($150,000) to *B*. In 1995, the real property is sold for $400,000 and *B* receives the entire proceeds of sale. For purposes of determining the amount of the gift on termination of the tenancy under the principles of section 2515 and the regulations thereunder, the amount treated as a gift to *B* on creation of the tenancy under section 2511 is treated as *B*'s contribution towards the purchase of the property. Accordingly, the termination of the tenancy results in a gift of $200,000 from *A* to *B* determined as follows:

$$\frac{\$150{,}000\ (\text{consideration furnished by A})}{\$300{,}000\ (\text{total consideration deemed furnished by both spouses})} \times \$400{,}000\ (\text{proceeds of termination}) = \$200{,}000\ (\text{Proceeds of termination attributable to A.})$$

$200,000 − 0 (proceeds received by *A*)=$200,000 gift by *A* to *B*.

(c) *Tenancies by the entirety in personal property where one spouse is not a United States citizen*—(1) *In general.* In the case of the creation (either by one spouse alone or by both spouses where at least one of the spouses is not a United States citizen) of a joint interest in personal property with right of survivorship, or additions to the value thereof in the form of improvements, reductions in the indebtedness thereof, or otherwise, the retained interest of each spouse, solely for purposes of determining whether there has been a gift by the donor to the spouse who is not a citizen of the United States at the time of the gift, is treated as one-half of the value of the joint interest. See section 2523(i) and §§ 25.2523(i)–1 and 25.2503–2(f) as to certain of the tax consequences that may result upon creation and termination of the tenancy.

(2) *Exception.* The rule provided in paragraph (c)(1) of this section does not apply with respect to any joint interest in property if the fair market value of the interest in property (determined as if each spouse had a right to sever) cannot reasonably be ascertained except by reference to the life expectancy of one or both spouses. In these cases, actuarial principles may need to be resorted to in determining the gift tax consequences of the transaction.

[T.D. 8612, 60 FR 43553, Aug. 22, 1995]

§ 25.2523(i)–3 Effective date.

The provisions of §§ 25.2523(i)–1 and 25.2523(i)–2 are effective in the case of gifts made after August 22, 1995.

[T.D. 8612, 60 FR 43554, Aug. 22, 1995]

§ 25.2524–1 Extent of deductions.

Under the provisions of section 2524, the charitable deduction provided for in section 2522 and the marital deduction provided for in section 2523 are allowable only to the extent that the gifts, with respect to which those deductions are authorized, are included in the ''total amount of gifts'' made during the ''calendar period'' (as defined in § 25.2502–1(c)(1)), computed as provided in section 2503 and § 25.2503–1 (i.e., the total gifts less exclusions). The following examples (in both of which it is assumed that the donor has previously utilized his entire $30,000 specific exemption provided by section 2521, which was in effect at the time) illustrate the application of the provisions of this section:

Example (1). A donor made transfers by gift to his spouse of $5,000 cash on January 1, 1971, and $1,000 cash on April 5, 1971. The donor made no other transfers during 1971. The first $3,000 of such gifts for the calendar year is excluded under the provisions of section 2503(b) in determining the ''total amount of gifts'' made during the first calendar quarter of 1971. The marital deduction for the first calendar quarter of $2,500 (one-half of $5,000) otherwise allowable is limited by section 2524 to $2,000. The amount of taxable gifts is zero ($5,000 − $3,000 (annual exclusion) − $2,000 (marital deduction)). For the second calendar quarter of 1971, the marital deduction is $500 (one-half of $1,000); the amount excluded under section 2503(b) is zero because the entire $3,000 annual exclusion was applied against the gift in the first calendar quarter of 1971; and the amount of taxable gifts is $500 ($1,000 − $500 (marital deduction)).

Example (2). The only gifts made by a donor to his spouse during calendar year 1969 were a gift of $2,400 in May and a gift of $3,000 in

August. The first $3,000 of such gifts is excluded under the provisions of section 2503(b) in determining the ''total amount of gifts'' made during the calendar year. The marital deduction for 1969 of $2,700 (one-half of $2,400 plus one-half $3,000) otherwise allowable is limited by section 2524 to $2,400. The amount of taxable gifts is zero ($5,400 − $3,000 (annual exclusion) − $2,400 (marital deduction)).

[T.D. 7238, 37 FR 28734, Dec. 29, 1972, as amended by T.D. 7910, 48 FR 40375, Sept. 7, 1983]

DEDUCTIONS PRIOR TO 1982

§ 25.2523(f)–1A Special rule applicable to community property transferred prior to January 1, 1982.

(a) *In general.* With respect to gifts made prior to January 1, 1982, the marital deduction is allowable with respect to any transfer by a donor to the donor's spouse only to the extent that the transfer is shown to represent a gift of property that was not, at the time of the gift, held as *community property*, as defined in paragraph (b) of this section. The burden of establishing the extent to which a transfer represents a gift of property not so held rests upon the donor.

(b) *Definition of ''community property.''* (1) For the purpose of paragraph (a) of this section, the term ''community property'' is considered to include—

(i) Any property held by the donor and his spouse as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, except property in which the donee spouse had at the time of the gift merely an expectant interest. The donee spouse is regarded as having, at any particular time, merely an expectant interest in property held at that time by the donor and herself as community property under the law of any State, Territory, or possession of the United States, or of any foreign country, if, in case such property were transferred by gift into the separate property of the donee spouse, the entire value of such property (and not merely one-half of it), would be treated as the amount of the gift.

(ii) Separate property acquired by the donor as a result of a ''conversion'', after December 31, 1941, of property held by him and the donee spouse as community property under the law of any State, Territory, or possession of the United States, or of any foreign country (except such property in which the donee spouse had at the time of the ''conversion'' merely an expectant interest), into their separate property, subject to the limitation with respect to value contained in subparagraph (5) of this paragraph.

(iii) Property acquired by the donor in exchange (by one exchange or a series of exchanges) for separate property resulting from such ''conversion.''

(2) The characteristics of property which acquired a noncommunity instead of a community status by reason of an agreement (whether antenuptial or post-nuptial) are such that section 2523(f) classifies the property as community property of the donor and his spouse in the computation of the marital deduction. In distinguishing property which thus acquired a noncommunity status from property which acquired such a status solely by operation of the community property law, section 2523(f) refers to the former category of property as ''separate property'' acquired as a result of a ''conversion'' of ''property held as such community property.'' As used in section 2523(f) the phrase ''property held as such community property'' is used to denote the body of property comprehended within the community property system; the expression ''separate property'' includes any noncommunity property, whether held in joint tenancy, tenancy by the entirety, tenancy in common, or otherwise; and the term ''conversion'' includes any transaction or agreement which transforms property from a community status into a noncommunity status.

(3) The separate property which section 2523(f) classifies as community property is not limited to that which was in existence at the time of the conversion. The following are illustrative of the scope of section 2523(f):

(i) A partition of community property between husband and wife, whereby a portion of the property became the separate property of each, is a conversion of community property.

(ii) A transfer of community property into some other form of coownership, such as a joint tenancy, is a conversion of the property.