Register Document 56-9572 appearing on pages 9196-7 of the issue for November 24, 1956, which follows the words "Acting Assistant

Commissioner," is hereby amended to read, "I concur. The records of the Bureau of Land Management will be noted accordingly."

The lands are withdrawn ceded Indian lands and are not subject to appropriation under the public land laws.

[SEAL] EDWARD WOOZLEY,
Director.

[F. R. Doc. 57-6; Filed, Jan. 2, 1957; 8:45 a. m.]

DEPARTMENT OF COMMERCE

Federal Maritime Board

STONE FORWARDING CO., INC., ET AL.

NOTICE OF AGREEMENTS FILED WITH THE BOARD FOR APPROVAL

Notice is hereby given that the following described agreements have been filed with the Board for approval pursuant to section 15 of the Shipping Act, 1916, 39 Stat. 733, 46 U. S. C. 814.

(1) Agreement No. 8181 between Stone Forwarding Company, Inc., Houston, Texas, and H. A. Gogarty, Inc., New York, New York;

(2) Agreement No. 8182 between Stone Forwarding Company, Inc., and T. J. Hanson, Beaumont, Texas; and

(3) Agreement No. 8183 between Stone Forwarding Company, Inc., and W. M. Cook & Company, Inc., New York, New York;

are cooperative working arrangements under which the parties perform freight forwarding services for each other.

Interested parties may inspect these agreements 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 agreements, and their position as to approval, disapproval, or modification, together with request for hearing should such hearing be desired.

By order of the Federal Maritime Board.

Dated: December 28, 1956.

[SEAL] JAMES L. PIMPER,
Secretary.

[F. R. Doc. 57-29; Filed, Jan. 2, 1957; 8:51 a. m.]

Office of the Secretary

LAWRENCE H. ZAHN

REPORT OF APPOINTMENT AND STATEMENT OF FINANCIAL INTERESTS

Report of appointment and statement of financial interests required by section 710 (b) (6) of the Defense Production Act of 1950, as amended.

Report of Appointment

1. Name of appointee: Lawrence H. Zahn.

2. Employing agency: Department of Commerce, Business and Defense Services Administration.

3. Date of appointment: December 3, 1956.

4. Title of position: Consultant.

5. Name of private employer: CIBA Pharmaceutical Products Inc., Summit, New Jersey.

JOHN F. LUKENS,
Acting Director of Personnel.

DECEMBER 27, 1956.

Statement of Financial Interests

6. Names of any corporations of which the appointee is an officer or director or within 60 days preceding appointment has been an officer or director, or in which the appointee owns or within 60 days preceding appointment has owned any stocks, bonds, or other financial interests; any partnerships in which the appointee is, or within 60 days preceding appointment was, a partner; and any other businesses in which the appointee owns, or within 60 days preceding appointment has owned, any similar interest.

American Telephone & Telegraph.
Beech Aircraft Corporation.
Payne Cutlery Company.
Texas Instruments Corporation.
Merck & Company.
CIBA Pharmaceutical Products Inc.
Bank deposits.

Dated: December 19, 1956.

LAWRENCE H. ZAHN.

[F. R. Doc. 57-19; Filed, Jan. 2, 1957;
8:48 a. m.]

DEPARTMENT OF AGRICULTURE

Office of the Secretary

PENNSYLVANIA

SALE OF MINERAL INTERESTS; AREA DESIGNATION

Pursuant to the authority contained in Public Law 760, 81st Congress (64 Stat. 769) the County of Chester in Commonwealth of Pennsylvania, is hereby designated as an area in which mineral interests covered by a single application may be sold for their fair market value.

Done at Washington, D. C., this 28th day of December 1956.

[SEAL] E. L. PETERSON,
Acting Secretary.

[F. R. Doc. 57-37; Filed, Jan. 2, 1957;
8:52 a. m.]

CIVIL AERONAUTICS BOARD

[Docket No. 8229 et al.]

CAPITAL AIRLINES, INC.

NOTICE OF PREHEARING CONFERENCE

In the matter of the proposal of Capital Airlines, Inc. to permit excursion fare travel on additional days of the week.

Notice is hereby given that a prehearing conference in the above-entitled investigation is assigned to be held on January 23, 1957, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5,

No. 2—10

Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner F. Merritt Ruhlen.

Dated at Washington, D. C., December 28, 1956.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-30; Filed, Jan. 2, 1957;
8:51 a. m.]

[Docket No. 8404]

RATE OF RETURN LOCAL SERVICE CARRIERS

NOTICE OF PREHEARING CONFERENCE

Notice is hereby given that a prehearing conference in the above-entitled investigation is assigned to be held on January 29, 1957, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner William J. Madden.

Dated at Washington, D. C., December 28, 1956.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-31; Filed, Jan. 2, 1957;
8:51 a. m.]

[Docket No. 8412]

PAN AMERICAN WORLD AIRWAYS, INC., AND THE FLYING TIGER LINE, INC.

NOTICE OF PREHEARING CONFERENCE

In the matter of the joint application of Pan American World Airways, Inc., and The Flying Tiger Line Inc. for an exemption from Section 408 of the Civil Aeronautics Act of 1938, as amended.

Notice is hereby given that a prehearing conference in the above-entitled application is assigned to be held on January 9, 1957, at 10:00 a. m., e. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner Richard A. Walsh.

Dated at Washington, D. C., December 28, 1956.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-33; Filed, Jan. 2, 1957;
8:51 a. m.]

[Docket No. 8430]

CAPITAL AIRLINES, INC.

NOTICE OF PREHEARING CONFERENCE

In the matter of group fares proposed by Capital Airlines, Inc.

Notice is hereby given that a prehearing conference in the above-entitled investigation is assigned to be held on January 23, 1957, at 2:00 p. m., e. s. t., in Room E-210, Temporary Building No. 5, Sixteenth Street and Constitution Avenue NW., Washington, D. C., before Examiner F. Merritt Ruhlen.

Dated at Washington, D. C., December 28, 1956.

[SEAL] FRANCIS W. BROWN,
Chief Examiner.

[F. R. Doc. 57-32; Filed, Jan. 2, 1957;
8:51 a. m.]

FEDERAL POWER COMMISSION

[Docket No. E-6719]

GEORGIA POWER AND LIGHT CO. AND FLORIDA POWER CORP.

NOTICE OF APPLICATION

DECEMBER 26, 1956.

Take notice that on December 17, 1956, an application was filed with the Federal Power Commission pursuant to section 203 of the Federal Power Act by Georgia Power and Light Company (hereinafter called "Georgia Light") and Florida Power Corporation (hereinafter called "Florida Power") for sale of facilities, hereinbelow described, to Georgia Power Company (hereinafter called "Georgia Power"). Georgia Light is a corporation organized under the laws of the State of Georgia and doing business in said state with its principal business office at Valdosta, Georgia. Florida Power is a corporation organized under the laws of the State of Florida and doing business in the States of Florida and Georgia, with its principal business office at St. Petersburg, Florida. Georgia Light is a subsidiary of Florida Power. Georgia Light proposes to sell and convey all the assets, properties and business to Georgia Power for cash at and for a base sales price of \$8,650,000, plus any increase or minus any decrease between April 30, 1956, and the last day of the first calendar month immediately preceding the closing date of the transaction, in the stated value of the outstanding shares of common stock of Georgia Light, its capital and earned surplus, and the amount of the account payable by Georgia Light to Florida Power subject to such further adjustments as provided in the agreement of sale. Florida Power, as owner of all of the outstanding shares of common stock of Georgia Light, will upon the completion of the transactions, liquidate its investments in Georgia Light by a dissolution of that corporation and the transfer of the proceeds of the sale from Georgia Light will be made to Florida Power. Upon the conclusion of the sale of the assets, properties and business of Georgia Light to Georgia Power, Florida Power will sell to Georgia Power electric energy at varying demands for a period of three years at demand and energy charges corresponding to those now in effect in the wholesale power agreement now existing between Florida Power and Georgia Light. Florida Power will sell and dispose of to Georgia Power that portion of a certain 110 kv. transmission line owned by Florida Power but located in Georgia in the territory served by Georgia Light extending from the Florida-Georgia state line from Jasper, Florida, to Barneyville, Georgia, being 47.46 miles in length comprising the 21.57 mile section from the Florida-Georgia State line to the Pine Grove Substation and

the 25.89 mile long section from the Pine Grove Substation to Barneyville, Georgia. Said transmission line is to be sold for cash, at the original cost thereof less applicable depreciation reserve at the date of transfer.

The assets, properties and business of Georgia Light proposed to be sold to Georgia Power, are utilized in the generation, transmission, distribution and sale of electric energy at wholesale and at retail in 19 counties in South Georgia serving approximately 36,000 customers among the inhabitants of 35 incorporated cities and towns and 14 unincorporated towns and rural communities. Said facilities comprise all of the facilities of Georgia Light.

The properties and facilities are integrated with those of Florida Power and the transmission facilities of Georgia Light and Florida Power are interconnected at six points along the Florida-Georgia boundary line. Upon completion of the sale of such properties and facilities by Georgia Light to Georgia Power, the properties will be interconnected and integrated with the properties and facilities of Florida Power at the same interchange points now in existence between the two applicants or at additional interchange points.

Any person desiring to be heard or make any protest with reference to said application should on or before the 18th day of January 1957, file with the Federal Power Commission, Washington 25, D. C., a petition or protest in accordance with the Commission's rules of practice and procedure. The application is on file and available for public inspection.

[SEAL]

J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 57-7; Filed, January 2, 1957;
8:45 a. m.]

[Docket No. G-9124]

NORTHERN NATURAL GAS CO.

NOTICE OF APPLICATION AND DATE OF
HEARING

DECEMBER 26, 1956.

Take notice that Northern Natural Gas Company (Applicant), a Delaware corporation having its principal place of business at 2223 Dodge Street, Omaha, Nebraska, filed on July 11, 1955, an application for a certificate of public convenience and necessity, pursuant to section 7 (c) of the Natural Gas Act authorizing Applicant to construct and operate certain natural gas facilities and to render service as hereinafter described, subject to the jurisdiction of the Commission, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate a measuring and regulating station at a point on its existing Blair Nebraska 6-inch branch line located in the SE $\frac{1}{4}$ of Section 12, Twp. 18 N., R. 8 E. near the community of Nickerson, Dodge County, Nebraska. It is proposed to use these facilities for the sale and delivery of natural gas by Applicant to

Central Electric & Gas Company (Central) for resale on an interruptible basis to the Gifford Alfalfa Company for use in its alfalfa dehydration plant near Nickerson.

Central will construct, own and operate the necessary pipeline between Applicant's facilities and the alfalfa dehydration plant.

The total estimated cost of the proposed facilities is \$3,800, for which Applicant will be reimbursed by Central.

The maximum daily demand of the alfalfa plant is estimated at 700 Mcf and the estimated annual requirements are 82,000 Mcf.

This matter is one that should be disposed of as promptly as possible under the applicable rules and regulations, and to that end:

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure a hearing will be held on January 31, 1957, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* That the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 18, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL]

J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 57-8; Filed, Jan. 2, 1957;
8:46 a. m.]

[Docket No. G-9156]

NORTHERN NATURAL GAS CO.

NOTICE OF APPLICATION AND DATE OF HEARING

DECEMBER 26, 1956.

Take notice that Northern Natural Gas Company (Applicant), a Delaware corporation having its principal place of business at 2223 Dodge Street, Omaha, Nebraska, filed on July 20, 1955, an application for a certificate of public convenience and necessity, pursuant to section 7 of the Natural Gas Act, authorizing Applicant to construct and operate certain regulating facilities as hereinafter described, subject to the jurisdiction of the Commission, to provide interruptible service to the Albert Lea Co-operative Creamery Association for use in its creamery located in Twin

Lakes, Minnesota, all as more fully represented in the application which is on file with the Commission and open for public inspection.

Applicant proposes to construct and operate additional regulating facilities at its existing measuring and regulating station serving the Dairland Co-operative Power Plant at Twin Lakes, Minnesota, located in Section 11, Twp. 101 N., R. 22 W. in Freeborn County, Minnesota.

The metering facilities at the creamery together with the pipeline between the regulating facilities and the creamery will be constructed, owned and operated by Peoples Natural Gas division of Applicant.

The estimated cost of the proposed regulating facilities is \$1,000, which will be financed out of funds on hand.

The maximum daily demand of the creamery is estimated at 325 Mcf and the estimated annual requirements are 57,600 Mcf.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Power Commission by sections 7 and 15 of the Natural Gas Act, and the Commission's rules of practice and procedure, a hearing will be held on Thursday, January 31, 1957, at 9:30 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., concerning the matters involved in and the issues presented by such application: *Provided, however,* that the Commission may, after a non-contested hearing, dispose of the proceedings pursuant to the provisions of § 1.30 (c) (1) or (2) of the Commission's rules of practice and procedure. Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or to be represented at the hearing.

Protests or petitions to intervene may be filed with the Federal Power Commission, Washington 25, D. C., in accordance with the rules of practice and procedure (18 CFR 1.8 or 1.10) on or before January 18, 1957. Failure of any party to appear at and participate in the hearing shall be construed as waiver of and concurrence in omission herein of the intermediate decision procedure in cases where a request therefor is made.

[SEAL]

J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 57-9; Filed, Jan. 2, 1957;
8:46 a. m.]

[Docket No. G-9966, etc.]

NATURAL GAS PIPELINE COMPANY OF
AMERICA ET AL.

ORDER MODIFYING AND AMENDING ORDER FOR
HEARING AND SPECIFYING PROCEDURE

In the matters of Natural Gas Pipeline Company of America, Docket No. G-9966; Texas Illinois Natural Gas Pipeline Company, Docket No. G-10103; Colorado Interstate Gas Company, Docket No. G-10176; Chicago District Pipeline Company, Docket No. G-10214; Pacific Northwest Pipeline Corporation, Docket No. G-10455.

The Commission, on November 30, 1956, issued its order setting the above-styled proceedings for hearing commencing on January 7, 1957, at 10:00 a. m., e. s. t., in a hearing room of the Federal Power Commission, 441 G Street NW., Washington, D. C., and in such order specified the procedure to be followed with respect to the presentation of testimony at the hearing.

The intent of the order issued November 30, 1956, was to require that all testimony relating to the various aspects of the certificate applications be presented orally upon the record at the hearing in question and answer form and that each witness presenting direct testimony would be cross-examined immediately upon the completion of his direct examination. Further, any redirect testimony and cross-examination with respect thereto would be presented immediately thereafter. In short, the foregoing was intended to prescribe only the form in which all testimony of whatever nature was to be presented.

The order then prescribed the sequence for the presentation of testimony, i. e., the order required each applicant to present its evidence with respect to market demands in accordance with the numerical docket designation assigned to its application, prior to the presentation of any testimony relating to other aspects of the same application.

Natural Gas Pipeline Company of America (Natural Gas), Texas Illinois Natural Gas Pipeline Company (Texas Illinois) and Chicago District Pipeline Company (Chicago District), on December 10, 1956, filed with the Commission a letter requesting clarification of the order and a change in the sequence prescribed for the presentation of testimony in the proceedings. In such letter the three applicants named state that the Commission's order issued November 30, 1956, is ambiguous and request clarification thereof. In addition they request the Commission to change the sequence in which the applicants have been directed to present testimony concerning market demands so as to permit Natural Gas, Texas Illinois and Chicago District each to present its testimony with respect to markets prior to the presentation of market testimony by Colorado Interstate Gas Company (Colorado Interstate) and Pacific Northwest Pipeline Corporation (Pacific Northwest). These two companies, Colorado Interstate and Pacific Northwest, have concurred in the request for change in the sequence prescribed for presentation of testimony.

Our order issued November 30, 1956 (specifying procedure), was designed to expedite the hearing in these proceedings, and to enable the Commission, if possible, to reach an early decision upon, as a separate preliminary issue, the issue of exclusiveness between the applications of Natural Gas, Texas Illinois and Chicago District in the areas they serve or propose to serve and the applications of Midwestern Gas Transmission Company (Midwestern), et al. filed in Docket Nos. G-9451, et al.

In connection with the foregoing statement, we desire to point out that the issue of exclusiveness has been raised not

only in these proceedings as between Natural Gas, Texas Illinois and Chicago District and Midwestern but also as an issue in other proceedings pending before the Commission as between Midwestern and Northern Natural Gas Company (Northern), et al., Docket Nos. G-2399, et al., and Midwestern and Michigan Wisconsin Pipe Line Company, et al., Docket Nos. G-2327, et al. and Docket No. G-9850. We are cognizant of the great public interest which has been generated and manifested among potential customers located in areas which would be served by the pipeline projects covered by the respective applications referred to above, and among the local and state authorities in the states in which the competitive areas are located. It is our intention, therefore, to set down for hearing at the earliest possible date in appropriate consolidated proceedings the applications of the pipeline companies referred to above in order to consider the competitive or mutually exclusive aspects presented in the light of their relation to the overall determination of the feasibility of each project for which authorization is sought. However, until the Commission is possessed of sufficient information, it cannot determine which proceedings can be appropriately consolidated. We feel that action looking toward increased service to markets presently being served in non-competitive areas should not, where possible, be deferred until after the competitive aspects of the respective applications can be considered and determined.

In accordance with the foregoing we will amend our order for hearing and specifying procedure issued November 30, 1956 as hereinafter indicated.

The Commission finds:

It is appropriate and in the public interest under the provisions of the Natural Gas Act to clarify and amend the Commission's order issued in these proceedings on November 30, 1956, and to provide that the procedure be as hereinafter ordered in the conduct of hearing set to commence on January 7, 1957, in these consolidated proceedings.

The Commission orders:

(A) The procedure at the hearing in the above-styled proceedings in Docket Nos. G-9966, G-10103, G-10176, G-10214 and G-10455 shall be as follows:

(i) All testimony in these proceedings shall be presented orally at the hearing in question and answer form.

(ii) Each witness as he appears to testify concerning a particular aspect of an application shall give his full and complete testimony with respect thereto. "Full and complete testimony" shall include direct testimony, cross-examination, redirect testimony, recross-examination, etc., it being the intent of this order that each witness shall give his full and complete testimony with respect to a particular aspect of an application as he is presented at the hearing.

(iii) In the sequence in which named Natural Gas, Texas Illinois and Chicago District shall present full and complete market testimony prior to the presentation of any testimony relating to other aspects of the applications or other matters or issues involved. The presentation

of the market testimony by Natural Gas, Texas Illinois and Chicago District shall be completed prior to the presentation of testimony by any other party to the proceeding.

(iv) Upon completion of the presentation of testimony as required by subparagraph (iii) hereof, other parties to the proceeding shall be afforded an opportunity to present immediately any counter testimony to that presented by the parties referred to in subparagraph (iii) hereof.

(v) Upon the completion of the presentation of counter testimony by other parties to the proceeding, Natural Gas, Texas Illinois and Chicago District shall be afforded an opportunity to present rebuttal testimony.

(vi) Upon completion of the presentation of the testimony as described in subparagraphs (iii), (iv) and (v) hereof the record shall immediately be certified to the Commission for its consideration and decision, as a separate preliminary issue, the issue of exclusiveness of the applications of Midwestern and Natural Gas, Texas Illinois and Chicago District. Opportunity will be afforded all parties to file briefs or for oral argument.

(vii) Pending the determination of the issue as set forth in subparagraph (vi) hereof, the hearing shall proceed for the presentation of full and complete market testimony by Colorado Interstate and Pacific Northwest.

(viii) Upon completion of the presentation of market testimony by Colorado Interstate and Pacific Northwest, in the following sequence full and complete testimony shall be presented by Natural Gas, Texas Illinois, Chicago District, Colorado Interstate and Pacific Northwest with respect to each other aspect of its particular application and other matters and issues involved. Thereupon other parties shall be afforded an opportunity to present counter testimony, and the applicants afforded an opportunity to present rebuttal testimony.

(B) No recess shall be taken during the course of the hearing for the purpose of preparing cross-examination or for preparation of other testimony.

Issued: December 26, 1956.

By the Commission.

[SEAL]

J. H. GUTHRIE,
Acting Secretary.

[F. R. Doc. 57-12; Filed, Jan. 2, 1957;
8:46 a. m.]

[Docket No. G-11640]

CONTINENTAL OIL CO. (OPERATOR) ET AL.
ORDER SUSPENDING PROPOSED CHANGE IN
RATES

Continental Oil Company (Operator)
et al. (Continental et al.),¹ on November

¹In addition to Continental, the following named producers are parties to the rate schedule hereinafter designated: Fred Goodstein, d/b/a Trigood Oil Company, Fred M. Manning Company, Estate of E. E. Brown (The International Trust Company of Denver, Colorado, Executor), Knox Oil Company, Oxford Oil Company, and Wyopark Oil Company.

23, 1956, tendered for filing a proposed change in their presently effective rate schedule for sales subject to the jurisdiction of the Commission. The proposed change, which constitutes an increased rate, is contained in the following designated filing which is proposed to become effective on the date shown:

Description; Purchaser; Rate Schedule Designation; and Proposed Effective Date

Notice of change, undated; Montana-Dakota Utilities Company; Supplement No. 2 to Continental et al., FPC Gas Rate Schedule No. 2; January 1, 1957.

The increased rate proposed in the aforesaid filing has not been shown to be justified, and may be unjust, unreasonable, unduly discriminatory, or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary concerning the lawfulness of said proposed change in rates; and, pending such hearing and decision thereon, the above-designated supplement be and the same hereby is suspended and the use thereof deferred until June 1, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested state commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

Issued: December 26, 1956.

By the Commission.*

[SEAL]

J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 57-10; Filed, Jan. 2, 1957;
8:46 a. m.]

[Docket No. G-11641]

PHILLIPS PETROLEUM CO.

ORDER SUSPENDING PROPOSED CHANGE
IN RATES

Phillips Petroleum Company (Phillips) on November 26, 1956, submitted for filing a proposed change in rate schedule for a sale of natural gas subject to the jurisdiction of the Commission. The proposed change is contained in the fol-

* Commissioner Digby dissenting.

lowing filing which is proposed to become effective on the date shown.

Description; Purchaser; Rate Schedule Designation; and Proposed Effective Date

Notice of change, dated November 21, 1956; Northern Natural Gas Company; Supplement No. 7 to Phillips FPC Gas Rate Schedule No. 24; January 1, 1957.

By order issued January 3, 1955, in Docket G-6621, a prior increase under the same rate schedule was suspended and its use deferred until March 1, 1955, and until made effective in the manner prescribed by the Natural Gas Act. The increase in Docket No. G-6621 was permitted to become effective subject to refund on March 1, 1955, by order issued in that docket.

The proposed increased rate and charge designated above has not been shown to be justified and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful.

The Commission finds: It is necessary and proper in the public interest and to aid in the enforcement of the provisions of the Natural Gas Act that the Commission enter upon a hearing concerning the lawfulness of the said proposed change, and that the above-designated supplement be suspended and the use thereof deferred as hereinafter ordered.

The Commission orders:

(A) Pursuant to the authority contained in sections 4 and 15 of the Natural Gas Act and the Commission's general rules and regulations (18 CFR Chapter I), a public hearing be held upon a date to be fixed by notice from the Secretary, concerning the lawfulness of the proposed increased rate and charge contained in Supplement No. 7 to Phillips FPC Gas Rate Schedule No. 24; and, pending such hearing and decision thereon, said supplement be and it is hereby suspended and the use thereof deferred until June 1, 1957, and until such further time as it is made effective in the manner prescribed by the Natural Gas Act.

(B) Neither the supplement hereby suspended, nor the rate schedule sought to be altered thereby, shall be changed until this proceeding has been disposed of or until the period of suspension has expired, unless otherwise ordered by the Commission.

(C) Interested state commissions may participate as provided by §§ 1.8 and 1.37 (f) of the Commission's rules of practice and procedure (18 CFR 1.8 and 1.37 (f)).

By the Commission.*

[SEAL]

J. H. GUTRIDE,
Acting Secretary.

[F. R. Doc. 57-11; Filed, Jan. 2, 1957;
8:46 a. m.]

FEDERAL RESERVE SYSTEM

FIRST NEW YORK CORP. ET AL.

NOTICE OF APPLICATIONS FILED FOR APPROVAL
OF ACTION TO BECOME BANK HOLDING
COMPANIES AND ORDER FOR HEARING
THEREON

Notice is hereby given that applications have been made to the Board of Govern-

nors of the Federal Reserve System, pursuant to section 3 (a) of the Bank Holding Company Act of 1956 (12 U. S. C. 1842), by the following applicants for the prior approval by the Board of the following actions:

First New York Corporation, a Delaware corporation, seeks Board approval of action whereby it would become a bank holding company with respect to each of the following banks: The Metropolitan National Bank, into which would be consolidated The First National City Bank of New York, under the latter name; The First National City Trust Company of New York, into which would be consolidated City Bank Farmers Trust Company; and County Trust National Bank, into which would be consolidated County Trust Company of White Plains, New York;

The First National City Bank of New York seeks Board approval of action whereby it would become a bank holding company with respect to The Metropolitan National Bank, The First National City Trust Company of New York, County Trust National Bank, and International Banking Corporation;

International Banking Corporation seeks Board approval of action whereby it would become a bank holding company with respect to The Metropolitan National Bank, The First National City Trust Company of New York, and County Trust National Bank.

It is proposed that First New York Corporation will operate as a holding company of the three subsidiary national banks, namely, The Metropolitan National Bank, The First National City Trust Company, and County Trust National Bank. It is further proposed that The First National City Bank of New York, City Bank Farmers Trust Company, and County Trust Company will respectively consolidate with these subsidiaries pursuant to the provisions of the national banking laws.

It appearing to the Board of Governors that it is appropriate in the public interest that a hearing be held with respect to these applications:

It is hereby ordered, That, pursuant to section 7 (a) of the Board's Regulation Y (12 CFR 222.7 (a)), promulgated under the Bank Holding Company Act of 1956, a public hearing with respect to these applications be held commencing January 24, 1957, at 10 a. m., in Room 1202 of the offices of the Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, D. C., before a hearing examiner selected by the Civil Service Commission pursuant to section 11 of the Administrative Procedure Act, such hearing to be conducted in accordance with the Rules of Practice for Formal Hearings of the Board of Governors of the Federal Reserve System (12 CFR Part 263). The right is reserved to the Board or such hearing examiner to designate any other place for such hearing or any part thereof which may be determined to be necessary or appropriate for the convenience of the parties.

It is further ordered, That the following matters will be the subject of con-

sideration at said hearing, without prejudice to the designation of additional related matters and questions upon further examination:

1. The financial history and condition of the companies and the banks concerned;

2. The prospects of said companies and banks;

3. The character of their management;

4. The convenience, needs, and welfare of the communities and the area concerned;

5. Whether or not the effect of such action would be to expand the size or extent of the bank holding companies' system involved beyond limits consistent with adequate and sound banking, the public interest, and the preservation of competition in the field of banking.

It is further ordered, That any person desiring to give testimony in this proceeding should file with the Secretary of the Board on or before January 14, 1957, a written request relative thereto, said request to contain a statement of the reasons for wishing to appear, the nature of the petitioner's interest in the proceeding, and a summary of the matters concerning which said petitioner wishes to give testimony. Such request will be presented to the designated hearing examiner for his determination in the matter at the appropriate time. Persons submitting timely requests will be notified of the hearing examiner's decision in due course.

By order of the Board of Governors,

[SEAL] MERRITT SHERMAN,
Assistant Secretary.

DECEMBER 26, 1956.

[F. R. Doc. 56-10628; Filed, Dec. 31, 1956;
8:48 a. m.]

SECURITIES AND EXCHANGE COMMISSION

[File Nos. 52-28, 54-183]

ELMER E. BAUER ET AL.

SUPPLEMENTAL ORDER APPROVING PROPOSED
SETTLEMENTS AND RELEASING JURISDICTION
IN CONNECTION THEREWITH

DECEMBER 27, 1956.

In the matter of Elmer E. Bauer, trustee of Pittsburgh Railways Company, debtor, and Philadelphia Company (File No. 52-28); Philadelphia Company (File No. 54-183).

I. Elmer E. Bauer, Trustee of Pittsburgh Railways Company, Debtor ("Railways"), and Philadelphia Company, a registered holding company which owns 50.9 percent of the common stock of Railways, jointly filed a plan and amendments thereto ("Combined Plan") for the reorganization of the Pittsburgh Railways System under Chapter X of the Bankruptcy Act and section 11 (f) of the Public Utility Holding Company Act of 1935 ("Holding Company Act") and for the discharge under section 11 (e) of the Holding Company Act of Philadelphia Company's guarantees affecting securities of the Pittsburgh Railways System.

On March 27, 1950, the Commission entered its order approving the Com-

bined Plan (Holding Company Act Release No. 9759) and in said order the Commission reserved jurisdiction;

(e) To examine and approve settlements of claims arising from the rejection of contracts, agreements or leases between Railways and Philadelphia Company and its subsidiaries;

(g) To entertain such further proceedings, to make such supplemental findings, to take such further action, and to enter such further orders as the Commission may deem necessary or appropriate in these proceedings.

On May 1, 1950, the United States District Court for the Western District of Pennsylvania ("Court") entered orders approving and enforcing the Combined Plan and said Court confirmed such plan by order dated August 31, 1950.

The Combined Plan which was duly consummated as of January 1, 1951, provided, among other things, (a) that the public holders of unguaranteed Pittsburgh Railways System bonds should receive cash and new bonds of the reorganized Railways in an amount in the aggregate equivalent to the principal of said bonds, and 14 percent of the new common stock of the reorganized Railways in settlement of the claims for the unpaid interest on said bonds; and (b) that the public holders of unguaranteed stocks of the Pittsburgh Railways System in the par amount of \$4,515,550 should receive the sum of \$449,607 in cash and 35.1 percent of the new common stock of the reorganized Railways. Pursuant to the plan, the public holders of the securities of Pittsburgh Railways System received, in the aggregate, 49.1 percent of the new stock and \$5,849,500 principal amount of the new bonds of the reorganized Railways and Philadelphia Company received 50.9 percent of the new stock. At the present time the principal amount of outstanding new bonds has been reduced to approximately \$3,500,000.

Article V of the Combined Plan provided, as follows:

The New Company will assume executory contracts, agreements and leases of the System which have been or shall be assumed by the Trustees with the express approval of the Court, whether in the form existing at the time of the institution of the reorganization proceedings or as thereafter or hereafter modified by agreement. Where desirable and feasible, the Trustees will negotiate new agreements, subject to approval by the Court, which shall be assumed by the New Company, including agreements with Philadelphia Company and subsidiaries. Claims, if any, arising out of the rejection of executory contracts, agreements and leases shall be heard and determined by the Court.

Order No. 6 of the Court, in aid of final consummation of the Combined Plan, provided as follows:

20. Subject to further order of this Court, the Court reserves jurisdiction to consider the assumption or rejection of all executory contracts not heretofore expressly assumed by the Trustees with the approval of the Court; the continued operation of the New Company pursuant to any contractual arrangement not yet assumed by the Trustees with the approval of this Court shall be without prejudice to the right of the Trustee to petition for assumption or rejection of such contracts or their modification and without prejudice to the power of this Court to approve such assumption, rejections or modifications.

Article VI of the Combined Plan provided that the net proceeds resulting from prosecution by the Trustee of all claims undetermined at the effective date of the Combined Plan shall be paid to Railways. By order dated December 29, 1950, the Court ordered as follows:

10.d. To the extent that any funds remain with the Trustee after payment of or provision for the liabilities set forth in subdivision "b" above, the excess funds shall be delivered by the Trustee to the New Company, and the New Company shall forthwith deposit such excess as an additional sinking fund payment pursuant to Section 5.02 of the Trust Indenture securing the bonds of the New Company, with the provision, however, that the New Company shall not take such additional sinking fund deposit as a credit against any future sinking fund obligations.

II. The Trustee and Philadelphia Company filed with the Commission on December 4, 1956, a Petition for an "Order Approving Proposed Settlement and for Order Releasing Jurisdiction in Connection Therewith" and a "Memorandum in Support of Petition for Order Approving Proposed Settlement". It appears from such Petition, among other things, that executory contracts, agreements or leases outstanding at the time of and following the commencement of the reorganization proceedings were as follows:

(a) An arrangement with Equitable Real Estate Company, a former subsidiary of Philadelphia, whereby a portion of a building at 435 Sixth Avenue, Pittsburgh, Pennsylvania, was occupied by Railways and its former subsidiary, Pittsburgh Motor Coach Company, at an agreed rental;

(b) An arrangement whereby Philadelphia operated certain departments of Railways and its former subsidiary and of other subsidiaries or affiliates of Philadelphia and allocated the cost of operations among them;

(c) The occupancy by Equitable Gas Company, a former subsidiary of Philadelphia, and by Duquesne Light Company, a subsidiary of Philadelphia, at a rental of \$775 per month plus taxes of Railways' premises at 6119 Penn Avenue, Pittsburgh, Pennsylvania;

(d) The occupancy by Railways' former subsidiary of the Lexington Avenue Garage as a sub-lessee of Equitable Auto Company, a lessee of Equitable Real Estate Company, both former subsidiaries of Philadelphia;

(e) The maintenance and servicing of the buses of Railways' former subsidiary by Equitable Auto Company, a former subsidiary of Philadelphia;

(f) A contract between Railways and Duquesne Light Company, a subsidiary of Philadelphia for the use of power by Railways;

(g) Other matters of inter-company relationships between Railways' system and Philadelphia and its subsidiaries prior to and during the reorganization.

III. The Petition referred to in II above also discloses that from the date of the death of the former Trustee of Railways, Thomas M. Benner, on April 19, 1943, to the appointment of Elmer E. Bauer on May 10, 1949, as his successor, W. D. George, now deceased, acted as the sole Trustee; that on June 7, 1948, the Commission filed with the Court a petition for the removal of George as Trustee; that hearings on the Commission's petition were held in 1948 and 1949 before a Referee in Bankruptcy as Special Master; that George resigned as Trustee on May 31, 1949, and died on March 2, 1953; that in May 1953 Bauer filed his

final accounts as Trustee including therein those of George for the year 1949 and the first five months of 1949; that in June 1953 the Commission filed, with the Court, Objections and Exceptions to the aforesaid accounts of George by reason of his affiliations with certain banks, deposits of idle funds, the financing of purchases of equipment, buses and street cars, the leasing of garages, and other dealings alleged to be unauthorized; that the executors, heirs and legatees under the will of George ("George Estate") filed, with the Court, a motion to strike or dismiss the aforesaid Objections and Exceptions of the Commission which motion was denied and thereafter extensive hearings were held on the aforesaid Objections and Exceptions; that upon conclusion of the Commission's case counsel for the George Estate moved for the right to examine all records of the Commission relating to Railways' reorganization, which motion was granted; that the Commission appealed to the United States Court of Appeals for the Third Circuit; that subsequently counsel for the George Estate and counsel for the Commission entered into a stipulation providing for examination of the Commission's records and discontinuance of the appeal; that following examination of the Commission's records, counsel for the George Estate filed requests for admissions and requested the production of many documents from the Commission's files, all of which documents have been marked for identification at a special pretrial hearing; that in the three years which have elapsed since the filing of the George accounts extensive proceedings have been held in connection with the Commission's Objections and Exceptions to such accounts; and that in the judgment of the petitioner, Bauer, the conflict between the positions asserted by counsel for the Commission and counsel for the George Estate, if litigation is to continue, could be resolved only by the Supreme Court of the United States with consequent further delay and great financial expense to the reorganization estate and other interested parties.

IV. It appears from the aforesaid joint petition of Bauer and Philadelphia Company that the Trustee and his counsel, the Staff of the Commission, and counsel for Philadelphia Company have had numerous conferences, jointly and severally, relating to the assumption or rejection of the executory contracts, agreements or leases referred to in II above looking toward a possible compromise to the mutual advantage of the reorganization estate, Philadelphia Company and the public interest.

It further appears from the aforesaid joint petition that counsel for the Trustee and counsel for Philadelphia Company have reached a compromise, subject to approval by the Commission and the Court, as set forth in the following excerpt from a letter from counsel for Philadelphia Company to counsel for the Trustee:

This letter will confirm the result of our recent conversations in which you, on behalf of the Trustee, and I on behalf of Philadelphia Company, have agreed to the following:

Philadelphia Company is to be discharged from any and all liabilities of it and its former parents or subsidiaries with respect to the debtors, estates and proceedings, in Case No. 20225, for reorganization of Pittsburgh Railways Company, and the proceedings to enforce a plan, pursuant to the Public Utility Holding Company Act of 1935 (Civil Action No. 8876), now pending in your District Court, upon payment to the reorganization trustee, in Case No. 20225, of the sum of \$20,000.00. Philadelphia Company, in accordance with this settlement, will waive any and all rights it has to any of the funds in the hands of the trustee, or which may come into possession of the trustee by virtue of this settlement or by virtue of any matter affecting the estate of W. D. George.

It further appears from the aforesaid joint petition that the Trustee, Bauer, represents that to terminate the controversy regarding the final accounts of George and to expedite the final closing of Railways' reorganization proceedings which have lasted for more than eighteen years, he and his counsel sought to induce a compromise with the George Estate; that after conferences among and between counsel for the Trustee, counsel for the Commission, and counsel for the George Estate an agreement has been reached between the Trustee and the George Estate whereby the latter has agreed to pay \$25,000 to the Trustee in full settlement of all claims against the estate; *Provided, however*, That such payment is without admission of any legal liability on the part of the George Estate and that such settlement is without any adverse reflection upon the integrity or good faith of George or upon the spirit of public service and good faith of the Commission and its Staff. The George Estate has also agreed not to assert any claims against Railways' estate for costs and expenses in connection with the litigation regarding the George accounts or for compensation for services rendered by George as Trustee for which no compensation has heretofore been allowed.

V. It appears from the aforesaid joint petition that in the event of the approval and consummation of the proposed settlements with Philadelphia Company and the George Estate, petitioner, Bauer, as Trustee, will hold cash in the following approximate amounts:

Commonwealth Trust Co. of Pittsburgh, 2½ percent time account.....	\$53,120
Mellon National Bank & Trust Co., checking account.....	28,000
George estate settlement.....	25,000
Philadelphia Company settlement.....	20,000
Miscellaneous.....	4,450
Total.....	130,570

¹Plus interest from July 1, 1956.

It further appears that petitioners propose that the net proceeds in the hands of the Trustee after deduction of the expenses of reorganization and of such other claims as may be judicially determined to be proper charges will be delivered by the Trustee to Railways for the purpose of distribution to the public holders of Railways' stock and that to accomplish such distribution petitioners will request the Court to make appropriate modification of paragraph 10.d of its order of December 29, 1950, referred to in I above.

Said joint petition having been filed for the purpose of complying with the provisions of section 11 (b) of the Holding Company Act and with the Commission's reservation of jurisdiction under its Order of March 27, 1950, and of settling and compromising all pending litigation and controversies affecting the reorganization of Railways, including the issues with respect to (a) possible claims arising from the rejection of contracts, agreements or leases between Railways and Philadelphia Company and its subsidiaries and with respect to (b) the Commission's Objections and Exceptions to the George accounts; and the Commission deeming it appropriate to consider said petition as being in aid of the consummation of the Combined Plan; and

The Commission having considered the joint petition and the memorandum and exhibits filed in support thereof and finding that the proposed settlements are in aid of the consummation of the Combined Plan and are necessary to effectuate the provisions of section 11 (b) of the Holding Company Act and are feasible and fair and equitable to the persons affected thereby:

It is ordered, Pursuant to sections 11 (e) and 11 (f) and other applicable provisions of the Holding Company Act, that the settlements set forth in the joint petition are approved as in aid of the consummation of the Combined Plan, subject to the conditions specified in Rule U-24 of the General Rules and Regulations promulgated under the Holding Company Act.

It is further ordered, That the jurisdiction heretofore reserved to examine and approve settlements of claims arising from the rejection of contracts, agreements or leases between Railways and Philadelphia Company and its subsidiaries be, and the same hereby is, released.

By the Commission.

[SEAL]

ORVAL L. DuBois,
Secretary.

[F. R. Doc. 57-25; Filed, Jan. 2, 1957;
8:50 a. m.]

[File No. 70-3533]

MISSISSIPPI POWER & LIGHT CO.

ORDER PERMITTING DECLARATION TO BECOME
EFFECTIVE REGARDING PROPOSAL TO ISSUE
AND SELL TO BANKS SHORT-TERM NOTES

DECEMBER 27, 1956.

Mississippi Power & Light Company ("Mississippi"), a public utility subsidiary of Middle South Utilities, Inc., a registered holding company, having filed with this Commission a declaration, pursuant to section 7 of the Public Utility Holding Company Act of 1935 ("act"), regarding a proposal to issue and sell to banks short-term notes as follows:

Pursuant to a credit agreement dated November 15, 1956, Mississippi proposes, during the period beginning January 2, 1957, and extending to January 31, 1958, to borrow an aggregate of not to exceed \$9,000,000 from banks as follows:

The Chase Manhattan Bank, New York	\$7,500,000
Deposit Guaranty Bank & Trust Co., Jackson, Miss.	1,000,000
First National Bank of Jackson, Jackson, Miss.	500,000
Total	9,000,000

Each borrowing is to be evidenced by a note maturing on or before two years from the date of the first borrowing, which is to be made during the month of January 1957, and is to bear interest at the rate of 4 percent per annum during the period of nine months from the date of the first borrowing, and at the rate of 4 1/4 percent per annum thereafter to maturity. A commitment fee is to be paid, computed on the average unused portion of the commitment, at the rate of 1/4 of 1 percent per annum from the date of the Commission's order permitting the declaration to become effective. The company is to have the right at any time to terminate or reduce the commitment.

The proceeds of the loans will be used to defray a portion of the cost of the company's construction program, presently estimated to result in expenditures of approximately \$14,000,000 during the year 1957 and approximately \$20,000,000 during the year 1958, and for other corporate purposes. The company states that it expects to refund the notes from the proceeds of the sale of additional bonds in 1958.

The declaration states that no state regulatory body or agency, and no Federal commission or agency, other than this Commission, has jurisdiction over the proposed transactions.

The declaration also states that the fees and expenses to be incurred in connection with the proposed transactions are estimated to be \$2,900, including \$1,500 of counsel fees; and

Notice of the filing of the declaration having been duly given in the manner prescribed by Rule U-23 (Holding Company Act Release No. 13330, December 7, 1956) promulgated under the act, and no hearing having been requested of or ordered by the Commission; and

It appearing that the fees and expenses to be incurred in connection with the proposed transactions are not unreasonable; and the Commission observing no basis for adverse findings or the imposition of terms and conditions, and finding in respect of said declaration that the applicable provisions of the act, and of the rules, promulgated thereunder, are satisfied, and deeming it appropriate in the public interest to permit the declaration, as amended, to become effective, forthwith:

It is ordered, Pursuant to Rule U-23 and the applicable provisions of the act, that the declaration, as amended, be, and it is hereby, permitted to become effective, forthwith, subject to the terms and conditions prescribed in Rule U-24.

By the Commission.

[SEAL]

ORVAL L. DuBOIS,
Secretary.

[File Nos. 70-2945, etc.]

OHIO VALLEY ELECTRIC CORP. ET AL.

ORDER EXTENDING TIME TO AMEND APPLICATIONS AND ORDER POSTPONING HEARING

DECEMBER 27, 1956.

In the matters of Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation, American Gas and Electric Company, The Cincinnati Gas & Electric Company, Kentucky Utilities Company, Louisville Gas and Electric Company, Ohio Edison Company, The West Penn Electric Company, American Gas and Electric Service Corporation, File No. 70-2945; Ohio Valley Electric Corporation, Indiana-Kentucky Electric Corporation, American Gas and Electric Company, Appalachian Electric Power Company, Indiana and Michigan Electric Company, The Ohio Power Company, The West Penn Electric Company, Monongahela Power Company, The Potomac Edison Company, West Penn Power Company, Ohio Edison Company, Pennsylvania Power Company, The Cincinnati Gas and Electric Company, Kentucky Utilities Company, Louisville Gas and Electric Company, File No. 70-3106; Ohio Valley Electric Corporation, American Gas and Electric Company, The West Penn Electric Company, Ohio Edison Company, File No. 70-3513.

On November 19, 1956, the Commission issued an order reopening and consolidating the proceedings in File Nos. 70-2945, 70-3106 and 70-3513 and gave Notice of and Order for hearing to consider matters in the consolidated proceedings over which jurisdiction had heretofore been reserved (Holding Company Act Release No. 13313). These proceedings concern, among other things, the applications of American Gas and Electric Company ("American Gas"), the Cincinnati Gas & Electric Company ("Cincinnati"), Kentucky Utilities Company ("Kentucky"), Louisville Gas and Electric Company ("Louisville"), Ohio Edison Company ("Ohio Edison"), and The West Penn Electric Company ("West Penn Electric"), (hereinafter referred to as the "participating companies"), to acquire the common stock of Ohio Valley Electric Corporation ("Ohio Valley"). Ohio Valley also filed an application to acquire all the common stock of Indiana-Kentucky Electric Corporation ("Indiana-Kentucky"). In its order the Commission specifically directed, "that Ohio Valley and the six participating companies subject to the jurisdiction of this Commission shall file with the Secretary of the Commission on or before December 21, 1956, amendments to their applications setting forth the facts as they now exist with regard to their respective relationships to Ohio Valley and of Ohio Valley to Indiana-Kentucky and with particular reference to the matters to be considered under section 10 of the act."

Ohio Valley and the six participating companies have now filed with the Commission a request to extend the time within which these amendments are required to be filed with the Commission. The request states that it has proved impossible for the companies to assemble

all of the required information within the time specified in the order of the Commission and asks that the Commission extend to February 1, 1957, the time within which such amendments shall be filed.

It appearing to the Commission that it will not be detrimental to the public interest for the time to be extended beyond December 21, 1956, in which the amendments to the applications shall be filed; and it also appearing to the Commission that the granting of such an extension requires the postponement of the hearing as originally ordered and the ordering of another date for hearing:

It is hereby ordered, That Ohio Valley and the six participating companies subject to the jurisdiction of this Commission shall file with the Secretary of the Commission on or before February 1, 1957, amendments to their applications setting forth the facts as they now exist with regard to their respective relationships to Ohio Valley and of Ohio Valley to Indiana-Kentucky and with particular references to the matters to be considered under section 10 of the act.

It is further ordered, Pursuant to the applicable provisions of the act that the hearing in the consolidated proceedings as previously ordered be postponed and such hearing be held at the offices of the Securities and Exchange Commission, 425 Second Street NW., Washington 25, D. C., on March 18, 1957, at 10:00 a. m., e. s. t. On such date the hearing room clerk in room 193 will advise as to where such hearing will be held.

Any person desiring to be heard or otherwise wishing to participate in this proceeding shall file with the Secretary, Securities and Exchange Commission, Washington 25, D. C., on or before March 11, 1957, a request relative thereto as provided by Rule XVII of the Commission's Rules of Practice and shall state the reasons for wishing to participate, the nature and extent of his interest in the proceeding, and the issues of fact or law raised by the applications which he desires to controvert.

It is further ordered, That the Secretary of the Commission shall serve notice of the hearing aforesaid by mailing a copy of this notice of and order for hearing by registered mail, not less than 30 days prior to the date fixed therefor, to each of the participating companies, the Atomic Energy Commission, the Federal Power Commission, Public Service Commission of Indiana, Kentucky Public Service Commission, Public Service Commission of Maryland, Michigan Public Service Commission, The Public Utilities Commission of Ohio, Pennsylvania Public Utility Commission, Public Service Commission of West Virginia; and that notice of said hearing is hereby given to the aforesaid and to all states, municipalities, and political subdivisions of states within which are located any of the physical assets of the applicant companies, to all state commissions, state security commissions, and all agencies, authorities or instrumentalities of any state, municipality, or other political subdivision having jurisdiction over any of the applicant companies or any of the

business affairs or operations of any of them, and to all other interested persons, such notice to be given by a general release of the Commission, distributed to the press and mailed to the mailing list for releases issued under the act; and by publication of this Notice and Order in the FEDERAL REGISTER not later than 30 days prior to the date hereinbefore fixed as the date of hearing.

By the Commission.

[SEAL] ORVAL L. DuBois,
Secretary.

[F. R. Doc. 57-27; Filed, Jan. 2, 1957;
8:50 a.m.]

INTERSTATE COMMERCE COMMISSION

MOTOR CARRIER APPLICATIONS

[Notice No. 145]

DECEMBER 28, 1956.

The following applications are governed by the Interstate Commerce Commission's special rules governing notice of filing of applications by motor carriers of property or passengers and by brokers under section 206, 209, and 211 of the Interstate Commerce Act and certain other procedural matters with respect thereto. (FEDERAL REGISTER, Volume 21, pages 7339, 7340, § 1.241, September 26, 1956.)

All hearings will be called at 9:30 o'clock a. m., United States Standard Time, unless otherwise specified.

APPLICATIONS ASSIGNED FOR ORAL HEARING OR PRE-HEARING CONFERENCE

MOTOR CARRIERS OF PROPERTY

No. MC 217 (Sub No. 3), filed December 17, 1956, POINT TRANSFER, INC., 1927 Sherrick Road, Canton, Ohio. Applicant's representative: John P. McMahon, 44 East Broad St., Columbus 15, Ohio. For authority to operate as a common carrier, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk and those requiring special equipment, serving the plant of Euclid Division of General Motors Corporation located approximately 1½ miles south of Hudson, Ohio, on Ohio Highway 91, in connection with applicant's authorized regular route operations between Pittsburgh, Pa., and Akron, Ohio. Applicant is authorized to transport similar commodities in Pennsylvania, Ohio, and West Virginia.

HEARING: January 14, 1957, in Room 255, New Post Office Building, Columbus, Ohio, before Joint Board No. 117.

No. MC 2962 (Sub No. 16), filed December 17, 1956, A. & H. TRUCK LINE, INC., 1277 Maxwell Avenue, Evansville, Ind. Applicant's representative: Robert W. Brunow, 1511 Kentucky Home Life Building, Louisville 2, Ky. For authority to operate as a common carrier, over a regular route, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring

special equipment, between Louisville, Ky., and the plant site of the Clayton & Lambert Manufacturing Company, near Buckner, Ky., from Louisville over U. S. Highway 42 to junction Buckner Road, near Buckner, thence over Buckner Road to the Clayton & Lambert Manufacturing Company plant site, and return over the same route, serving no intermediate points, but serving the off-route point of the above-described plant site in connection with and as an extension of applicant's authorized regular route operations. Applicant is authorized to conduct operations in Illinois, Indiana, Kentucky, Missouri, Ohio, and Tennessee.

NOTE: Duplication with present authority to be eliminated.

HEARING: January 31, 1957, at the Department of Motor Transportation Bldg., State Office Building, Frankfort, Ky., before Joint Board No. 105.

No. MC 30837 (Sub No. 214), filed December 13, 1956, KENOSHA AUTO TRANSPORT CORPORATION, 4519 76th Street, Kenosha, Wis. Applicant's representative: Lyle DeVuyst, Traffic Manager, Kenosha Auto Transport Corporation, P. O. Box 351, 4519 76th Street, Kenosha, Wis. For authority to operate as a common carrier, over irregular routes, transporting: *Reel trailers, reel winders, reel dollies, tension wire stringers, and cable pullers*, set-up and uncrated, and *parts thereof*, when such parts belong to and move with the unit being transported, from Santa Clara, Calif., to points in the United States.

HEARING: February 13, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner Paul Coyle.

No. MC 37896 (Sub No. 8), filed December 17, 1956, YOUNGBLOOD TRUCK LINES, INC., Highway 25, Fletcher, N. C. Applicant's representative: Robert W. Brunow, 1511 Kentucky Home Life Building, Louisville 2, Ky. For authority to operate as a common carrier, over irregular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, between Buckner, Ky., and points within three (3) miles of Buckner, on the one hand, and, on the other, Wilmington, N. C., Augusta and Savannah, Ga., Knoxville, Lowland, and Newport, Tenn., points in that part of North Carolina on and west of U. S. Highway 1, points in South Carolina, points in that part of Georgia on and north of a line beginning at the Alabama-Georgia State line and extending along Georgia Highway 20 to junction U. S. Highway 41, thence along U. S. Highway 41 to Atlanta, Ga., thence along U. S. Highway 29 to Athens, Ga., and thence along U. S. Highway 78 to the Georgia-South Carolina State line. Applicant is authorized to conduct operations in Georgia, Kentucky, North Carolina, Ohio, South Carolina, and Tennessee.

HEARING: January 31, 1957, at the Department of Motor Transportation Building, State Office Building, Frankfort, Ky., before Examiner William R. Tyers.

No. MC 65172 (Sub No. 2), filed December 17, 1956, HERBERT RAY, doing business as RAY'S TRANSFER, R. D. No. 1, Hazleton, Pa. Applicant's representative: Robert H. Griswold, P. O. Box 432, Commerce Bldg., Harrisburg, Pa. For authority to operate as a common carrier, over regular routes, transporting: *General commodities, including commodities of unusual value and commodities requiring special equipment*, but excepting Class A and B explosives, household goods as defined by the Commission, and commodities in bulk, in service auxiliary to, or supplemental of rail service of the Pennsylvania Railroad Company, between Wilkes-Barre, Pa. and Hazleton, Pa. over U. S. Highway 309, serving intermediate points which are stations on the rail line of The Pennsylvania Railroad Company. Applicant is authorized to conduct operations in Pennsylvania.

HEARING: February 19, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner Bertram E. Stillwell.

No. MC 95540 (Sub No. 282), filed December 10, 1956, WATKINS MOTOR LINES, INC., Cassidy Road, P. O. Box 785, Thomasville, Ga. Applicant's representative: Joseph H. Blackshear, Gainesville, Ga. For authority to operate as a common carrier, over irregular routes, transporting: (1) *Frozen foods*, from points in Tennessee, except Memphis, to points in Arizona, California and New Mexico; (2) *Meats, meat products, meat byproducts, dairy products, and articles distributed by meat packing houses*, between points in Arizona, California and New Mexico, on the one hand, and, on the other, points in Alabama, Florida, Georgia, North Carolina, South Carolina and Tennessee, except Memphis. Applicant is authorized to transport similar commodities in the States of Alabama, Florida, Tennessee, Illinois, Virginia, Georgia, North Carolina, South Carolina, Pennsylvania, Wisconsin, Iowa, Kentucky, Texas, Mississippi, Michigan, Indiana, New York, New Jersey, Maryland, Nebraska, Ohio, Delaware, Missouri, Minnesota, West Virginia, Arkansas, Oklahoma, Arizona, California, and New Mexico.

HEARING: February 20, 1957, at the Peachtree-Seventh Bldg., 50 Seventh Street NE., Atlanta, Ga., before Examiner Richard Yardley.

No. MC 102616 (Sub No. 628), filed December 11, 1956, COASTAL TANK LINES, INC., Grantley Road, York, Pa. Applicant's representative: Harold G. Hernly, 1624 Eye Street, N. W., Washington 6, D. C. For authority to operate as a common carrier, over irregular routes, transporting: *Residual fuel oil*, in bulk, in tank vehicles, from East Liverpool, Ohio to Youngstown, Ohio. Applicant is authorized to conduct operations in Delaware, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Virginia, West Virginia, and the District of Columbia.

NOTE: Applicant states that it can presently perform the above-described service by tacking Paragraphs 29 and 19 of the authority in MC 102616 (Sub No. 1) certificate at Midland, Pa.

HEARING: February 5, 1957, in Room 255, New Post Office Bldg., Columbus, Ohio, before Joint Board No. 117.

No. MC 103051 (Sub No. 26), filed December 12, 1956, WALKER HAULING CO., INC., 624 Penn Avenue NE., Atlanta 8, Ga. Applicant's representative: R. J. Reynolds, Jr., 1403 Citizens & Southern Natl. Bank Bldg., Atlanta 3, Ga. For authority to operate as a *common carrier*, over irregular routes, transporting: *Corn Syrup, liquid sugar and blends of corn syrup and liquid sugar*, in bulk, in tank vehicles, from Atlanta, Ga., to points in Alabama, Florida, Georgia, South Carolina, and Tennessee.

HEARING: February 25, 1957, at the Peachtree-Seventh Bldg., 50 Seventh Street NE., Atlanta, Ga., before Examiner Richard Yardley.

No. MC 103341 (Sub No. 4), filed December 14, 1956, JC YOUNGBLOOD VAN & STORAGE CO., INC., 3906 Hamilton Rd., Columbus, Ga. Applicant's representative: Allan Watkins, Grant Bldg., Atlanta 3, Ga. For authority to operate as a *common carrier*, over irregular routes, transporting: *New store fixtures and new hospital equipment*, from Columbus, Ga. and Phenix City, Ala. to points in Louisiana, Texas, Oklahoma, Arkansas, Kansas, Missouri, Indiana, Kentucky, Virginia, West Virginia, Illinois and the District of Columbia; *damaged shipments of new store fixtures and hospital equipment* on return. Applicant is authorized to conduct operations in Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, and Tennessee.

HEARING: March 4, 1957, at the Peachtree-Seventh Building, 50 Seventh Street NE., Atlanta, Ga., before Examiner Richard Yardley.

No. MC 106914 (Sub No. 15), filed December 12, 1956, HAROLD FINE, doing business as AMERICAN CARTAGE COMPANY, 1575 Fairfield Ave., Cleveland, Ohio. Applicant's representative: G. H. Dilla, 3350 Superior Ave., Cleveland 14, Ohio. For authority to operate as a *common carrier*, transporting: *General commodities*, except those of unusual value, Class A and B explosives, livestock, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, serving the site of the new plant of Euclid Division of General Motors Corporation, located near Hudson, Ohio, in connection with applicant's authorized operations between Cleveland, Ohio and specified points, in its Certificate MC 106914 dated December 12, 1950. Applicant is authorized to transport similar commodities in Ohio, Pennsylvania, and Michigan.

HEARING: January 14, 1957, in Room 255, New Post Office Bldg., Columbus, Ohio, before Joint Board No. 117.

No. MC 106965 (Sub No. 82), M. I. O'BOYLE & SON, INC., doing business as O'BOYLE TANK LINES, 817 Michigan Ave., NE., Washington, D. C. Applicant's representative: Dale C. Dillon, Suite 944, Washington Bldg., Washington 5, D. C. **REOPENED FOR FURTHER**

HEARING: Issues originally published in the FEDERAL REGISTER issue of October 26, 1955, on page 8060, as follows: For au-

thority to operate as a *common carrier*, over irregular routes, transporting: *Fish oil, fish oil products, and paint oils and paint vehicles* (consisting of oils which have fish oil or some extract of fish oil as a principal ingredient), in bulk, in tank vehicles, from Baltimore, Md., to points in Connecticut, Massachusetts, Rhode Island, New York, New Jersey, Pennsylvania, Maryland, Delaware, Virginia, West Virginia, North Carolina, and the District of Columbia.

FURTHER HEARING: February 8, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner T. Kinsey Carpenter.

No. MC 107107 (Sub No. 83), filed December 12, 1956, ALTERMAN TRANSPORT LINES, INC., 2424 N. W. 46th St., P. O. Box 65, Miami 42, Fla. Applicant's representative: Frank B. Hand, Jr., Transportation Bldg., Washington 6, D. C. For authority to operate as a *common carrier*, over irregular routes, transporting: *Meat, meat products, meat by-products and dairy products*, as defined by the Commission, from Terre Haute, Ind., to points in Florida. Applicant is authorized to transport similar commodities in Tennessee, Nebraska, Texas, Wisconsin, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Minnesota, Missouri, South Dakota, Pennsylvania, New York, Massachusetts, Virginia, New Jersey, Maryland, Ohio, Delaware, Connecticut, Rhode Island, West Virginia, District of Columbia, North and South Carolina.

HEARING: February 21, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner William T. Croft.

No. MC 110190 (Sub No. 41), filed December 14, 1956, PENN-DIXIE LINES, INC., 2000 S. George St., P. O. Box 42, York, Pa. Applicant's representative: Christian V. Graf, 11 N. Front St., Harrisburg, Pa. For authority to operate as a *common carrier*, over irregular routes, transporting: *Canned goods*, from points in Pennsylvania to points in Louisiana, Mississippi, and Texas. Applicant is authorized to conduct operations in Pennsylvania, Maryland, Alabama, Georgia, Florida, New Jersey, Mississippi, Louisiana, and Texas.

HEARING: February 7, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner William T. Croft.

No. MC 111897 (Sub No. 1), filed November 6, 1956, W. A. HIX, Commerce, Ga. Applicant's representative: James L. Flemister, Suite 301, Georgia Savings Bank Bldg., Atlanta 3, Ga. For authority to operate as a *common carrier*, over irregular routes, transporting: *Lumber*, between points in that part of Georgia north of U. S. Highway 80, on the one hand, and, on the other, points in Tennessee, Kentucky, North Carolina, South Carolina, Alabama, Florida, and Georgia.

HEARING: February 11, 1957, at the Peachtree-Seventh Bldg., 50 Seventh Street NE., Atlanta, Ga., before Examiner Richard Yardley.

No. MC 114019 (Sub No. 9), filed December 7, 1956, THE EMERY TRANSPORTATION COMPANY, a corporation,

7000 South Pulaski Road, Chicago 29, Ill. Applicant's representative: Charles W. Singer, 1825 Jefferson Place NW., Washington 6, D. C. For authority to operate as a *common carrier*, over irregular routes, transporting: *Meats, packing-house products, and commodities used by packing-houses*, as defined by the Commission, between Indianapolis, Ind., and Storm Lake, Iowa, on the one hand, and, on the other, points in Connecticut, Delaware, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, Rhode Island, Vermont, Virginia, West Virginia, and the District of Columbia. Applicant is authorized to conduct contract carrier, regular route operations in Docket No. MC 9685 and subs thereunder in Indiana, Ohio, and Tennessee, and irregular route operations in Illinois, Indiana, Iowa, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, Ohio, Pennsylvania, Virginia, West Virginia, Wisconsin, and the District of Columbia. Section 210 (dual operations) may be involved.

HEARING: February 13, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner Bertram E. Stillwell.

No. MC 115354 (Sub No. 1) filed December 22, 1956, HERMAN COLUSSY, doing business as COLUSSY ICE COMPANY, 647 Baldwin St., Bridgeville, Pa. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Used baking pans for cleaning and reglazing*, between Columbus, Ohio, on the one hand, and, on the other, points in areas in Michigan, Indiana, Kentucky, and Ohio bounded by a line beginning at Detroit, Mich. and extending west along U. S. Highway 112 to Niles, Mich., thence south along U. S. Highway 31 to Louisville, Ky., thence east along U. S. Highway 60 to the Kentucky-Ohio State line, thence east along the Kentucky-Ohio State line to the West Virginia-Ohio State line, thence north along the West Virginia-Ohio State line to the Pennsylvania-Ohio State line, thence north along the Pennsylvania-Ohio State line to Lake Erie, and thence west along the south shore of Lake Erie to point of beginning at Detroit, Mich., including Detroit. Applicant is authorized to transport used baking pans from Bridgeville, Pa. to points in certain areas in New York, Ohio, Pennsylvania, and West Virginia.

HEARING: February 21, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner Bertram E. Stillwell.

No. MC 115921 (Sub No. 2), filed December 14, 1956, CHEMICAL SALT SERVICE, INC., 64 Waltham Avenue, Springfield, Mass. Applicant's representative: Patrick A. Doyle, Court Square Building, Springfield, Mass. For authority to operate as a *contract carrier*, over irregular routes, transporting: *Rock salt*, in bulk, and by use of dump trucks, and *rock salt*, in bags and by use of dump trucks, and tractor trailers, from Westfield, Mass., to points in Maine, New Hampshire, Vermont, Rhode Island, and Connecticut. Applicant is authorized to conduct operations in Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, and Vermont.

HEARING: February 15, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Examiner T. Kinsey Carpenter.

MOTOR CARRIERS OF PASSENGERS

No. MC 116344, filed December 10, 1956, ARCHIE L. MILLING, doing business as MOTEL TOURS, 1500 Richmond Highway, Alexandria, Va. For authority to operate as a *common carrier*, over a regular route, transporting: *Passengers* and their *baggage*, in the same vehicle with passengers, between points in Virginia located on that portion of U. S. Highway 1 south of Alexandria, beginning at the junction of U. S. Highway 1 and Virginia Highway 630 and extending to Alexandria, and Arlington National Cemetery, Va., and Washington, D. C., as follows: From points in Virginia on the above-specified portion of U. S. Highway 1, over U. S. Highway 1 to Alexandria, thence over Alternate U. S. 1 to Arlington National Cemetery, Va., thence over Arlington Memorial Bridge to Washington, D. C., and return over Highway Bridge and Alternate U. S. Highway 1 and U. S. Highway 1 to points of origin, serving only the points specified on the above-described route.

NOTE: Applicant states he proposes to pick up tourists at motels on U. S. Highway 1 south of Alexandria, Va., only, bring them to Arlington National Cemetery and the District of Columbia on sightseeing tours, and then return them to their motels in Virginia.

HEARING: February 5, 1957, at the Offices of the Interstate Commerce Commission, Washington, D. C., before Joint Board No. 12.

APPLICATIONS IN WHICH HANDLING WITHOUT ORAL HEARING IS REQUESTED

MOTOR CARRIERS OF PROPERTY

No. MC 239 (Sub No. 19), filed November 13, 1956, ECKLAR-MOORE EXPRESS, INC., U. S. 62, Cynthiana, Ky. Applicant's representative: Robert M. Pearce, McClure Bldg., Frankfort, Ky. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and commodities requiring special equipment, (1) between Lexington, Ky. and Versailles, Ky. over U. S. Highway 60 serving no intermediate points; (2) between Versailles, Ky. and Lawrenceburg, Ky. over U. S. Highway 62, serving no intermediate points. Applicant is authorized to conduct operations in Kentucky and Ohio.

No. MC 30867 (Sub No. 68), filed November 6, 1956, CENTRAL FREIGHT LINES, INC., 303 So. 12th Street, Waco, Tex. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities*, except those of unusual value, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, and those requiring special equipment, over alternate routes, for operating convenience only, (1) between San Marcos, Texas and Caldwell, Texas, from San

Marcos over Texas Highway 21 via Bastrop and Lincoln, Texas, to Caldwell, and return over the same route, serving no new or additional points but forming physical connections with existing routes at junction Texas Highway 21 and U. S. Highway 290 and at junction Texas Highway 21 and U. S. Highway 77 and Texas Highway 36; and (2) between Brenham, Texas and Dayton, Texas, from Brenham over Texas Highway 90 to Navasota, Texas, thence over Texas Highway 105 to Cleveland, Texas, thence over Texas Highway 321 to Dayton, and return over the same route, serving no intermediate points, but forming physical connections with existing routes at junction Texas Highways 6, 90 and 105 at Navasota and at junction Texas Highway 105 and U. S. Highway 75 at Conroe. Applicant is authorized to conduct operations in Texas.

NOTE: Applicant states the above service is to be coordinated with that authorized by its present certificates.

No. MC 66562 (Sub No. 1324), filed November 26, 1956, RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42nd St., New York 17, N. Y. Applicant's representative: James E. Thomas, Alston, Sibley, Miller, Spann & Shackelford, 1220 The Citizens and Southern National Bank Bldg., Atlanta, Ga. For authority to operate as a *common carrier*, over regular routes, transporting: *General commodities, including Class A and B explosives*, moving in express service, between Gainesville, Ga., and Commerce, Ga., from Gainesville over U. S. Highway 129 to Jefferson, Ga., thence over Georgia Highway 15 to Commerce, and return over the same route, serving the intermediate point of Jefferson, Ga. Subject to the conditions under Restriction in Certificate No. MC 66562 (Sub No. 1203), set forth below, which existing authority applicant by this application desires to extend by adding the intermediate point of Jefferson, and operating as above applied for in connection with its existing authority between Gainesville and Commerce, Ga. the Certificate in No. MC 66562 (Sub No. 1203) authorizes the following transportation service: *General commodities*, moving in express service, between Gainesville, Ga., and Franklin, N. C., serving the intermediate points of Maysville, Commerce, Demorest, Clarkesville, Tallulah Falls, Clayton, and Dillard, Ga.: From Gainesville over U. S. Highway 23 to junction Georgia Highway 52, thence over Georgia Highway 52 to Maysville, Ga., thence over Georgia Highway 98 to Commerce, Ga., thence over U. S. Highway 441 to junction U. S. Highway 23 (also from junction Georgia Highway 52 and U. S. Highway 23 to junction U. S. Highways 23 and 441, over U. S. Highway 23), thence over combined U. S. Highways 23 and 441 to Franklin, N. C., and return over the same route. **RESTRICTION:** The service authorized herein is subject to the following conditions: The service to be performed by carrier shall be limited to service which is auxiliary to, or supplemental of, express service. Shipments transported by carrier shall be limited to those moving on a through bill

of lading or express receipt covering, in addition to the motor carrier movement by carrier, an immediately prior or an immediately subsequent movement by rail or air. Such further conditions as the Commission, in the future may find it necessary to impose in order to restrict carrier's operation to service which is auxiliary to, or supplemental of, express service.

NOTE: Applicant is authorized to conduct operations throughout the United States.

No. MC 66562 (Sub No. 1326), filed December 10, 1956, RAILWAY EXPRESS AGENCY, INCORPORATED, 219 East 42nd Street, New York 17, N. Y. Applicant's representative: William H. Marx, same address as applicant. For authority to operate as a *common carrier*, over a regular route, transporting: *General commodities*, moving in express service, between Springfield, Mass., and Northampton, Mass., from Springfield over U. S. Highway 5 to Northampton, and return over the same route, serving the intermediate point of Holyoke. Applicant is authorized to conduct operations throughout the United States.

APPLICATIONS UNDER SECTIONS 5 AND 210a (b)

The following applications are governed by the Interstate Commerce Commission's Special Rules governing notice of filing of applications by motor carriers of property or passengers under section 5 (2) and 210a (b) of the Interstate Commerce Act and certain other procedural matters with respect thereto. (FEDERAL REGISTER Volume 21, page 7339, § 1.240, September 26, 1956.)

MOTOR CARRIERS OF PROPERTY

No. MC-F 6474. Authority sought for purchase by DELAWARE BUS COMPANY, 948 Delaware Trust Bldg., Wilmington, Del., of the operating rights and certain property of SOUTHERN PENNSYLVANIA BUS COMPANY, 1300 Edgmont Avenue, Chester, Pa., and for acquisition by LESTER T. DOYLE, 410 East 57th Street, New York 22, N. Y., of control of such rights and property through the purchase. Applicants' representative: David F. Anderson, 9th and Market Streets, Wilmington, Del. Operating rights sought to be transferred: *Passengers*, as a *common carrier* over regular routes, between Darby, Pa., and the Pennsylvania-Delaware State Line, and between Chester, Pa., and Aniline Village, Del., serving all intermediate points; *passengers and their baggage*, in special operations during the season extending from August 1 to October 31, inclusive, of each year, between Chester, Pa., and the Brandywine Raceway, New Castle County, Del., near Brandywine, Del., serving the intermediate point of Marcus Hook, Pa., and points between Marcus Hook and the said Brandywine Raceway; *passengers and their baggage*, restricted to traffic originating in the territory indicated, in charter operations, over irregular routes, from points in Delaware County, Pa., to points in New York, New Jersey, Delaware, Maryland, and the District of Columbia, and return; *passengers and their baggage*, in special operations, during the authorized racing

seasons of each year, beginning and ending at Chester, Pa., and extending to Atlantic City Race Track, at or near McKee City, N. J., Garden State Park Race Track, in Delaware Township, Camden County, N. J., and Monmouth Park Race Track, at or near Oceanport, N. J. Vendee is authorized to operate as a common carrier in Delaware, Maryland, Virginia, Pennsylvania and the District of Columbia. Application has not been filed for temporary authority under section 210a (b).

No. MC-F 6475. Authority sought for purchase by GARRETT FREIGHT-LINES, INC., 2055 Pole Line Road, Pocatello, Idaho, of a portion of the operating rights and certain property of WILLIAM B. SWIGERT, doing business as CHALLIS TRANSPORTATION CO., & GARAGE, Challis, Idaho, and for acquisition by CLARENCE A. GARRETT, also of Pocatello, and OSCAR W. GARRETT, Chamberlain Street, Idaho Falls, Idaho, of control of such rights and property through the purchase. Applicants' representative: Maurice H. Greene, 300 North 6th Street, Boise, Idaho. Operating rights sought to be transferred: *Commodities in bulk, ore and ore concentrates, coal, and petroleum products*, as a common carrier, over irregular routes, between points in Idaho within 75 miles of Challis, Idaho. Vendee is authorized to operate as a common carrier in Idaho, Montana, California, Utah, Nevada, Oregon, Colorado, New Mexico, Washington, Arizona, and Wyoming. Application has not been filed for temporary authority under section 210a (b).

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-17; Filed, Jan. 2, 1957;
8:47 a. m.]

FOURTH SECTION APPLICATIONS FOR RELIEF

DECEMBER 28, 1956.

Protests to the granting of an application must be prepared in accordance

with Rule 40 of the general rules of practice (49 CFR 1.40) and filed within 15 days from the date of publication of this notice in the FEDERAL REGISTER.

LONG-AND-SHORT HAUL

FSA No. 33108: *Rock salt from Ojibway, Ontario, to trunk line territory.* Filed by H. R. Hinsch, Agent, for interested rail carriers. Rates on rock salt (sodium chloride), carloads from Ojibway, Ontario, Canada, to points in trunk line territory.

Grounds for relief: Circuitous routes.

FSA No. 33109: *Plastics from Illinois to Natchez, Miss.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on plastics (synthetic resin), liquid or other than liquid, NOIBN, in carloads from Marshall and Tuscola, Ill., to Natchez, Miss.

Grounds for relief: Rail carrier competition and circuitry.

FSA No. 33110: *Slag from Carteret, N. J., to the South.* Filed by O. E. Schultz, Agent, for interested rail carriers. Rates on granulated slag, in paper bags, carloads from Carteret, N. J., to points in Alabama, Florida, Georgia, Louisiana, and South Carolina.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 33 to Agent C. W. Boin's tariff I. C. C. A-1079.

FSA No. 33111: *Petroleum oil from Oak Point, La., to Falling Rock, W. Va.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on petroleum oil, NOIBN, tank-car loads from Oak Point, La., to Falling Rock, W. Va.

Grounds for relief: Competition with rail carriers and circuitry.

Tariff: Supplement 82 to Agent Kratzmeir's tariff I. C. C. 4150.

FSA No. 33112: *Phosphatic feed supplements from Houston and Texas City, Tex.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on phosphatic feed supplements, viz.: phosphate, di-calcium, feed grade, bone meal, in bulk or in packages, carloads from Houston and Texas City, Tex., to points in Minnesota, North Dakota, and South Dakota.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 21 to Agent Kratzmeir's tariff I. C. C. 4076.

FSA No. 33113: *Barite tailings from and to the Southwest.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on barite tailings, in bulk or in bags, carloads from, to, and between points in southwestern territory.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 92 to Agent Kratzmeir's tariff I. C. C. 4135.

FSA No. 33114: *Iron and steel articles to Channel View, Tex.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on iron and steel articles, carloads from points in central, official, southwestern, and western trunk-line territories, also Minnequa, Colo., to Channel View, Tex.

Grounds for relief: Establishment of a new station, rail carrier competition, and grouping.

Tariff: Supplement 87 to Agent Kratzmeir's tariff I. C. C. 4170.

FSA No. 33115: *Crude petrolatum from Texas to Official Territories.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on crude petrolatum, tank-car loads from Beaumont-Port Arthur, Tex., district to points in official territory.

Grounds for relief: Short-line distance formula and circuitry.

Tariff: Supplement 84 to Agent Kratzmeir's tariff I. C. C. 4150.

FSA No. 33116: *Aluminum from Louisiana to Ohio.* Filed by F. C. Kratzmeir, Agent, for interested rail carriers. Rates on aluminum billets, blooms, ingots, pigs or slabs, carloads from Chalmette and New Orleans, La., to Columbus and Heath, Ohio.

Grounds for relief: Rail carrier competition and circuitry.

By the Commission.

[SEAL] HAROLD D. MCCOY,
Secretary.

[F. R. Doc. 57-4; Filed, Jan. 2, 1957;
8:45 a. m.]

