

§ 25.2515-3 Termination of tenancy by the entirety; cases in which entire value of gift is determined under section 2515(b).

(a) In any case in which—(1) The creation of a tenancy by the entirety (including additions in value thereto) was not treated as a gift, and

(2) The entire consideration for the creation of the tenancy, and any additions in value thereto, was furnished solely by the spouses (see paragraph (c)(1)(ii) of § 25.2515-1),

the termination of the tenancy (other than by the death of a spouse) always results in the making of a gift by a spouse who receives a smaller share of the proceeds of the termination (whether received in cash, property or interests in property) than the share of the proceeds attributable to the total consideration furnished by him. See paragraph (c) of § 25.2515-1 for a discussion of what constitutes consideration and the value thereof. Thus, a gift is effected at the time of termination of the tenancy by the spouse receiving less than one-half of the proceeds of termination if such spouse (regardless of age) furnished one-half or more of the total consideration for the purchase and improvements, if any, of the property held in the tenancy. Also, if one spouse furnished the entire consideration, a gift is made by such spouse to the extent that the other spouse receives any portion of the proceeds of termination. See § 25.2515-4 for determination of the amount of the gift, if any, in cases in which the creation of the tenancy was treated as a gift or a portion of the consideration was furnished by a third person. See paragraph (d)(2) of § 25.2515-1 as to the acts which effect a termination of the tenancy.

(b) In computing the value of the gift under the circumstances described in paragraph (a) of this section, it is first necessary to determine the spouse's share of the proceeds attributable to the consideration furnished by him. This share is computed by multiplying the total value of the proceeds of the termination by a fraction, the numerator of which is the total consideration furnished by the donor spouse and the denominator of which is the total consideration furnished by both spouses. From this amount there is subtracted

the value of the proceeds of termination received by the donor spouse. The amount remaining is the value of the gift. In arriving at the "total consideration furnished by the donor spouse" and the "total consideration furnished by both spouses", for purposes of the computation provided for in this paragraph, the consideration furnished (see paragraph (c) of § 25.2515-1) is not reduced by any amounts which otherwise would have been excludable under section 2503(b) in determining the amounts of taxable gifts for calendar quarters or calendar years in which the consideration was furnished. (See § 25.2502-1 (c)(1) for the definition of calendar quarter.) As an example assume that in 1955, real property was purchased for \$30,000, the husband and wife each contributing \$12,000 and the remaining \$6,000 being obtained through a mortgage on the property. In each of the years 1956 and 1957, the husband paid \$3,000 on the principal of the indebtedness, but did not disclose the value of these transfers on his gift tax returns for those years. The total consideration furnished by the husband is \$18,000, the total consideration furnished by the wife is \$12,000, and the total consideration furnished by both spouses is \$30,000.

(c) The application of this section may be illustrated by the following examples:

Example (1). In 1956 the husband furnished \$30,000 and his wife furnished \$10,000 of the consideration for the purchase and subsequent improvement of real property held by them as tenants by the entirety. The husband did not elect to treat the consideration furnished as a gift. The property later is sold for \$60,000, the husband receiving \$35,000 and his wife receiving \$25,000 of the proceeds of the termination. The termination of the tenancy results in a gift of \$10,000 by the husband to his wife, computed as follows:

$[\$30,000 \text{ (consideration furnished by husband)} + \$40,000 \text{ (total consideration furnished by both spouses)}] \times \$60,000 \text{ (proceeds of termination)} = \$45,000$
 $\$45,000 - \$35,000 \text{ (proceeds received by husband)} = \$10,000 \text{ gift by husband to wife}$

Example (2). In 1950 the husband purchased shares of X Company for \$10,000. In 1955 when those shares had a fair market value of \$30,000, he and his wife purchased real property from A and had it conveyed to them as tenants by the entirety. In payment for the real property, the husband transferred his

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shares of X Company to A and the wife paid A the sum of \$10,000. They later sold the real property for \$60,000, divided \$24,000 (each taking \$12,000) and reinvested the remaining \$36,000 in other real property under circumstances that satisfied the conditions set forth in paragraph (d)(2)(ii) of § 25.2515-1. The tenancy was terminated only with respect to the \$24,000 divided between them. This termination of the tenancy resulted in a gift of \$6,000 by the husband to the wife, computed as follows:

$[\$30,000 \text{ (consideration furnished by husband)} + \$40,000 \text{ (total consideration furnished by both spouses)}] \times \$24,000 \text{ (proceeds of termination)} = \$18,000$

$\$18,000 - \$12,000 \text{ (proceeds received by husband)} = \$6,000 \text{ gift by husband to wife.}$

Since the tenancy was terminated only in part, with respect to the remaining portion of the tenancy each spouse is considered as having furnished that proportion of the total consideration for the remaining portion of the tenancy as the consideration furnished by him before the sale bears to the total consideration furnished by both spouses before the sale. See paragraph (c) of § 25.2515-1. The consideration furnished by the husband for the reduced tenancy is \$27,000, computed as follows:

$[\$30,000 \text{ (consideration furnished by husband before sale)} + \$40,000 \text{ (total consideration furnished by both spouses before sale)}] \times \$36,000 \text{ (consideration for reduced tenancy)} = \$27,000$

The consideration furnished by the wife is \$9,000, computed in a similar manner.

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§ 25.2515-4 Termination of tenancy by entirety; cases in which none, or a portion only, of value of gift is determined under section 2515(b).

(a) *In general.* The rules provided in section 2515(b) (see § 25.2515-3) are not applied in determining whether a gift has been made at the termination of a tenancy to the extent that the consideration furnished for the creation of the tenancy was treated as a gift or if the consideration for the creation of the tenancy was furnished by a third party. Consideration furnished for the creation of the tenancy was treated as a gift if it was furnished either (1) during calendar years prior to 1955, or (2) during the calendar year 1955 and subsequent calendar years and calendar quarters and the donor spouse exercised the election to treat the furnishing of consideration as a gift. (For

the definition of calendar quarter see § 25.2502-1(c)(1).) See paragraph (b) of this section for the manner of computing the value of gifts resulting from the termination of the tenancy under these circumstances. See paragraph (c) of this section for the rules to be applied where part of the total consideration for the creation of the tenancy and additions to the value thereof was not treated as a gift and part either was treated as a gift or was furnished by a third party.

(b) *Value of gift when entire consideration is of the type described in paragraph (a) of this section.* If the entire consideration for the creation of a tenancy by the entirety was treated as a gift or contributed by a third party, the determination of the amount, if any, of a gift made at the termination of the tenancy will be made by the application of the general principles set forth in § 25.2511-1. Under those principles, when a spouse surrenders a property interest in a tenancy, the creation of which was treated as a gift, and in return receives an amount (whether in the form of cash, property, or an interest in property) less than the value of the property interest surrendered, that spouse is deemed to have made a gift in an amount equal to the difference between the value at the time of termination, of the property interest surrendered by such spouse and the amount received in exchange. Thus, if the husband's interest in such a tenancy at the time of termination is worth \$44,971 and the wife's interest therein at the time is worth \$55,029, the property is sold for \$100,000, and each spouse received \$50,000 out of the proceeds of the sale, the wife has made a gift to the husband of \$5,029. The principles applied in paragraph (c) of § 25.2515-2 for the method of determining the value of the respective interests of the spouses at the time of the creation of a tenancy by the entirety are equally applicable in determining the value of each spouse's interest in the tenancy at termination, except that the actuarial factors to be applied are those for the respective spouses at the ages attained at the date of termination.