

Disclaimer of Interests and  
Powers

AGENCY: Internal Revenue Service  
(IRS), Treasury.

ACTION: Final Regulations.

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SUMMARY: This document contains final regulations relating to the treatment of disclaimers for estate and gift tax purposes. The regulations clarify certain provisions governing the disclaimer of property interests and powers and, in addition, conform the regulations to court decisions holding the current regulation invalid with respect to the disclaimer of joint property interests. The final regulations will affect persons who disclaim property interests, powers, or interests in jointly owned property.

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DATES: *Effective date:* The final regulations are effective December 31, 1997.

*Applicability dates:* The amendments to §§25.2518-1(a) and 25.2518-2(c)(3) (substituting the statutory language in section 2518(b)(2)(A) “transfer creating the interest,” for “taxable transfer”) and conforming changes to §§20.2041-3(d)-(6)(i), 20.2046-1, 20.2056(d)-2 (a) and (b), 25.2511-1(c)(1), 25.2514-3(c)(5), are applicable for transfers creating the interest or power to be disclaimed made on or after December 31, 1997. The amendments to §25.2518-2(c)(4) (relating to the disclaimer of joint property and bank accounts) are applicable for disclaimers made on or after December 31, 1997.

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FOR FURTHER INFORMATION CONTACT: James F. Hogan (202) 622-3090 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

*Background*

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On August 21, 1996, the IRS published in the **Federal Register** (61 F.R. 43197) a notice of proposed rulemaking (REG-208216-91) amending the regulations under section 2518. The IRS received comments on the proposed regulations; however, no request for a public hearing was received so no public hearing was

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Section 2518.—Disclaimers

26 CFR 25.2518-2: Requirements for a qualified disclaimer.

held. This document adopts final regulations with respect to this notice of proposed rulemaking.

The proposed regulations substituted the statutory language of section 2518(b)-(2)(A), “transfer creating the interest,” for “taxable transfer” as the reference point for determining when the 9-month time period for making the disclaimer commences. This change clarifies that the starting point for the 9-month period is not dependent on the actual imposition of a transfer tax at the time that the interest to be disclaimed is created. Comments with respect to the clarification in the proposed regulation supported the change.

Under the proposed regulations, the one-half survivorship interest in jointly-held property that was unilaterally severable could be disclaimed within 9 months of the date of death of the first joint tenant to die. The proposed regulations did not extend the same treatment to joint interests that are not unilaterally severable (e.g., tenancies by the entirety), but the preamble invited comments on this subject.

The comments received unanimously suggested that a surviving joint tenant should be allowed to disclaim, within 9 months of the date of death of the first joint tenant to die, his or her survivorship interest in a tenancy, whether or not that tenancy is unilaterally severable. The comments noted that parties purchasing a residence often do not make an informed decision regarding whether the residence should be held as joint tenants or tenants by the entirety, and generally are not aware that the decision to take title to the property as either joint tenants with right of survivorship or tenants by the entirety will affect the ability to disclaim their interest in the property after the death of the first joint tenant to die.

Accordingly, the final regulations allow the disclaimer of jointly-held property that is not unilaterally severable on the same basis as joint property that is unilaterally severable. Thus, a surviving joint tenant may disclaim the one-half survivorship interest in property that the joint tenant held either in joint tenancy with right of survivorship or in tenancy by the entirety, within 9 months of the death of the first joint tenant to die. The rule also significantly simplifies the disclaimer of jointly-held property, eliminating certain special rules that were depen-

dent on the application of section 2515 to the creation of the tenancy.

The proposed regulations provided rules regarding the disclaimer of interests in Joint bank accounts and brokerage accounts, generally recognizing that the creation of such accounts are not completed gifts under certain circumstances. Comments noted that other kinds of investment accounts, such as accounts held at mutual funds, accord the parties rights that are similar to the rights of parties with respect to joint bank accounts and brokerage accounts. Accordingly, the final regulations have expanded the special rule with respect to the disclaimer of jointly-held bank and brokerage accounts to include jointly-held investment accounts such as accounts held at mutual funds.

### *Special Analyses*

It has been determined that this Treasury decision is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, the Notice of Proposed Rulemaking preceding these regulations was submitted to the Small Business Administration for comment on their impact on small business.

### *Drafting Information*

The principal author of these regulations is Dale Carlton, Office of the Chief Counsel, IRS. Other personnel from the IRS and Treasury Department participated in their development.

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### *Adoption of Amendments to the Regulations*

Accordingly, 26 CFR parts 20 and 25 are amended as follows:

## **PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954**

Paragraph 1. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 20.2041–3 is amended as follows:

1. Paragraph (d)(6)(i) is amended by revising the first sentence and by adding a new sentence after the first sentence.

2. Paragraph (d) (6) (iii) is added.

The additions and revisions read as follows:

*§20.2041–3 Powers of appointment created after October 21, 1942.*

\* \* \* \* \*

(d) \* \* \*

(6)(i) A disclaimer or renunciation of a general power of appointment created in a transfer made after December 31, 1976, is not considered to be the release of the power if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. For rules relating to when the transfer creating the power occurs, see 25.2518–2(c) (3) of this chapter. \* \* \*

\* \* \* \* \*

(iii) The first and second sentences of paragraph (d)(6)(i) of this section are applicable for transfers creating the power to be disclaimed made on or after December 31, 1997.

\* \* \* \* \*

Par. 3. Section 20.2046–1 is revised to read as follows:

*520.2046–1 Disclaimed property.*

(a) This section shall apply to the disclaimer or renunciation of an interest in the person disclaiming by a transfer made after December 31, 1976. For rules relating to when the transfer creating the interest occurs, see §25.2518–2(C) (3) and (c) (4) of this chapter. If a qualified disclaimer is made with respect to such a transfer, the Federal estate tax provisions are to apply with respect to the property interest disclaimed as if the interest had never been transferred to the person making the disclaimer. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

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

Par. 4. Section 20.2056 (d)–2 is amended as follows:

1. Paragraph (a) is amended by revising the first sentence and adding a new sentence after the first sentence.

2. Paragraph (b) is revised.

3. A new paragraph (c) is added.

The additions and revisions read as follows:

*120.2056(d)-2 Marital deduction: effect of disclaimers of post-December 31, 1976 transfers.*

(a) \*\*\* If a surviving spouse disclaims an interest in property passing to such spouse from the decedent, which interest was created in a transfer made after December 31, 1976, the effectiveness of the disclaimer will be determined by section 2518 and the corresponding regulations. For rules relating to when the transfer creating the interest occurs, see §25.25182(c)(3) and (c)(4) of this chapter. \*\*\*

(b) *Disclaimer by a person other than a surviving spouse.* If an interest in property passes from a decedent to a person other than the surviving spouse, and the interest is created in a transfer made after December 31, 1976, and—

(1) The person other than the surviving spouse makes a qualified disclaimer with respect to such interest; and

(2) The surviving spouse is entitled to such interest in property as a result of such disclaimer, the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. For rules relating to when the transfer creating the interest occurs, see §25.2518-2(c)(3) and (c)(4) of this chapter.

(c) *Effective date.* The first and second sentences of paragraphs (a) and (b) of this section are applicable for transfers creating the interest to be disclaimed made on or after December 31, 1997.

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

Par. 5. The authority citation for part 25 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 \*\*\*

Section 25.2518-2 is also issued under 26 U.S.C. 2518 (b). \*\*\*

Par. 6. Section 25.2511-1 is amended as follows:

1. In paragraph (c)(1), the fourth sentence is revised.

2. A new paragraph (c)(3) is added.

The additions and revisions read as follows: 25. 2511-1 Transfers in asneral.

\* \* \* \* \*

(c)(1) \*\*\* However, in the case of a transfer creating an interest in property (within the meaning of 25.2518-2(c) (3) and (c) (4) ) made after December 31, 1976, this paragraph (c)(1) shall not apply to the donee if, as a result of a qualified disclaimer by the donee, the interest passes to a different donee. \*\*\*

\* \* \* \* \*

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

\* \* \* \* \*

Par. 7. Section 25.2514-3 is amended as follows:

1. Paragraph (c) (5) is amended by revising the first sentence and adding a new sentence after the first sentence.

2. A new paragraph (c)(7) is added.

The additions and revisions read as follows:

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

\* \* \* \* \*

(c) \*\*\*

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

\* \* \* \* \*

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

\* \* \* \* \*

Par. 8. Section 25.2518-1 is amended as follows:

1. Paragraph (a)(1) is revised.

2. In paragraph (a)(2), the last three sentences of the example are removed and

four new sentences are added in their place.

3. A new paragraph (a)(3) is added.

The additions and revisions read as follows:

*§25.2518-1 Qualified disclaimers of property: In general.*

(a) \*\*\* (1) In aeneral. The rules described in this section, §25. 2518-2, and §25. 2518- 3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a transfer made after December 31, 1976. In general, a qualified disclaimer is an irrevocable and unqualified refusal to accept the ownership of an interest in property. For rules relating to the determination of when a transfer creating an interest occurs, see §25.2518-2(c)(3) and (4)

(2) \*\*\*

*Example.* \*\*\* The transfer creating the remainder interest in the trust occurred in 1968. See §25.2511-l(c)(2). Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the transfer creating the interest was made prior to January 1, 1977. If, however, W had caused the gift to be incomplete by also retaining the power to designate the person or persons to receive the trust principal at death, and, as a result, no transfer (within the meaning of 2§5.2511-l(c)(2)) of the remainder interest was made at the time of the creation of the trust, section 2518 would apply to any disclaimer made after W's death with respect to an interest in the trust property.

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

\* \* \* \* \*

Par. 9. Section 25.2518-2 is amended as follows:

1. The text of paragraph (c)(3) following the heading is redesignated as paragraph (c)(3)(i) and amended as follows:

a. In the first, eighth, and eleventh sentences, the word "taxable" is removed in each place it appears.

b. In the second and ninth sentences, the language "taxable transfer" is removed and "transfer creating an interest" is added in each place it appears.

c. In the third sentence the language "taxable transfers" is removed and "transfers creating an interest" is added.

d. The fourth, fifth, sixth, and seventh sentences are removed and five new sentences are added in their place.

2-3. A new paragraph (c) (3) (ii) is added.

4. Paragraph (c)(4) is revised.

5. In paragraph (c)(5), *Example (7)* is revised.

6. In paragraph (c)(5), *Example (8)* is removed.

7. In paragraph (c)(5), *Example (9)* is redesignated as *Example (12)* and is revised.

8. In paragraph (c)(5), *Example (10)* is redesignated as *Example (11)* and the first sentence is revised.

9. In paragraph (c)(5), new *Examples (8), (9), (10), (13), and (14)*, are added.

The additions and revisions read as follows:

*625.2518-2 Requirements for a qualified disclaimer.*

\* \* \* \* \*

(c) \* \* \* (3) *Transfer.* (i) \* \* \* With respect to transfers made by a decedent at death or transfers that become irrevocable at death, the transfer creating the interest occurs on the date of the decedent's death, even if an estate tax is not imposed on the transfer. For example, a bequest of foreign-situs property by a nonresident alien decedent is regarded as transfer creating an interest in property even if the transfer would not be subject to estate tax. If there is a transfer creating an interest in property during the transferor's lifetime and such interest is later included in the transferor's gross estate for estate tax purposes (or would have been included if such interest were subject to estate tax), the 9-month period for making the qualified disclaimer is determined with reference to the earlier transfer creating the interest. In the case of a general power of appointment, the holder of the power has a 9-month period after the transfer creating the power in which to disclaim. If a person to whom any interest in property passes by reason of the exercise, release, or lapse of a general power desires to make a qualified disclaimer, the disclaimer must be made within a 9-month period after the exercise, release, or lapse regardless of whether the exercise, release, or lapse is subject to estate or gift tax. \* \* \*

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

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

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

(iii) *Special rule for joint bank, brokerage, and other investment accounts (e.g., accounts held at mutual funds) established between spouses or between persons other than husband and wife.* In

the case of a transfer to a joint bank, brokerage, or other investment account (e.g., an account held at a mutual fund), if a transferor may unilaterally regain the transferor's own contributions to the account without the consent of the other cotenant, such that the transfer is not a completed gift under §25.2511-1(h)(4), the transfer creating the survivor's interest in the decedent's share of the account occurs on the death of the deceased cotenant. Accordingly, if a surviving joint tenant desires to make a qualified disclaimer with respect to funds contributed by a deceased cotenant, the disclaimer must be made within 9 months of the cotenant's death. The surviving joint tenant may not disclaim any portion of the joint account attributable to consideration furnished by that surviving joint tenant. See paragraph (c)(5), *Examples (12), (13), and (14)*, of this section, regarding the treatment of disclaimed interests under sections 2518, 2033 and 2040.

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

(5) *Examples.* \* \* \*

\* \* \* \* \*

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

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

*Example (9).* On March 1, 1989, H and W purchase a tract of vacant land which is conveyed to them as tenants by the entirety. The entire consideration is paid by H. W is not a United States citizen. H

des on June 1, 1998. W can disclaim the entire joint interest because this is the interest includible in H's gross estate under section 2040(a). Assuming that W's disclaimer is received by the executor of H's estate no later than 9 months after June 1, 1998, and the other requirements of section 2518(b) are satisfied, W's disclaimer of the property would be a qualified disclaimer. The result would be the same if the property was held in joint tenancy with right of survivorship that was unilaterally severable under local law.

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

*Example (11).* H and W, husband and wife, reside in state X, a community property state. \* \* \*

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

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

*Example (14).* The facts are the same as *Example (12)*, except that B disclaims 40 percent of the funds in the account. Since, under state law, B is treated as predeceasing A with respect to the disclaimed interest, the 40 percent portion of the account balance that was disclaimed passes as part of A's probate estate, and is no longer characterized as joint property.

This 40 percent portion of the account balance is, therefore, includible in A's gross estate under section 2033. The remaining 60 percent of the account balance that was not disclaimed retains its character as joint property and, therefore, is includible in A's gross estate as provided in section 2040(b). Therefore, 30 percent ( $1/2 \times 60$  percent) of the account balance is includible in A's gross estate under section 2040(b), and a total of 70 percent of the aggregate account balance is includible in A's gross estate. If A and B were not married, then the 40 percent portion of the account subject to the disclaimer would be includible in A's gross estate as provided in section 2033 and the 60 percent portion of the account not subject to the disclaimer would be includible in A's gross estate as provided in section 2040(a), because A furnished all of the funds with respect to the account.

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Michael P. Dolan,  
*Deputy Commissioner of  
Internal Revenue.*

Approved December 10, 1997.

Donald C. Lubick,  
*Acting Assistant Secretary of  
the Treasury.*

(Filed by the Office of the Federal Register on December 30, 1997, 8:45 a.m., and published in the issue of the Federal Register for December 31, 1997, 62 F.R. 68183)

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