1986 IRB LEXIS 567

TITLE 26-INTERNAL REVENUE.-CHAPTER I, SUBCHAPTER B, SUBCHAPTER H, PART 20-ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954-PART 25-GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954-PART 602-OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

US Internal Revenue Service

July 1986

1986-2 C.B. 160T.D. 8095

Reporter
1986 IRB LEXIS 567 *; 1986-2 C.B. 160; T.D. 8095

Treasury Decision 8095

Subject Matter

Section 2041.-Powers of Appointment

Applicable Sections

26 CFR 20.2041-3: Powers of appontment created after October 21, 1942.

[*1]

Core Terms

disclaimer, qualified disclaimer, surviving spouse, regulations, gift, corpus, requirement of section, taxable transfer, transferred, purposes, bequest, devised, remainder interest, local law, spouse, residuary estate, undivided portion, distributed, shares, farm, effective, the will, provisions, appointing power, refuse to accept, ownership, retains, revised, merged, rights

Text

Qualified Disclaimers

AGENCY:

Internal Revenue Service, Treasury.

ACTION:

Final regulations.

SUMMARY:

This document contains final regulations relating to the disclaimer of property transferred by gift or inheritance. Changes to the applicable law were made by the Tax Reform Act of 1976, the Revenue Act of 1978 and the Act of October 4, 1966. These regulations provide necessary guidance to the public for compliance with the law and affect those persons who disclaim an interest in property.

DATES:

The regulations are effective for taxable transfers made after December 31, 1976, which create an interest in a person who disclaims that interest.

FOR FURTHER INFORMATION CONTACT:

William A. Jackson of the Legislation and Regulations Division, Office of the Chief Counsel, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. 20224 (Attention: CC:LR:T:202-566-4336, not a toll-free call).

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 22, 1980, the FEDERAL REGISTER published proposed amendments to the Estate and Gift Tax Regulations (26 CFR Parts 20 and 25) under *sections 2041*, *2045*, **[*2]** *2055*, *2056*, *2511*, *2514*, and *2518* of the Internal Revenue Code of 1954 (Code) (*45 FR 48922*). The amendments were proposed to conform the regulations to section 2009 (b) of the Tax Reform Act of 1976 (90 Stat. 1893), which added *section 2518* to the Code; section 702 (m) of the Revenue Act of 1978 (92 Stat. 2935), which allowed a surviving spouse to receive an interest in property as a result of a qualified disclaimer by the spouse; and the Act of October 4, 1966 (80 Stat. 872), which allowed an interest disclaimed by a person other than the surviving spouse to be treated as passing from the decedent to the surviving spouse where the spouse receives the interest as a result of the disclaimer. A public hearing was held on November 18, 1980. After consideration of all comments regarding the proposed amendments, those amendments are adopted as revised by this Treasury decision.

SUMMARY OF REVISIONS

Effective Dates

Sections 20.2041-3 (d) (6) (i) and *25.2518-1 (a)* have been revised to clarify that *section 2518* applies to all interests in property if the interest in the property was created by a taxable transfer made after December 31, 1976. Thus, *section 2518* applies to a revocable trust created **[*3]** prior to December 31, 1976 if it becomes irrevocable after that date. The 9-month period in such a case would be measured from the date on which the transfer creating the interest became irrevocable.

Effect of a Qualified Disclaimer

One commentator suggested that *§25.2518-1 (b)* be amended to clarify that a beneficiary of a generation-skipping trust who makes a qualified disclaimer is treated as never having been a beneficiary. No revision was made in *paragraph (b) of §25.2518-1* because that paragraph already states that the disclaimed interest is treated as if it had never been transferred to the disclaimant and that the interest is treated as passing directly to the person entitled to receive the property as a result of the disclaimer.

The same commentator also suggested that §25.2056(d)-1 (a) be amended to specify the effect of a nonqualified disclaimer by a surviving spouse. No change has been made under §25.2056 (d)-1 (a) because *§25.2511-1 (c) (1)* already specifically states that any disposition which is not a qualified disclaimer constitutes the making of a gift.

Effect of Local Law

Several commentators believed that the proposed regulation under *paragraph (c) (1) of §25.2518-1*, relating **[*4]** to the effect of local law, is wrong because of the requirement that the disclaimer be effective under local law. In response to these comments, paragraph (c) (1) has been revised to clarify that even if the requirements of local law are not met, one can nevertheless make a qualified disclaimer under *section 2518* if, under applicable local law, the interest is transferred, as a result of attempting the disclaimer, to another person without any direction on the part of

the disclaimant. Mandatory actions by the disclaimant which are required under local law merely to divest ownership of the property in the disclaimant and vest it in another person will not disqualify the disclaimer for purposes of *section 2518*. Further, the rule under *paragraph (c) (2) of §25.2518-1* has been changed to make it clear that whether a transfer is voidable has no effect on the determination of whether a disclaimer constitutes a qualified disclaimer. This Treasury decision does not contain regulations relating to the changes made to the law by the Economic Recovery Tax Act of 1981 which allows certain transfers to be treated as qualified disclaimers even if no effective disclaimer has been made under local **[*5]** law. Proposed regulations relating to this change will be published shortly in another project (LR-212-81).

Beneficiary Under Twenty-One Years of Age

In order to make a qualified disclaimer under *section 2518*, a disclaimer must be made no later than 9 months after the transfer creating the interest in the person disclaiming, or, if later, 9 months after the day the disclaimant attains age 21. The proposed regulations have been revised to clarify in paragraph (d) (3) of *§25.2518-2* that in the case of a beneficiary of an interest in property who is under 21 years of age, any actions taken with regard to the interest by the beneficiary or a custodian prior to the beneficiary's twenty-first birthday will not be considered to be an acceptance of the interest by the beneficiary.

Joint Ownership

Several commentators believed the regulations should be revised to allow a qualified disclaimer to be made with respect to jointly owned property within 9 months of the death of the first joint tenant. Several other commentators believe that the regulations should allow at least the accretive portion to be disclaimed. Other commentators suggested that examples be inserted into the final regulations that **[*6]** illustrate the effect of the joint ownership rules in community property jurisdictions, the issue of acceptance, the effect of revocability, and the effect of former *section 2515*, relating to the creation of a joint tenancy.

A minor revision has been made in the regulations regarding the ability of a surviving joint tenant to disclaim the jointly held property. The general rule that a disclaimer of a joint interest must be made within 9 months of the transfer creating the interest remains unchanged because each joint tenant receives an interest in the entire property subject to the tenancy, as well as the rights of survivorship, at the time of the transfer creating the joint interest. See *Pearl M. Kennedy v. Commissioner,* Docket No. 33349-83, T.C. Memo, 1986-3, January 2, 1986. However, in the case of a joint tenancy between spouses or a tenancy by the entirety in real property created after 1976 and before 1982 where no election is made under *section 2515*, the surviving tenant can make a qualified disclaimer of the entire jointly held property (except any portion attributable to consideration furnished by the surviving tenant) within 9 months after the death of the first tenant to **[*7]** die if such tenant dies before 1982. If such tenant dies in 1982 or thereafter, the surviving tenant may only disclaim one-half of the jointly held property. In addition, a joint tenant cannot make a qualified disclaimer of any portion of the joint interest attributable to consideration furnished by that tenant. Examples have been added to the final regulations illustrating the other issues raised by the commentator.

Surviving Spouse

Under the proposed regulations, a surviving spouse could not make a qualified disclaimer if the spouse retained the power to direct the beneficial enjoyment of disclaimed property. Several commentators believe that the Revenue Act of 1978 reversed this result. No change has been made regarding the requirements that a surviving spouse must meet in order to make a qualified disclaimer. The statute states that the interest must pass to a person without any direction on the part of the person making the disclaimer. If the spouse retains the power to direct beneficial enjoyment of the disclaimed property, the disclaimer would violate this rule.

Disclaimer of Less than an Entire Interest

Section 25.2518-3 has been revised in response to the many comments received. **[*8]** Under the proposed regulations, all interests in income were treated as one separate interest and all interests in corpus were treated as another separate interest. Under the final regulations, each interest or power with respect to property that is separately created by the transferor is generally treated as a separate interest. Thus, a person could make a qualified disclaimer of one interest in corpus while retaining another interest in corpus, assuming that all other requirements of *section 2518 (b)* have been met. However, if local law merges separately created interests, a

qualified disclaimer will be allowed only if there is a disclaimer of the entire merged interest or an undivided portion of such merged interest. In addition, the final regulations provide that where a merger of separate interests would occur but for the creation by the transferor of a nominal interest, a qualified disclaimer will be allowed only if there is a disclaimer of all of the separate interests, or an undivided portion of all such interests, which would have merged but for the nominal interest.

Disclaimer of a Pecuniary Amount

Section 25.2518-3 (c) of the proposed regulations has been revised to provide **[*9]** that a disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift can be a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Thus, following a disclaimer of a specific pecuniary amount, the disclaimed amount and any income attributable to such amount must be segregated from the portion of the gift or bequest that was not disclaimed. Further, the segregation of any assets making up the disclaimed amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis fairly representative of the value changes that may have occurred between the date of the transfer and the date of the disclaimer. The final regulations also provide rules for making a disclaimer of a specific pecuniary amount after the beneficiary has already received a distribution from the gift or bequest.

Life Insurance and Annuity Contracts

Two commentators questioned the necessity of singling out life insurance proceeds and annuities because the same rules apply to such interests as apply to any other interest in property. **[*10]** In response to this comment, §25.2518-4 has been deleted from the final regulations.

REGULATORY FLEXIBILITY ACT AND EXECUTIVE ORDER 12291

The Commissioner of Internal Revenue has determined that this final rule is not a major rule as defined in Executive Order 12291 and that a Regulatory Impact Analysis is therefore not required. The notice of proposed rule-making relating to this final rule was published before January 1, 1981. Accordingly, a regulatory flexibility analysis under the Regulatory Flexibility Act is not required for this final rule.

PAPERWORK REDUCTION ACT

The collection of information requirements contained in this regulation have been submitted to the Office of Management and Budget (OMB) in accordance with the requirements of the Paperwork Reduction Act of 1980. These requirements have been approved by OMB (control number 1545-0959).

DRAFTING INFORMATION

The principal author of this regulation is William A. Jackson of the Legislation and Regulations Division of the Office of Chief Counsel, Internal Revenue Service. However, personnel from other offices of the Internal Revenue Service and Treasury Department participated in developing the regulations, both on matters of substance **[*11]** and style.

Adoption of amendments to the regulations.

Accordingly, 26 CFR Parts 20, 25, and 602 are amended as follows:

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

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

Par. 2. Section 20.2041-3 (d) (6) is revised to read as follows:

§20.2041-3 Powers of appointment created after October 21, 1942

(d) *Releases, lapses, and disclaimers of general powers of appointment.*

(6) (i) A disclaimer or renunciation of a general power of appointment created in a taxable transfer after December 31, 1976, in the person disclaiming is not considered a release of the power if the disclaimer or renunciation is a qualified disclaimer as described in section 2518 and the corresponding regulations. If the disclaimer or renunciation is not a qualified disclaimer, it is considered a release of the power by the disclaimant.

(ii) The disclaimer or renunciation of a general power of appointment created in a taxable transfer before January 1, 1977, in the person disclaiming is not considered 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 **[*12]** rights to which one is entitled. There can be no disclaimer or renunciation of a power after its acceptance. In the absence of facts to the contrary, the failure to renounce or disclaim within a reasonable time after learning of its existence will be presumed to constitute an acceptance of the power. In any case where a power is purported to be disclaimed or renounced as to only a portion of the property subject to the power, the determination as to whether or not there has been a complete and unqualified refusal to accept the rights to which one is entitled will depend on all the facts and circumstances of the particular case, taking into account the recognition and effectiveness of such a disclaimer under local law. Such rights refer to the incidents of the power and not to other interests of the decedent in the property. If effective under local law, the power may be disclaimed or renounced without disclaiming or renouncing-such other interests.

Par. 3. There is added immediately after *§20.2044-1*, the following new section:

§20.2046-1 Disclaimed property.

This section shall apply to the disclaimer or renunciation of a taxable transfer creating an interest in the person disclaiming made **[*13]** after December 31, 1976. 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.

Par. 4. *Section 20-2055-2 (c)* is revised to read as follows:

§20.2055-2 Transfers not exclusively for charitable purposes

(c) *Disclaimers*-(1) *Decedents dying after December 31, 1976.* In the case of a bequest, devise, or transfer made by a decedent dying after December 31, 1976, the amount of a bequest, devise or transfer for which a deduction is allowable under section 2055 includes an interest which falls into the bequest, devise or transfer as the result of either-

(i) A qualified disclaimer (see section 2518 and the corresponding regulations for rules relating to a qualified disclaimer), or

(ii) The complete termination of a power to consume, invade, or appropriate property for the benefit of an individual by reason of the death of such individual or for any other reason, if the termination occurs within the period of time (including **[*14]** extensions) for filing the decedent's Federal estate tax return and before such power has been exercised.

(2) *Decedents dying before January 1, 1977.* In the case of a bequest, devise or transfer made by a decedent dying before January 1, 1977, the amount of a bequest, devise or transfer, for which a deduction is allowable under section 2055 includes an interest which falls into the bequest, devise or transfer as a result of either-

(i) A disclaimer of a bequest, devise, transfer, or power, if the disclaimer is made within 9 months (15 months if the decedent died on or before December 31, 1970) after the decedent's death (the period of time within which the estate tax return must be filed under section 8075) or within any extension of time for filing the return granted pursuant to section 8081, and the disclaimer is irrevocable at the time the deduction is allowed, or

(ii) The complete termination of a power to consume, invade, or appropriate property for the benefit of an individual (whether the termination occurs by reason of the death of the individual, or otherwise) if the termination occurs within the period described in paragraph (c) (2) (i) of this section and before the power has **[*15]** been exercised. Ordinarily, a disclaimer made by a person not under any legal disability will be

considered irrevocable when filed with the probate court. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. Thus, if a beneficiary uses these rights for his own purposes, as by receiving a consideration for his formal disclaimer, he has not refused the rights to which he was entitled. There can be no disclaimer after an acceptance of these rights, expressly or impliedly. The disclaimer of a power is to be distinguished from the release or exercise of a power. The release or exercise of a power by the donee of the power in favor of a person or object described in paragraph (a) of §20.2055-1 does not result in any deduction under section 2055 in the estate of the donor of a power (but see paragraph (b) (1) of §20.2055-1 with respect to the donee's estate).

Par. 5. Section 20.2056 (a)-1 (a) is amended by removing the phrase "§20.2056 (d)-1 states special rules concerning disclaimers of interests in property;" from the last sentence and inserting in its place "§§20.2056 (d)-1 and 20.2056 (d)-2 state special rules concerning disclaimers of interests **[*16]** in property;".

Par. 6. Section 20.2056 (a)-1 (b) (2) is amended by adding "§20.2056 (d)-2" to follow "§20.2056 (d)-1."

Par. 7. Section 20.2056(d)-1 is revised to read as set forth below, and a new §20.2056 (d)-2 is added to read as set forth below:

20.2056 (d)-1 Marital deduction; effect of disclaimers of post-December 31, 1976 transfers.

(a) *Disclaimer by a surviving spouse.* If a surviving spouse disclaims an interest in property passing to such spouse from the decedent in a taxable transfer made after December 31, 1976, the efficacy of the disclaimer will be determined by section 2518 and the corresponding regulations. If a qualified disclaimer is determined to have been made by the surviving spouse, the property interest disclaimed is treated as if such interest had never been transferred to the surviving spouse.

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

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

(2) The surviving spouse is entitled to such interest in **[*17]** property as a result of such disclaimer.

the disclaimed interest is treated as passing directly from the decedent to the surviving spouse. If the disclaimer is not a qualified disclaimer, the interest in property is considered as passing from the decedent to the person who made the disclaimer as if the disclaimer had not been made. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

§20.2056 (d)-2. Marital deduction; effect of disclaimers of pre-January 1, 1977 transfers.

(a) *Disclaimer by a surviving spouse.* If an interest in property passes to a decedent's surviving spouse in a taxable transfer made by a decedent dying before January 1, 1977, and the decedent's surviving spouse makes a disclaimer of this property interest the disclaimed interest is considered as passing from the decedent to the person or persons entitled to receive the interest as a result of the disclaimer. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. It is, therefore, necessary to distinguish between the surviving spouse's disclaimer of a property interest and such surviving spouse's acceptance and subsequent disposal **[*18]** of a property interest. For example, if proceeds of insurance are payable to the surviving spouse and the proceeds are refused so that they consequently pass to an alternate beneficiary designated by the decedent, the proceeds are considered as having passed from the decedent to the alternate beneficiary. On the other hand, if the insurance company is directed by the surviving spouse to hold the proceeds at interest during such spouse's life and, upon this spouse's death, to pay the principal sum to another person designated by the surviving spouse, thus affecting a transfer of a remainder interest, the proceeds are considered as having passed from the decedent to the surviving spouse. See paragraph (c) of §20.2056 (e)-2 with respect to a spouse's exercise or failure to exercise a right to take against a decedent's will.

(b) *Disclaimer by a person other than a surviving spouse*-(1) *Decedents dying after October 3, 1966 and before January 1, 1977.* This paragraph (b) (1) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying after October 3, 1966 and before January 1, 1977. If a surviving spouse is entitled to receive property **[*19]** from the decedent as a result of the timely disclaimer made by the disclaim-ant, the property received by the surviving spouse is to be treated as passing to the surviving spouse from the decedent. Both a disclaimer of property passing by the laws of intestacy or otherwise, as by insurance or by trust, and a disclaimer of bequests and devises under the will of a decedent are to be fully effective for purposes of computing the marital deduction under section 2056. A disclaimer is a complete and unqualified refusal to accept some or all of the rights to which one is entitled. It must be a valid refusal under State law and must be made without consideration. For example, a disclaimer for the benefit of a surviving spouse who promises to give or bequeath property to a child of the person who disclaims is not a disclaimer within the meaning of this paragraph (b) (1). The disclaimer must be made before the person disclaiming accepts any property under the disclaimed interest. In the case of property transferred by a decedent dying after December 31, 1970, and before January 1, 1977, the disclaimer must be made within 9 months after the decedent's death (or within any extension of time for **[*20]** filing the estate tax return granted pursuant to section 6081). In the case of property transferred by a decedent dying after October 3, 1966, and before January 1, 1971, the disclaimer must be made within 15 months after the decedent's death (or within any extension of time for filing the estate tax return granted pursuant to section 6061). If the disclaimer does not satisfy the requirements of this paragraph (b) (1), for the purpose of the marital deduction, the property is considered as passing from the decedent in the person who made the disclaimer as if the disclaimer had not been made.

(2) *Decedents dying after September 30, 1963 and before October 4, 1966.* This paragraph (b) (2) applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying after September 30, 1963 and before October 4, 1966. If, as a result of the disclaimer by the disclaimant, the surviving spouse is entitled to receive the disclaimed property interest, then such interest shall, for the purposes of this paragraph (b) (2), be considered as passing from the decedent to the surviving spouse if the following conditions are met. First, the interest disclaimed **[*21]** was bequeathed or devised to the disclaimant. Second, the disclaimant disclaimed all bequests and devises under the will before the date prescribed for the filing of the estate tax return. Third, the disclaimant did not accept any property under the bequest or devise before making the disclaimer. The interests passing by disclaimer to the surviving spouse under this paragraph (b) (2) are to qualify for the marital deduction only to the extent that, when added to any other allowable marital deduction without regard to this paragraph (b) (2), they do not exceed the greater of the deductions which would be allowable for the marital deduction without regard to the disclaimer if the surviving spouse exercised the election under State law to take against the will, or an amount equal to one-third of the decedent's adjusted gross estate. If the disclaimer does not satisfy the requirements of this paragraph (b) (2), the property is treated as passing from the decedent to the person who made the disclaimer, in the same manner as if the disclaimer had not been made.

(3) *Decedents dying before October 4, 1966.* Unless the rule of paragraph (b) (2) of this section applies, this paragraph (b) (3) **[*22]** applies in the case of a disclaimer of property passing to one other than the surviving spouse from a decedent dying before October 4, 1966. For the purpose of these transfers, it is unnecessary to distinguish for the purpose of the marital deduction between a disclaimer by a person other than the surviving spouse and a transfer by such person. If the surviving spouse becomes entitled to receive an interest in property from the decedent as a result of a disclaimer made by some other person, the interest is, nevertheless, considered as having passed from the decedent, not to the surviving spouse, but to the person who made the disclaimer, as though the disclaimer had not been made. If, as a result of a disclaimer made by a person other than the surviving spouse, a property interest passes to the surviving spouse under circumstances which meet the conditions set forth in §20.2056 (b)-3 (relating to a life estate with a power of appointment), the rule stated in the preceding sentence applies, not only with respect to the portion of the interest which beneficially vests in the surviving spouse, but also with respect to the portion over which such spouse acquires a power to appoint. The **[*23]** rule applies also in the case of proceeds under a life insurance, endowment, or annuity contract which, as a result of a disclaimer made

by a person other than the surviving spouse, are held by the insurer subject to the conditions set forth in §20.2056 (b)-6.

Gift Tax Regulations

Par 8. The authority citation for Part 25 continues to read as follows:

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

Par. 9. *Section 25.2511-1 (c)* is revised to read as follows:

§26.2511-1 Transfers in general.

* * *

(c) (1) The gift tax also applies to gifts indirectly made. Thus, any transaction in which an interest in property is gratuitiously passed or conferred upon another, regardless of the means or device employed, constitutes a gift subject to tax. See further §25.2512-8 relating to transfers for insufficient consideration. However, in the case of a taxable transfer creating an interest in the person disclaiming 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 property passes to a different donee. Nor shall it apply to a donor if, as a result of a qualified disclaimer by the donee, a completed transfer of an interest in property is not **[*24]** effected. See section 2518 and the corresponding regulations for rules relating to a qualified disclaimer.

(2) In the case of taxable transfers creating an interest in the person disclaiming made before January 1, 1977, where the law governing the administration of the decedent's estate gives a beneficiary, heir, or next-of-kin a right completely and unqualifiedly to refuse to accept ownership of property transferred from a decedent (whether the transfer is effected by the decedent's will or by the law of descent and distribution) a refusal to accept ownership does not constitute the making of a gift if the refusal is made within a reasonable time after knowledge of the existence of the transfer. The refusal must be unequivocal and effective under the local law. There can be no refusal of ownership of property after its acceptance. In the absence of the facts to the contrary, if a person fails to refuse to accept a transfer to him of ownership of a decedent's property within a reasonable time after learning of the existence of the transfer, he will be presumed to have accepted the property. Where the local law does not permit such a refusal, any disposition by the beneficiary, heir, **[*25]** or next-of-kin whereby ownership is transferred gratuitously to another constitutes the making of a gift by the beneficiary, heir, or next-of-kin. In any case where a refusal is purported to relate to only a part of the property, the determination of whether or not there has been a complete and unqualified refusal to accept ownership will depend on all the facts and circumstances in each particular case, taking into account the recognition and effectiveness of such a purported refusal under the local law. In illustration, if Blackacre was devised to A under the decedent's will (which also provided that all lapsed legacies and devises shall go to B, the residuary beneficiary), and under the local law A could refuse to accept ownership in which case title would be considered as never having passed to A. A's refusal to accept Black-acre within a reasonable time of learning of the devise will not constitute the making of a gift by A to B. However, if a decedent who owned Greenacre died intestate with C and D as his only heirs, and under local law the heir of a decedent cannot, by refusal to accept, prevent himself from becoming an owner of intestate property, any gratuitous disposition **[*26]** by C (by whatever term it is known) whereby he gives up his ownership of a portion of Greenacre and D acquires the whole thereof constitutes the making of a gift by C to D.

* * *

Par 10. *Section 25.2514-3 (c)* is amended by adding headings to paragraphs (c) (1) through (c) (4), by revising paragraph (c) (5), and by adding a new paragraph (c) (6). The added and revised provisions of §25.2514-3 (c) read as follows:

§29.2514-3 Powers of appointment created after October 21, 1942.

* * *

(c) *Partial releases, lapses, and disclaimers of general powers of appointment created after October 21, 1942*-(1) *Partial release of power.*

(2) *Power partially released before June 1, 1951.* * *

(3) *Power partially released after May 31, 1951.* * *

(4) *Release or lapse of power.* *

(5) *Disclaimer of power created after December 31, 1976.* A disclaimer or renunciation of a general power of appointment created in a taxable transfer after December 31, 1976, in the person disclaiming 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. If the disclaimer or renunciation is not a qualified disclaimer, it **[*27]** is considered a release of the power.

(6) *Disclaimer of power created before January 1, 1977. A* disclaimer or renunciation of a general power of appointment created in a taxable transfer before January 1, 1977, in the person disclaiming is not considered a release of the power. The disclaimer or renunciation must be unequivocal and effective under local law. A disclaimer is a complete and unqualified refusal to accept the rights to which one is entitled. There can be no disclaimer or renunciation of a power after its acceptance. In the absence of facts to the contrary, the failure to renounce or disclaim within a reasonable time after learning of the existence of a power shall be presumed to constitute an acceptance of the power. In any case where a power is purported to be disclaimed or renounced as to only a portion of the property subject to the power, the determination as to whether there has been a complete and unqualified refusal to accept the rights to which one is entitled will depend on all the facts and circumstances of the particular case, taking into account the recognition and effectiveness of such a disclaimer under local law. Such rights refer to the incidents of the **[*28]** 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.

* * *

Par. 11. New §§25.2518-1, 25.2518-2, and 25.2518-3 are added immediately after §25.2517-1 to read as follows:

§25.2518-1 Qualified disclaimers of property; In general.

(a) *Applicability*-(1) *In general.* The rules described in §§25.2518-1 through 25.2518-3 apply to the qualified disclaimer of an interest in property which is created in the person disclaiming by a taxable 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 occurs, see §25.2518-2 (c) (3) and (4).

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

> *Example.* W creates an irrevocable trust on December 10, 1968, and retains the right to receive the income for life. Upon the death of W, which occurs after December 31, 1976, the trust property is distributable to W's surviving issue, per *stirpes.* The creation **[*29]** of the remainder interest in the trust was a taxable transfer. Therefore, section 2518 does not apply to the disclaimer of the remainder interest because the taxable transfer was made prior to January 1, 1977. If, however, W had also retained the power to designate the person or persons to receive the trust principal at her death, and as a result no taxable gift was made of the remainder interest 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.

(b) *Effect of a qualified disclaimer.* If a person makes a qualified disclaimer as described in section 2518 (b) and §25.2518-2, for purpose of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimed interest in property is treated as if it had never been transferred to the person making the qualified disclaimer. Instead, it is considered as passing directly from the transferor of the property to the person entitled to receive the property as a result of the disclaimer. Accordingly, a person making a qualified disclaimer is not treated as making a gift. Similarly, the value of a decedent's gross estate for **[*30]** purposes of the Federal estate tax does not include the value of property with respect to which the decedent, or the decedent's executor or administrator on behalf of the decedent, has made a qualified disclaimer. If the disclaimer is not a qualified disclaimer, for the purposes of the Federal estate, gift, and generation-skipping transfer tax provisions, the disclaimer is disregarded and the disclaimant is treated as having received the interest.

(c) *Effect of local law-* (1) *In general-* (i) *Interests created before 1982.* A disclaimer of an interest created in a taxable transfer before 1982 which otherwise meets the requirements of a qualified disclaimer under section 2518 and the corresponding regulations but which, by itself, is not effective under applicable local law to divest ownership of the disclaimed property from the disclaimant and vest it in another, is nevertheless treated as a qualified disclaimer under section 2518 if, under applicable local law, the disclaimed interest in property is transferred, as a result of attempting the disclaimer, to another person without any direction on the part of the disclaimant. An interest in property will not be considered to be transferred **[*31]** without any direction on the part of the disclaimant if, under applicable local law, the disclaimant has any discretion (whether or not such discretion is exercised) to determine who will receive such interest. Actions by the disclaimant which are required under local law merely to divest ownership of the property from the disclaimant and vest ownership in another person will not disqualify the disclaimer for purposes of section 2518 (a). See §25.2518-2 (d) (1) for rules relating to the immediate vesting of title in the disclaimant.

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

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

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

Example (1). F dies testate in State Y on June 17, 1978. G and H are beneficiaries under the will. The will provides that any disclaimed property is to pass to the residuary estate. **[*32]** H has no interest in the residuary estate. Under the applicable laws of State Y, a disclaimer must be made within 6 months of the death of the testator. Seven months after F's death, H disclaimed the real property H received under the will. The disclaimer statute of State Y has a provision stating that an untimely disclaimer will be treated as an assignment of the interest disclaimed to those persons who would have taken had the disclaimer been valid. Pursuant to this provision, the disclaimed property became part of the residuary estate. Assuming the remaining requirements of section 2518 are met. H has made a qualified disclaimer for purposes of section 2518 (a).

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

Example (3). Assume the same facts as in example (1) except that the law of State Y requires H to pay **[*33]** a transfer tax in order to effectuate the transfer under the ineffective disclaimer provision. H pays the transfer tax. H has made a qualified disclaimer for purposes of section 2518 (a).

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

§25.2518-2 Requirements for a qualified disclaimer.

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

(1) The disclaimer must be irrevocable and unqualified:

(2) The disclaimer must be in writing:

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

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

(5) The interest disclaimed must pass either to the spouse of the decedent or to a person other than the disclaimant without **[*34]** any direction on the part of the person making the disclaimer:

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

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

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

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

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

(2) *A timely mailing of a disclaimer treated as a timely delivery.* Although section 7502 and the regulations under that section apply only to documents to be filed with the Service, a timely mailing of **[*35]** a disclaimer to the person described in paragraph (b) (2) of this section is treated as a timely delivery if the mailing requirements under paragraphs (c) (1), (c) (2) and (d) of §301.7502-1 are met. Further, if the last day of the period specified in paragraph (c) (1) of this section falls on Saturday, Sunday or a legal holiday (as defined in paragraph (b) of §301.7503-1), then the delivery of the writing described in paragraph (b) (1) of this section shall be considered timely if delivery is made on the first succeeding day which is not Saturday, Sunday or a legal holiday. See paragraph (d) (3) of this section for rules applicable to the exception for the individuals under 21 years of age.

(3) *Transfer.* For purposes of the time limitation described in paragraph (c) (1) (i) of this section, the 9-month period for making a disclaimer generally is to be determined with reference to the taxable transfer creating the interest in the disclaimant. With respect to inter vivos transfers, a taxable transfer occurs when there is a completed gift for Federal gift tax purposes regardless of whether a gift tax is imposed on the completed gift. Thus, gifts qualifying for the gift tax annual exclusion **[*36]** under section 2503 (b) are regarded as taxable transfers for this purpose. With respect to transfers made by a decedent at death or transfers which become irrevocable at death, a taxable transfer occurs upon the date of the decedent's

death. However, where there is a taxable transfer of an interest for Federal gift tax purposes and such interest is later included in the transferor's gross estate for Federal estate tax purposes, the 9-month period for making a qualified disclaimer is determined with reference to the earlier taxable transfer. In the case of a general power of appointment, the holder of the power has a 9-month period after the creation of the power in which to disclaim. A person to whom any interest in property passes by reason of the exercise or lapse of a general power may disclaim such interest within a 9-month period after the exercise or lapse. In the case of a non-general power of appointment, the holder of the power, permissible appointees, or takers in default of appointment must disclaim within a 9-month period after the original taxable transfer that created or authorized the creation of the power. If the transfer is for the life of an income beneficiary with **[*37]** succeeding interests to other persons, both the life tenant and the other remaindermen, whether their interests are vested or contingent, must disclaim no later than 9 months after the original taxable transfer. In the case of a remainder interest in property which an executor elects to treat as qualified terminable interest property under section 2056 (b) (7), the remainder must disclaim within 9 months of the transfer creating the interest, rather than 9 months from the date such interest is subject to tax under section 2044 or 2519. A person who receives an interest in property as the result of a qualified disclaimer of the interest must disclaim the previously disclaimed interest no later than 9 months after the date of the taxable transfer creating the interest in the preceding disclaimant. Thus, if A were to make a qualified disclaimer of a specific bequest and as a result of the qualified disclaimer the property passed as part of the residue, the beneficiary of the residue could make a qualified disclaimer no later than 9 months after the date of the testator's death. See paragraph (d) (3) of this section for the time limitation rule with reference to recipients who are under **[*38]** 21 years of age.

(4) *Joint property*-(i) *In general.* Except as otherwise provided in paragraph (c) (4) (ii) of this section, a qualified disclaimer under section 2518 (a) of an interest or any portion of an interest in a joint tenancy or a tenancy by the entirety must be made no later than 9 months after the transfer creating the tenancy. Thus, a surviving joint tenant cannot disclaim any part of the interest, including the survivorship interest, if more than 9 months have passed since the transfer creating the joint tenancy. In addition, a joint tenant cannot make a qualified disclaimer of any portion of the joint interest attributable to consideration furnished by that tenant.

(ii) *Tenancies in real property between spouses created before 1982.* In the case of joint tenancies between spouses or a tenancy by the entirety in real property created after 1976 and before 1982 where no election was made under section 2515, the surviving spouse must make a qualified disclaimer no later than 9 months after the date of death of the first spouse to die. Such a qualified disclaimer will be effective for-

(A) The entire joint interest (except any portion attributable to consideration furnished by **[*39]** the surviving spouse) if the date of death of the deceased spouse is before 1982; or

(B) One-half the value of the joint interest if the date of death of the deceased spouse is after 1981.

See examples (7) and (8) under paragraph (c) (5) of this section.

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

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

Example (2). Assume the same facts as in example (1) except **[*40]** that B is given a general power of appointment over the corpus of the trust. B exercises the general power of appointment in favor of C upon B's death on June 17, 1989. C may make a qualified disclaimer no later than 9 months after June 17, 1989. If B had died without exercising the general power of appointment, E could have made a qualified disclaimer no later than 9 months after June 17, 1989.

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

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

Example (5). A, a resident of State Q, dies on January 10, 1979, devising **[*41]** certain real property to B. The disclaimer laws of State Q requires that a disclaimer be made with a reasonable time after a transfer. B disclaims the entire interest in real property on November 10, 1979. Although B's disclaimer may be effective under State Q law, it is not a qualified disclaimer under section 2518 because the disclaimer was made later than 9 months after the taxable transfer to B.

Example (6). A creates a revocable trust on June 1, 1980, in which B and C are given the income interest for life. Upon the death of the last income beneficiary, the remainder interest is to pass to D. The creation of the trust is not a completed gift for Federal gift tax purposes, but each distribution of trust income to B and C is a completed gift at the date of distribution. B and C must disclaim each income distribution no later than 9 months after the date of the particular distribution. In order to disclaim an income distribution in the form of a check, the recipient must return the check to the trustee un-cashed along with a written disclaimer. A dies on September 1, 1982, causing the trust to become irrevocable, and the trust corpus is includible in A's gross estate for Federal estate **[*42]** tax purposes under section 2038. H B or C wishes to make a qualified disclaimer of his income interest, he must do so no later than 9 months after September 1, 1982. If D wishes to make a qualified disclaimer of his remainder interest, he must do so no later than 9 months after September 1, 1982.

Example (7). On March 1, 1977, 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. H does not elect, under section 2515 to have the transaction treated as a transfer for purposes of Chapter 12. H dies on June 1, 1981. On October 1, 1981, W disclaims the property. Assuming the other requirements of section 2518 (b) are satisfied, W has made a qualified disclaimer because the transfer which created W's interest is treated as not occurring until H's death since no election was made under section 2515. Had an election been made under section 2515, then W's disclaimer of any of W's interest in the property would not be a qualified disclaimer.

Example (8). Assume the same facts as in example (7) except that H dies on September 3, 1982. W has until 9 months after September 3, 1984 to make a qualified disclaimer, but she **[*43]** can only make a qualified disclaimer of one-half of the joint interest.

Example (9). On July 1, 1980, B transfers $10,000 to a bank account which is held jointly by B and C. Assume the transfer is not a completed gift for Federal gift tax purposes. The funds in the bank account may be withdrawn in full by either B or C at any time. C never receives funds from the bank account. B dies on August 15, 1989, and C disclaims the amount in the bank account on October 15, 1989. Assuming the remaining requirements of section 2518 (b) are satisfied, C made a qualified disclaimer under section 2518 (a) because it was made no later than 9 months after the taxable transfer that created an interest in C.

Example (10). H and W reside in State X, a community property state. On April 1, 1978, H and W purchase real property with community funds. The property is not held by H and W as jointly owned property with rights of survivorship. H and W hold the property until January 3, 1985, when H dies. H devises the portion of the property to W. On March 15, 1985, W disclaims the portion of the property devised to her by H. Assuming all the other requirements of section 2518 (b) have been met, W has made a qualified **[*44]** disclaimer of the interest devised to her by H. However, W could not disclaim the interest in the property that she acquired on April 1, 1978.

(d) *No acceptance of benefits*-(1) *Acceptance.* A qualified disclaimer cannot be made with respect to an interest in property if the disclaimant has accepted the interest or any of its benefits, expressly or impliedly, prior to making the disclaimer. Acceptance is manifested by an affirmative act which is consistent with ownership of the interest in property. Acts indicative of acceptance include using the property or the interest in property; accepting dividends, interest, or rents from the property; and directing others to act with respect to the property or interest in property. However, merely taking delivery of an instrument of title, without more, does not constitute acceptance. Moreover, a disclaimant is not considered to have accepted property merely because under applicable local law title to the property vests immediately in the disclaimant upon the death of a decedent. The acceptance of one interest in property will not, by itself, constitute an acceptance of any other separate interests created by the transferor and held by the disclaimant **[*45]** in the same property. In the case of residential property, held in joint tenancy by some or all of the residents, a joint tenant will not be considered to have accepted the joint interest merely because the tenant resided on the property prior to disclaiming his interest in the property. The exercise of a power of appointment to any extent by the donee of the power is an acceptance of its benefits. In addition, the acceptance of any consideration in return for making the disclaimer is an acceptance of the benefits of the entire interest disclaimed.

(2) *Fiduciaries.* If a beneficiary who disclaims an interest in property is also a fiduciary, actions taken by such person in the exercise of fiduciary powers to preserve or maintain the disclaimed property shall not be treated as an acceptance of such property or any of its benefits. Under this rule, for example, an executor who is also a beneficiary may direct the harvesting of a crop of the general maintenance of a home. A fiduciary, however, cannot retain a wholly discretionary power to direct the enjoyment of the disclaimed interest. For example, a fiduciary's disclaimer of a beneficial interest does not meet the requirements of a qualified **[*46]** disclaimer if the fiduciary exercised or retains a discretionary power to allocate enjoyment of that interest among members of a designated class. See paragraph (a) of this section for rules relating to the effect of directing the redistribution of disclaimed property.

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

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

Example (1). On April 9, 1977. A established a trust for the benefit of B, then age 22. Under the terms of the trust, the current income of the trust is to be paid quarterly to B. Additionally, one half the principal is to be distributed to B when B attains the age of 30 years. The balance of the principal is to be distributed to B when B attains the age of 40 years. Pursuant to the terms of the trust. B received a **[*47]** distribution of income on June 30, 1977. On August 1, 1977, B disclaimed B's right to receive both the income from the trust and the principal of the trust. B's disclaimer of the income interest is not a qualified disclaimer for purposes of section 2518 (a) because B accepted income prior to making the disclaimer. B's disclaimer of the principal however, does satisfy section 2518 (b) (3). See also §25.2518-3 for rules relating to the disclaimer of less than an entire interest in property.

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

Example (3). A received a gift of Blackacre on December 25, 1978. A never resided on Blackacre but when property taxes on Blackacre became due on July 1, 1979, A paid them out of personal funds. On August 15, 1979, A disclaimed **[*48]** the gift of Black-acre. Assuming all the requirements of section 2518 (b) have been met, A has made a qualified disclaimer of Blackacre. Merely paying the properly taxes does not constitute an acceptance of Blackacre even though A's personal funds were used to pay the taxes,

Example (4). A died on February 15, 1978. Pursuant to A's will, B received a farm in State Z. B requested the executor to sell the farm and to give the proceeds to B. The executor then sold the farm pursuant to B's request. B then disclaimed $50,000 of the proceeds from the sale of the farm. B's disclaimer is not a qualified disclaimer. By requesting the executor to sell the farm B accepted the farm even though the executor may not have been legally obligated to comply with B's request. See also §25.2518-3 for rules relating to the disclaimer of less than an entire interest in property.

Example (5). Assume the same facts as in example (4) except that instead of requesting the executor to sell the farm, B pledged the farm as security for a short-term loan which was paid off prior to distribution of the estate. B then disclaimed his interest in the farm. B's disclaimer is not a qualified disclaimer. By pledging the **[*49]** farm as security for the loan, B accepted the farm.

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

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

Example (8). H and W reside in X, a community property state. On January 1, 1981, H and W purchase a residence with community funds. They continued to reside in the house until H dies testate on February **[*50]** 1, 1990. Although H could devise his portion of the residence to any person. H devised his portion of the residence to W. On September 1, 1990, W disclaims the portion of the residence devised to her pursuant to H's will but continues to live in the residence. Assuming the remaining requirements of section 2518 (b) are satisfied, W's disclaimer is a qualified disclaimer under section 2518 (a). W's continued occupancy of the house prior to making the disclaimer will not by itself be treated as an acceptance of the benefits of the portion of the residence devised to her by H.

Example (9). In 1979, D established a trust for the benefit of D's minor children E and F. Under the terms of the trust, the trustee is given the power to make discretionary distributions of current income and corpus to both children. The corpus of the trust is to be distributed equally between E and F when E becomes 35 years of age. Prior to attaining the age of 21 years on April 8, 1982, E receives several distributions of income from the trust. E receives no distributions of income between April 8, 1982 and August 15, 1982, which is the date on which E disclaims all interest in the income from the trust. As a **[*51]** result of the disclaimer the income will be distributed to F. If the remaining requirements of section 2518 are met, E's disclaimer is a qualified disclaimer under section 2518 (a). To have a

qualified disclaimer of the interest in corpus, E must disclaim the interest no later than 9 months after April 8, 1982, E's 21st birthday.

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

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

(e) **[*52]** *Passage without direction by the disclaimant of beneficial enjoyment of disclaimed interest.*

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

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

(ii) The disclaimed property or interest in property passes to or for the benefit of the disclaimant as a result of the disclaimer (except as provided in paragraph (e) (2) of this section). If a power **[*53]** of appointment is disclaimed, the requirements of this paragraph (e) (1) are satisfied so long as there is no direction on the part of the disclaimant with respect to the transfer of the interest subject to the power or with respect to the transfer of the power to another person. A person may make a qualified disclaimer of a beneficial interest in property even if after such disclaimer the disclaimant has a fiduciary power to distribute to designated beneficiaries, but any if the power is subject to an ascertainable standard. See examples (11) and (12) of paragraph (e) (5) of this section.

(2) *Disclaimer by surviving spouse.* In the case of a disclaimer made by a decedent's surviving spouse with respect to property transferred by the decedent, the disclaimer satisfies the requirements of this paragraph (e) if the interest passes as a result of the disclaimer without direction on the part of the surviving spouse either to the surviving spouse or to another person. If the surviving spouse, however, retains the right to direct the beneficial enjoyment of the disclaimed property in a transfer that is not subject to Federal estate and gift tax (whether as trustee or otherwise), such spouse **[*54]** will be treated as directing the beneficial enjoyment of the disclaimed property, unless such power is limited by an ascertainable standard. See examples (4), (5), and (6) in paragraph (e) (5) of this section.

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

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

(ii) The disclaimant does not effectively disclaim these rights, the disclaimer is not a qualified disclaimer with respect to the portion of the disclaimed property which the disclaimant has a right to receive. If the portion of the disclaimed interest in property which the disclaimant has a right to receive is not severable property

or an undivided portion of the property, then the disclaimer is not a qualified disclaimer with respect to any portion of the property. Thus, for example, if a disclaimant who is not a surviving spouse receives a specific bequest of a fee simple interest in property and as a result of the disclaimer of the entire interest, **[*55]** the property passes to a trust in which the disclaimant has a remainder interest, then the disclaimer will not be a qualified disclaimer unless the remainder interest in the property is also disclaimed. See §25.2518-3 (a) (1) (ii) for the definition of severable property.

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

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

Example (1). A, a resident of State X, died on July 30, 1978. Pursuant to A's will, B, A's son and heir at law, received the family home. In addition, B and C each received 50 percent of A's residuary estate. B disclaimed the home. A's will made no provision for the distribution of property in the case of a beneficiary's disclaimer. Therefore, pursuant to the disclaimer laws of State X, the disclaimed property became part of the residuary estate. Because B's 50 percent share of the residuary estate will be increased by 50 percent of the **[*56]** value of the family home, the disclaimed property will not pass solely to another person. Consequently, B's disclaimer of the family home is a qualified disclaimer only with respect to the 50 percent portion that passes solely to C. Had B also disclaimed B's 50 percent interest in the residuary estate, the disclaimer would have been a qualified disclaimer under section 2518 of the entire interest in the home (assuming the remaining requirements of a qualified disclaimer were satisfied). Similarly, if under the laws of State X, the disclaimer has the effect of divesting B of all interest in the home, both as devisee and as a beneficiary of the residuary estate, including any property resulting from its sale, the disclaimer would be a qualified disclaimer of B's entire interest in the home.

Example (2). D, a resident of State Y, died testate on June 30, 1978. E, an heir at law of D, received specific bequests of certain severable personal property from D. E disclaimed the property transferred by D under the will. The will made no provision for the distribution of property in the case of a beneficiary's disclaimer. The disclaimer laws of State Y provide that such property shall pass to **[*57]** the decedent's heirs at law in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. Because State Y's law treats E as predeceasing D, the property disclaimed by E does not pass to E as an heir at law or otherwise. Consequently, if the remaining requirements of section 2518 (b) are satisfied, E's disclaimer is a qualified disclaimer under section 2518 (a).

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

Example (4). B died testate on February 13, 1980. B's will established both a marital trust and a non-marital trust. The decedent's surviving spouse, A, is an income beneficiary of the marital trust and has a testamentary general power of appointment over its assets. A is also an income beneficiary of the non-marital trust, but has no power to appoint or invade the **[*58]** corpus. The provisions of the will specify that any portion of the marital trust disclaimed is to be added to the nonmarital trust. A disclaimed 30 percent of the marital trust. (See §25.2518-3 (b) for rules relating to the disclaimer of an undivided portion of an interest in property.) Pursuant to the will, this portion of the marital trust property was transferred to the non-marital trust without any direction on the part of A. This disclaimer by A satisfies section 2518 (b) (4).

Example (5). Assume the same facts as in example (4) except that A, the surviving spouse, has both an income interest in the nonmarital trust and a testamentary nongeneral power to appoint amount designated beneficiaries. This power is not limited by an ascertainable standard. The requirements of section 2518 (b) (4) are not satisfied unless A also disclaims the non-general power to appoint the portion of the trust corpus that is attributable to the property that passed to the nonmarital trust as a result of A's disclaimer. Assuming that the fair market value of the disclaimed property on the date of the disclaimer is $250,000 and that the fair market value of the non-marital trust (including the disclaimed **[*59]** property) immediately after the disclaimer is $750,000, A must disclaim the power to appoint one-third of the non-marital trust's corpus. The result is the same regardless of whether the nongeneral power is testamentary or inter vivos.

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

Example (7). B died testate on June 1, 1980. B's will created both a marital trust and a nonmarital trust. The decedent's surviving spouse, C, is an income beneficiary of the marital trust and has a testamentary general power of appointment over its assets. C is an income beneficiary of the nonmarital trust, and additionally has the noncumulative right to withdraw yearly the greater of $5,000 or 5 percent of the aggregate value of the principal. The provisions of the will specify **[*60]** that any portion of the marital trust disclaimed is to be added to the nonmarital trust. C disclaims 50 percent of the marital trust corpus. Pursuant to the will, this amount is transferred to the nonmarital trust. Assuming the remaining requirements of section 518 (b) are satisfied, C's disclaimer is a qualified disclaimer.

Example (8). A, a resident of State X, died on July 19, 1979. A was survived by a spouse B, and three children, C, D, and E. Pursuant to A's will, B received one-half of A's estate and the children received equal shares of the remaining one-half of the estate. B disclaimed the entire interest B had received. The will made no provisions for the distribution of property in the case of a beneficiary's disclaimer. The disclaimer laws of State X provide that under these circumstances disclaimed property passes to the decedent's heirs at law in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. As a result, C, D, and E are A's only remaining heirs at law, and will divide the disclaimed property equally among themselves. B's disclaimer includes language stating that "it is my intention, that C, D, and E will share equally **[*61]** in the division of this property as a result of my disclaimer. "State X considers these to be precatory words and gives them no legal effect. B's disclaimer meets all other requirements imposed by State X on disclaimers, and is considered as effective disclaimer under which the property will vest solely in C, D, and E in equal shares without any further action required by B. Therefore, B is not treated as directing the redistribution or transfer of the property. If the remaining requirements of section 2518 are met, B's disclaimer is a qualified disclaimer.

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

Example (10). **[*62]** Assume the same facts as in example (9) except the C's will also states that D was to receive Blackacre and Whiteacre. C's will further provides that if D disclaimed Blackacre then such property was to pass to E and that if D disclaimed Whiteacre then Whiteacre was to pass to F. D

specifically disclaims Blackacre with the intention that it pass to E. Assuming the other requirements of section 2518 are met, D has made a qualified disclaimer of Blackacre. Alternatively, D could disclaim an undivided disclaimer of Blackacre. Alternatively, D could disclaim an undivided portion of both Blackacre and Whiteacre. Assuming the other requirements of section 2518 are met, this would also be a qualified disclaimer.

Example (11). G creates an irrevocable trust on February 16, 1983, naming H, I and J as the income beneficiaries for life and F as the remainderman. F is also named the trustee and as trustee has the discretionary power to invade the corpus and make discretionary distributions to H, I or J during their lives. F disclaims the remainder interest on August 8, 1983, but retains his discretionary power to invade the corpus. F has not made a qualified disclaimer because F retains the power **[*63]** to direct enjoyment of the corpus and the retained fiduciary power is not limited by an ascertainable standard.

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

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

(a) *Disclaimer of a partial interest*-(1) *In general*-(i) *Interest.* If the requirements of this section are met, the disclaimer of all or an undivided portion of any separate interest in property may be a qualified disclaimer even if the disclaim-ant has another interest in the same property. In general, each interest in property that is separately created by the transferor is treated as a separate interest. For example, if an income interest in securities is bequeathed to A for life, then to B for life, with the remainder interest in such securities bequeathed to A's estate, and if the remaining requirements of section 2518 (b) are met, A could make **[*64]** a qualified disclaimer of either the income interest of the remainder, or an undivided portion of either interest. A could not, however, make a qualified disclaimer of the income interest for a certain number of years. Further, where local law merges interests separately created by the transferor, a qualified disclaimer will be allowed only if there is a disclaimer of the entire merged interest or an undivided portion of such merged interest. See example (12) in paragraph (d) of this section. See §25.2518-3 (b) for rules relating to the disclaimer of an undivided portion. Where the merger of separate interests would occur but for the creation by the transferor of a nominal interest (as defined in paragraph (a) (1) (iv) of this section), a qualified disclaimer will be allowed only if there is a disclaimer of all the separate interests, or an undivided portion of all such interests, which would have merged but for the nominal interest.

(ii) *Severable property.* A disclaimant shall be treated as making a qualified disclaimer of a separate interest in property if the disclaimer relates to severable property and the disclaimant makes a disclaimer which would be a qualified disclaimer if such **[*65]** property were the only property in which the disclaimant had an interest. If applicable local law does not recognize a purported disclaimer of severable property, the disclaimant must comply with the requirements of paragraph (c) (1) of §25.2518-1 in order to make a qualified disclaimer of the severable property. Severable property is property which can be divided into separate parts each of which, after severance, maintains a complete and independent existence. For example, a legatee of shares of corporate stock may accept some shares of the stock and make a qualified disclaimer of the remaining shares.

(iii) *Powers of appointment.* A power of appointment with respect to property is treated as a separate interest in such property and such power of appointment with respect to all or undivided portion of such property may be disclaimed independently from any other interests separately created by the transferor in the property if the requirements of section 2518 (b) are met. See example (21) of paragraph (d) of this section. Further, a disclaimer of a power of appointment with respect to property is a qualified disclaimer only if any right to direct the beneficial enjoyment of the property **[*66]** which is retained by the disclaimant is limited by an ascertainable standard. See example (9) of paragraph (d) of this section.

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

(A) Has an actuarial value (as determined under §20.2031-10) of less than 5 percent of the total value of the property at the time of the taxable transfer creating the interest,

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

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

Factors to be considered in determining whether an interest is created primarily for the purpose of preventing merger include (but are not limited to) the following: the relationship between the transferor and the interest holder; the age difference between the interest holder and the beneficiary whose interests would have merged; the interest holder's state of health at the time of the taxable transfer; and, in the case of a contingent remainder, any other factors which indicate that the possibility of the interest vesting as a fee **[*67]** simple is so remote as to be negligible.

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

(b) *Disclaimer of undivided portion.* A disclaimer of an undivided **[*68]** portion of a separate interest in property which meets the other requirements of a qualified disclaimer under section 2518 (b) and the corresponding regulations is a qualified disclaimer. An undivided portion of a disclaimant's separate interest in property must consist of a fraction or percentage of each and every substantial interest or right owned by the disclaimant in such property and must extend over the entire term of the disclaimant's interest in such property and in other property into which such property is converted. A disclaimer of some specific rights while retaining other rights with respect to an interest in the property is not a qualified disclaimer of an undivided portion of the disclaimant's interest in property. Thus, for example, a disclaimer made by the devisee of a fee simple interest in Blackacre is not a qualified disclaimer if the disclaimant disclaims a remainder interest in Blackacre but retains a life estate.

(c) *Disclaimer of a pecuniary amount.* A disclaimer of a specific pecuniary amount out of a pecuniary or nonpecuniary bequest or gift which satisfies the other requirements of a qualified disclaimer under section 2518 (b) and the corresponding regulations **[*69]** is a qualified disclaimer provided that no income or other benefit of the disclaimed amount inures to the benefit of the disclaimant either prior to or subsequent to the disclaimer. Thus, following the disclaimer of a specific pecuniary amount from a bequest or gift, the amount disclaimed and any income attributable to such amount must be segregated from the portion of the gift or bequest that was not disclaimed. Such a segregation of assets making up the disclaimer of a pecuniary amount must be made on the basis of the fair market value of the assets on the date of the disclaimer or on a basis that is fairly representative of value changes that may have occurred between the date of transfer and the date of the disclaimer. A pecuniary amount distributed to the disclaimant from the bequest or gift prior to the disclaimer shall be treated as a distribution of corpus from the bequest or gift. However, the acceptance of a distribution from the gift or bequest shall also be considered to be an acceptance of a proportionate amount of income earned by the bequest or gift. The proportionate share of income considered to be accepted by the disclaimant shall be determined at the time of the **[*70]** disclaimer according to the following formula:

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

See examples (17), (18), and (19) in §25.25183 (d) for illustrations of the rules set forth in this paragraph (c).

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

Example (1). A, a resident of State Q, died on August 1, 1978. A's will included specific bequests of 100 shares of stock in X corporation; 200 shares of stock in Y corporation; 500 shares of stock in Z corporation; personal effects consisting of paintings, home furnishings, jewelry, and silver, and a 500 acre farm consisting of a residence, various outbuildings, and 500 head of cattle. The laws of State 0 provide that a disclaimed interest passes in the same manner as if the disclaiming beneficiary had died immediately before the testator's death. Pursuant to A's will. B was to receive both the personal effects and the farm. C was to receive all the shares of stock in Corporation X and Y and D was **[*71]** to receive all the shares of stock in Corporation Z. B disclaimed 2 of the paintings and all the jewelry, C disclaimed 50 shares of Y corporation stock, and D disclaimed 100 shares of Z corporation stock. If the remaining requirements of section 2518 (b) and the corresponding regulations are met, each of these disclaimers is a qualified disclaimer for purposes of section 2518 (a).

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

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

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

*Example **[*72]** (5).* E died on September 13, 1978. Under the provisions of E's will, E's shares of stock in X, Y, and Z corporations were to be transferred to a trust. The trust provides that all income is to be distributed currently to F and G in equal parts until F attains the age of 45 years. At that time the corpus of the trust is to be divided equally between F and G. F disclaimed the income arising from the shares of X stock. G disclaimed 20 percent of G's interest in the trust. F's disclaimer is not a qualified disclaimer because the X stock remains in the trust. If the remaining requirements of section 2518 (b) are met, G's disclaimer is a qualified disclaimer.

Example (6). Assume the same facts as in example (5) except that F disclaimed both the income interest and the remainder interest in the shares of X stock. F's disclaimer results in the X stock being transferred out of the trust to G without any direction on F's part. F's disclaimer is a qualified disclaimer under section 2518 (b).

Example (7). Assume the same facts as in example (5) except that F is only an income beneficiary of the trust. The X stock remains in the trust after F's disclaimer of the income arising from the shares of **[*73]** X stock. F's disclaimer is not a qualified disclaimer under section 2518.

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

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

Example ***[*74]*** *(10).* E creates an irrevocable trust on May 1, 1980, in which D is the income beneficiary for life. Subject to the trustee's discretion, E's children, A, B, and C, have the right to receive corpus during D's lifetime. The remainder passes to D if D survives A, B, C, and all their issue. D also holds an inter vivos power to appoint the trust corpus to A, B, and C. On September 1, 1980, D disclaimed the remainder interest. D's disclaimer is not a qualified disclaimer because D retained the power to direct the use and enjoyment of corpus during D's life.

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

Example (12). Under the provisions of G's will A received a life estate in a farm, and was the sole beneficiary **[*75]** of property in the residuary estate. The will also provided that the remainder interest in the farm pass to the residuary estate. Under local Jaw A's interests merged to give A a fee simple in the farm. A made a timely disclaimer of the life estate. A's disclaimer of a partial interest is not a qualified disclaimer under section 2518 (a). If A makes a disclaimer of the entire merged interest in the farm or an undivided portion of such merged interest than A would be making a qualified disclaimer assuming all the other requirements of section 2518 (b) are met.

Example (13). A, a resident of State Z, dies on September 3, 1980. Under A's will, Blackacre is devised to C for life, then to D for 1 month, remainder to C. Had A not created D's interest, State Z law would have merged C's life estate and the remainder to C to create a fee simple interest in C. Assume that the actuarial value of D's interest is less than 5 percent of the total value, of Blackacre on the date of A's death. Further assume that facts and circumstances (particularly the duration of D's interest) clearly indicate that D's interest was created primarily for the purpose of preventing the merger of C's two interests in **[*76]** Blackacre. D's interest in Blackacre is a nominal interest and C's two interests will, for purposes of making a qualified disclaimer, be considered to have merged. Thus, C cannot make a qualified disclaimer of his remainder while retaining the life estate. C can, however, make a qualified disclaimer of both of these interests entirely or an undivided portion of both.

Example (14). A, a resident of State X, dies on October 12, 1978. Under A's will, Blackacre was devised to B for life, then to C for life if C survives B, remainder to B's estate. On the date of A's death, B and C are both 8 year old grandchildren of A. In addition, C is in good health. The actual value of C's interest is less than 5 percent of the total value of Blackacre on the date of A's death. No facts are present which would indicate that the possibility of C's contingent interest vesting is so remote as to be negligible. Had C's contingent life estate not been created, B's life estate and remainder interests would have merged under local law to give B a fee simple interest in Blackacre. Although C's interest prevents the merger of B's two interests and has an actual value of less than 5 percent, C's interest is not **[*77]** a nominal interest within the meaning of §25.2518-3 (a) (1) (iv) because the facts and circumstances do not clearly indicate that the interest was created primarily for the purpose of preventing the merger of other interests in the property. Assuming all the other requirements of

section 2518 (b) are met, B can make a qualified disclaimer of the remainder while retaining his life estate.

Example (15). In 1981, A transfers $60,000 to a trust created for the benefit of B who was given the income interest for life and who also has a testamentary nongeneral power of appointment over the corpus. A transfers an additional $25,000 to the trust on June 1, 1984. At that time the trust corpus (exclusive of the $25,000 transfer) has a fair market value of $75,000. On January 1, 1985, B disclaims the right to receive income attributable to 25 percent of the corpus

$$\$25{,}000\ (1984)\ \text{transfer} \Big/ \$100{,}000\ (\text{Fair market value of corpus immediately after the 1984 transfer}) = 25\%$$

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

Example (16). Under the **[*78]** provisions of B's will, A is left an outright cash legacy of $50,000 and has no other interest in B's estate. A timely disclaimer by A of any stated dollar amount is a qualified disclaimer under section 2518 (a).

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

$$\$40{,}000 / \$100{,}000 \Big/ \$20{,}000 = \$8{,}000$$

E is considered to have **[*79]** accepted $8,000 of the income earned by the account. If (i) the $60,000 disclaimed by E and the $12,000 of income earned prior to the disclaimer which is attributable to that amount are segregated from the $8,000 of income E is considered to have accepted, (ii) E does not accept any benefits of the $72,000 so segregated, and (iii) the other requirements of section 2518 (b) are met, then E's disclaimer of $60,000 from the account is a qualified disclaimer.

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

Example (19). Assume the same facts as in example (18) except that no income was paid to B and the value of the residuary estate on the date of the disclaimer (including interest earned from date of death) was $1.5 million. **[*80]** In addition, as soon as B's disclaimer was made, the executor of A's estate set aside assets worth $300,000

$$\$200{,}000 \Big/ \$1{,}000{,}000 \times \$1{,}500{,}000$$

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

Example (20). A bequeathed his residuary estate to B. B disclaims a fractional share of the residuary estate. Any disclaimed property will pass to A's surviving spouse, W. The numerator of the fraction

disclaimed is the smallest amount which will allow A's estate to pass free of Federal estate tax and the denominator is the value of the residuary estate. B's disclaimer is a qualified disclaimer.

Example (21). A created a trust on July 1, 1979. The trust provides that all current income is to be distributed equally between B and C for the life of B. B also is given a testamentary general power of appointment over the corpus. If the power is not exercised, the corpus passes to C or C's heirs. B disclaimed the testamentary power to appoint an undivided one-half of the trust corpus. Assuming the remaining requirements of section 2518 (b) are satisfied, B's disclaimer is **[*81]** a qualified disclaimer under section 2518 (a).

Par. 12. The authority citation for Part 602 continues to read as follows:

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

Par. 13. *Section 602.101 (c)* is amended by inserting in the appropriate place in the table:

"§25.2518-2 (b) 1545-0959".

ROSCOE L. EGGER, JR.,

Commissioner of Internal Revenue.

Approved July 16, 1986.

J. ROGER MENTZ,

Assistant Secretary of the Treasury.

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