

transferred to the spouse would not qualify for the marital deduction. See paragraph (c) of § 25.2523(a)-1 to determine the percentage of the deductible interest allowable as a marital deduction. The application of this section may be illustrated by the following example:

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

[T.D. 6334, 23 FR 8904, Nov. 15, 1958; 25 FR 14021, Dec. 31, 1960, as amended by T.D. 8522, 59 FR 9659, Mar. 1, 1994; T.D. 8540, 59 FR 30103, June 10, 1994]

#### § 25.2523(d)-1 Joint interests.

Section 2523(d) provides that if a property interest is transferred to the donee spouse as sole joint tenant with the donor or as a tenant by the entirety, the interest of the donor in the property which exists solely by reason of the possibility that the donor may survive the donee spouse, or that there may occur a severance of the tenancy, is not for the purposes of section 2523(b), to be considered as an interest retained by the donor in himself. Under this provision, the fact that the donor may, as surviving tenant, possess or

enjoy the property after the termination of the interest transferred to the donee spouse does not preclude the allowance of the marital deduction with respect to the latter interest. Thus, if the donor purchased real property in the name of the donor and the donor's spouse as tenants by the entirety or as joint tenants with rights of survivorship, a marital deduction is allowable with respect to the value of the interest of the donee spouse in the property (subject to the limitations set forth in § 25.2523(a)-1). See paragraph (c) of § 25.2523(b)-1, and section 2524.

[T.D. 7238, 37 FR 28734, Dec. 29, 1972, as amended by T.D. 8522, 59 FR 9659, Mar. 1, 1994]

#### § 25.2523(e)-1 Marital deduction; life estate with power of appointment in donee spouse.

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

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

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

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

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

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