this example L had a power to cause the corpus to be distributed only to X, L would have a power of appointment which is not a general power of appointment, the exercise or release of which would not constitute a transfer of property for purposes of the gift tax. Although the exercise or release of the nongeneral power is not taxable under this section, see §25.2514–1(b)(2) for the gift tax consequences of the transfer of the life income interest.

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

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

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28730, Dec. 29, 1972; T.D. 7776, 46 FR 27642, May 21, 1981; T.D. 7910, 48 FR 40375, Sept. 7, 1983; T.D. 8095, 51 FR 28370, Aug. 7, 1986; T.D. 8744, 62 FR 68185, Dec. 31, 1997]

§25.2515–1 Tenancies by the entirety; in general.

(a) *Scope*—(1) *In general.* This section and §§25.2515–2 through 25.2515–4 do not apply to the creation of a tenancy by the entirety after December 31, 1981, and do not reflect changes made to the Internal Revenue Code by sections 702(k)(1)(A) of the Revenue Act of 1978, or section 2002(c)(2) of the Tax Reform Act of 1976.

(2) *Special rule in the case of tenancies created after July 13, 1988, if the donee spouse is not a United States citizen.* Under section 2523(i)(3), applicable (subject to the special treaty rule contained in Public Law 101–239, section 7815(d)(14)) in the case of tenancies by the entirety and joint tenancies created between spouses after July 13, 1988, if the donee spouse is not a citizen of the United States, the principles contained in section 2515 and §§25.2515–1 through 25.2515–4 apply in determining the gift tax consequences with respect to the creation and termination of the tenancy, except that the election provided in section 2515(a) (prior to repeal by the Economic Recovery Tax Act of 1981) and §25.2515–2 (relating to the donor's election to treat the creation of the tenancy as a transfer for gift tax purposes) does not apply.

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

(b) *Gift upon creation of tenancy by the entirety; in general.* During calendar years prior to 1955 the contribution made by a husband or wife in the creation of a tenancy by the entirety constituted a gift to the extent that the consideration furnished by either spouse exceeded the value of the rights retained by that spouse. The contribution made by either or both spouses in the creation of such a tenancy during the calendar year 1955, any calendar year beginning before January 1, 1971, or any calendar quarter beginning after December 31, 1970, is not deemed a gift by either spouse, regardless of the proportion of the total consideration furnished by either spouse, unless the donor spouse elects (see §25.2515–2) under section 2515(c) to treat such transaction as a gift in the calendar quarter or calendar year in which the transaction is effected. See §25.2502–1(c)(1) for the definition of calendar quarter. However, there is a gift upon the termination of such a tenancy, other than by the death of a spouse, if the proceeds received by one spouse on termination of the tenancy are larger than the proceeds allocable to the consideration furnished by that spouse to the tenancy. The creation of a tenancy by the entirety takes place if (1) a husband or his wife purchases property and causes the title thereto to be conveyed to themselves as tenants by the

entirety, (2) both join in such a purchase, or (3) either or both cause to be created such a tenancy in property already owned by either or both of them. The rule prescribed herein with respect to the creation of a tenancy by the entirety applies also to contributions made in the making of additions to the value of such a tenancy (in the form of improvements, reductions in the indebtedness, or otherwise), regardless of the proportion of the consideration furnished by each spouse. See § 25.2516–1 for transfers made pursuant to a property settlement agreement incident to divorce.

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

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

(iii) Where a tenancy is terminated in part (e.g., where a portion of the property subject to the tenancy is sold to a third party, or where the original property is disposed of and in its place there is substituted other property of lesser value acquired through reinvestment under circumstances which satisfy the requirements of paragraph (d)(2)(ii) of this section), the proportionate contribution of each person to the remaining tenancy is in general the same as his proportionate contribution to the original tenancy, and the character of his contribution remains the same. These proportions are applied to the cost of the remaining or substituted property. Thus, if the total contribution to the cost of the property was $20,000 and a fourth of the property was sold, the contribution to the remaining portion of the tenancy is normally $15,000. However, if it is

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

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

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

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

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

(d) *Gift upon termination of tenancy by the entirety*—(1) *In general.* Upon the termination of the tenancy, whether created before, during, or subsequent

to the calendar year 1955, a gift may result, depending upon the disposition made of the proceeds of the termination (whether the proceeds be in the form of cash, property, or interests in property). A gift may result notwithstanding the fact that the contribution of either spouse to the tenancy was treated as a gift. See § 25.2515–3 for the method of determining the amount of any gift that may result from the termination of the tenancy in those cases in which no portion of the consideration contributed was treated as a gift by the spouses in the calendar quarter or calendar year in which it was furnished. See § 25.2515–4 for the method of determining the amount of any gift that may result from the termination of the tenancy in those cases in which all or a portion of the consideration contributed was treated as constituting a gift by the spouses in the calendar quarter or calendar year in which it was furnished. See § 25.2515–2 for the procedure to be followed by a donor who elects under section 2515(c) to treat the creation of a tenancy by the entirety (or the making of additions to its value) as a transfer subject to the gift tax in the calendar quarter (calendar year with respect to such transfers made before January 1, 1971) in which the transfer is made, and for the method of determining the amount of the gift. See § 25.2502–1(c)(1) for the definition of calendar quarter.

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

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

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

(*b*) On or before the due date for the filing of a gift tax return for the calendar quarter or calendar year (see § 25.6075–1 for the time for filing gift tax returns) in which the property held as tenants by the entirety was sold, exchanged, or otherwise disposed of, the spouses enter into a binding contract for the purchase of other real property; and

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

To the extent that all three of the conditions set forth in this subdivision are not met (whether by reason of the death of one of the spouses or for any other reason), the provisions of the preceding sentence shall not apply, and the sale, exchange or other disposition of the property will constitute a termination of the tenancy. As used in subdivision (*c*) the expression ''a reasonable time'' means the time which, under the particular facts in each case,

is needed for those matters which are incident to the acquisition of the other property (i.e., perfecting of title, arranging for financing, construction, etc.). The fact that proceeds of a sale are deposited in the name of one tenant or of both tenants separately or jointly as a convenience does not constitute a division within the meaning of subdivision (*a*) if the other requirements of this subdivision are met. The proceeds of a sale, exchange, or other disposition of property held as tenants by the entirety will be deemed to have been used for the purchase of other real property if applied to the purchase or construction of improvements which themselves constitute real property and which are additions to other real property held by the spouses in a tenancy identical to that in which they held the property which was sold, exchanged, or otherwise disposed of.

(3) *Proceeds of termination.* (i) The proceeds of termination may be received by a spouse in the form of money, property, or an interest in property. Where the proceeds are received in the form of property (other than money) or an interest in property, the value of the proceeds received by that spouse is the fair market value, on the date of termination of the tenancy by the entirety, of the property or interest received. Thus, if a tenancy by the entirety is terminated so that thereafter each spouse owns an undivided half interest in the property as tenant in common, the value of the proceeds of termination received by each spouse is one-half the value of the property at the time of the termination of the tenancy by the entirety. If under local law one spouse, without the consent of the other, can bring about a severance of his or her interest in a tenancy by the entirety and does so by making a gift of his or her interest to a third party, that spouse is considered as having received proceeds of termination in the amount of the fair market value, at the time of the termination, of his severable interest determined in accordance with the rules prescribed in § 25.2512–5. He has, in addition, made a gift to the third party of the fair market value of the interest conveyed to the third party. In such a case, the other spouse also is considered as having received as proceeds of termination the fair market value, at the time of termination, of the interest which she thereafter holds in the property as tenant in common with the third party. However, since section 2515(b) contemplates that the spouses may divide the proceeds of termination in some proportion other than that represented by the values of their respective legal interests in the property, if both spouses join together in making a gift to a third party of property held by them as tenants by the entirety, the value of the proceeds of termination which will be treated as received by each is the amount which each reports (on his or her gift tax return filed for the calendar quarter or calendar year in which the termination occurs) as the value of his or her gift to the third party. This amount is the amount which each reports without regard to whether the spouses elect under section 2513 to treat the gifts as made one-half by each. For example, assume that H and W (his wife) hold real property as tenants by the entirety; that in the first calendar quarter of 1972, when the property has a fair market value of $60,000, they give it to their son; and that on their gift tax returns for such calendar quarter, H reports himself as having made a gift to the son of $36,000 and W reports herself as having made a gift to the son of $24,000. Under these circumstances, H is considered as having received proceeds of termination valued at $36,000, and W is considered as having received proceeds of termination valued at $24,000.

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

of his or her enforceable property rights in respect of the proceeds.

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7238, 37 FR 28731, Dec. 29, 1972, as amended by T.D. 8522, 59 FR 9656, Mar. 1, 1994]

§ 25.2515–2 Tenancies by the entirety; transfers treated as gifts; manner of election and valuation.

(a) The election to treat the creation of a tenancy by the entirety in real property, or additions made to its value, as constituting a gift in the calendar quarter or calendar year in which effected, shall be exercised by including the value of such gifts in the gift tax return of the donor for such calendar quarter or calendar year in which the tenancy was created, or the additions in value were made to the property. See section 6019 and the regulations thereunder. The election may be exercised only in a return filed within the time prescribed by law, or before the expiration of any extension of time granted pursuant to law for the filing of the return. See section 6075 for the time for filing the gift tax return and section 6081 for extensions of time for filing the return, together with the regulations thereunder. In order to make the election, a gift tax return must be filed for the calendar quarter or calendar year in which the tenancy was created, or additions in value thereto made, even though the value of the gift involved does not exceed the amount of the exclusion provided by section 2503(b). See § 25.2502–1(c)(1) for the definition of calendar quarter.

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

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

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

(c) Factors representing the respective interests of the spouses, under a tenancy by the entirety, at their attained ages at the time of the transaction may be readily computed based on the method described in § 25.2512–5. State law may provide that the husband only is entitled to all of the income or other enjoyment of the real property held as tenants by the entirety, and the wife's interest consists only of the right of survivorship with no right of severance. In such a case, a special factor may be needed to determine the value of the interests of the respective spouses. See § 25.2512–5(d)(4) for the procedure for obtaining special factors from the Internal Revenue Service in appropriate cases.

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

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

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

[T.D. 6334, 23 FR 8904, Nov. 15, 1958, as amended by T.D. 7150, 36 FR 22900, Dec. 2, 1971; T.D. 7238, 37 FR 28731, Dec. 29, 1972; T.D. 8540, 59 FR 30177, June 10, 1994]