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USE OF LIFE INSURANCE IN ESTATE PLANNING UNDER THE INTERNAL REVENUE CODE OF 1954

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Life insurance, for tax purposes, has been treated as a separate type of property and, generally, the rules applying to other types of property are not applicable to insurance problems. Life insurance is supposed to receive favored treatment, on the theory that it promotes the general good to encourage people to provide for their future and for the care of their dependents.[1]

Prior to the enactment of the Revenue Code of 1954, there were some instances where life insurance did not receive favorable consideration. One example was the taxation of annuities at three per cent of the cost.[2] Another example was the nonrecognition for estate tax purposes of gifts of life insurance policies where the insured continued to pay the premiums.

The new Internal Revenue Code remedies some of these inequities. It has been stated that a great new field has been created for the sale of life insurance. Anyone who has followed the literature in the various tax and insurance magazines will appreciate that the insurance companies and insurance agents are giving a great deal of attention to the new Code and its effect on the sale of life insurance.

Life insurance agents, like any other group of business persons, have various degrees of capability. Some know a great deal about the tax laws and the problems involved in life insurance matters. Others are salesmen and have only a superficial knowledge of the tax effects of their proposals. The tax problems involved are complex, and the correct solution involves a thorough understanding of the Code, the regulations and the court decisions. The answers to the problems require legal knowledge and legal training, and lawyers will be consulted more frequently with life insurance tax matters.

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1 In Commissioner v. Pierce, 146 F.2d 388, 390 (2d Cir. 1944), Judge Learned Hand stated, "We are to assume that Congress wished to favor the class of dependents in whose behalf life insurance is ordinarily secured—the wife and children of the insured. Although that involves an exemption from taxation and exemptions are viewed with jealousy, when the purpose is evident enough, we should not defeat or mutilate its realization."

2 Prior to the enactment of the Internal Revenue Code of 1954, three per cent of all annuity payments was taxed as ordinary income until the cost was recovered, and then the entire payment became taxable.

I. Gifts Of Life Insurance Policies

The 1954 Code has made a substantial change in the treatment of gifts of insurance for estate tax purposes. Life insurance advertising and life insurance agents are devoting a great deal of attention to this change, and there is no question but that it provides a method, in an appropriate case, to prevent life insurance proceeds from being taxed in the insured's estate.[3] Before the change, it was argued that a gift of any property, other than insurance policies, removed the property from the taxable estate if the gift was not in contemplation of death. A gift of life insurance policies was subject to an additional "payment of premiums" test. Under this test, with certain exceptions, payment of the premiums by the insured, either directly or indirectly, after January 10, 1941, caused the insurance to be included in his estate for tax purposes.

The new law removes the "payment of premiums" test. In the future, life insurance will be included in the gross estate:

> 1. To the extent that it is receivable by the executor, or
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> 2. To the extent that it is receivable by other beneficiaries under policies on the decedent's life where the decedent, at the time of his death, *possessed any of the incidents of ownership of the policy. A reversionary interest, having a value in excess of five per cent of the value of the policy immediately before death, is expressly declared to be an incident of ownership*, or
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> 3. To the extent that a gift of the policy or proceeds falls within the restrictions relating to gifts in contemplation of death.[4]

It is now argued that, with proper planning, life insurance can be given away by the insured so that his wife can enjoy the proceeds, with the result that the insurance is not taxable in the insured's estate or his wife's estate.[5]

[3] Before the 1954 Code, life insurance proceeds were taxable in the estate, "(1) To the extent of the amount receivable by the executor as insurance under policies upon the life of the decedent. (2) To the extent of the amount receivable by all other beneficiaries as insurance under policies upon the life of the decedent (A) purchased with the premiums, or other consideration, paid directly or indirectly by the decedent, in proportion that the amount so paid by the decedent bears to the total premiums paid for the insurance, or (B) with respect to which the decedent possessed at his death any of the incidents of ownership exercisable either alone or in conjunction with any other person."

[4] Int. Rev. Code § 2042 (1954). Italics added.

[5] It can be argued that his situation is no different than the situation which applies with respect to other property. By creating an irrevocable living trust with no strings attached, a grantor can remove property from his estate, permit the income (and, in the sole discretion of the trustee,

While this new tool should be handled with caution, it does afford tax savings opportunities, and a lawyer will not be giving his client the service to which he is entitled if the device is not used in situations where it will fit the client's estate plan.

The real advantage in using life insurance as the object of the gift lies in the fact that life insurance when viewed from the standpoint of its impact on the estate tax has one value, and when viewed from the standpoint of the gift tax involved has a substantially lower value in most cases. A policy which will pay $50,000 on death must be considered at that value in estimating the estate tax in the planning stage. That same policy may have a present value of $5,000, more-or-less. By making a $5,000 gift, the insured can take 50,000 out of his estate.

A. THE REVERSIONARY INTEREST PROBLEM

In planning such a gift, many questions arise. One item which is giving students of the new law some trouble is the interpretation of the meaning of "... a 'reversionary interest' (whether arising by the express terms of the policy or other instrument or by operation of law) only if the value of such reversionary interest exceeded five per cent of the value of the policy immediately before the death of the decedent. . . ."[6]

What is a reversionary interest? Lawyers dealing in real estate transactions might feel this could easily be answered.[7] From a tax standpoint, however, the answer is not simple.

The peculiar character of a life insurance policy comes into play in analyzing the problem. There are really two types of interests involved in an ordinary life policy. During the lifetime

the principal) to be used for the benefit of his wife after his death, and ultimately vest the interest in the property in his children or grandchildren without permitting it to be taxed in his own estate or his wife's estate. The real distinction in the situation arises from the nature of life insurance as compared with income-producing property. Individuals will be more willing to tie up their life insurance in such a trust than they will be to dispose of income-producing property in the same manner.

6 Int. Rev. Code § 2042(2) (1954).

7 Patton, Titles § 142 (1938), defines an estate of reversion as follows: "An 'estate in reversion' is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. It is not created like most other interests by deed or other writing, but arises by construction of law whenever a grantor has conveyed less than the entire interest or estate owned by him, and is the undisposed of portion of his interest or estate."

of the insured, the policy constitutes a form of property. It has a cash value in the ordinary case and can be used as collateral for borrowing money. This interest is controlled by the owner of the policy. If given away, the insured might retain a reversionary interest in these benefits in event of the death of the donee. Such a reversionary interest is akin to a reversionary interest in real estate.

After the death of the insured, an entirely different situation is presented. At that time, the interest of the owner of the policy ceases to exist, and the named beneficiary succeeds to the policy proceeds. If the policy has been given away, does the fact that the proceeds of the policy might ultimately become payable to the insured's estate constitute a reversionary interest? To arrive at the correct answer, consideration must be given to further provisions of the statute. It is expressly stated, "As used in this paragraph the term 'reversionary interest' includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate, or may be subject to a power of disposition by him."[8]

It could be argued that this language is so broad that it includes situations where "the policy, or proceeds of the policy, may return to the decedent or his estate" by reason of his right to elect against the will of his wife, or even because he might inherit the interest from her.

Consideration of a reversionary interest as an incident of ownership of life insurance is not new. The Revenue Act of 1942 expressly provided, "For the purposes of clause (B) of this paragraph, [relating to the possession by the insured of incidents of ownership] the term 'incident of ownership' does not include a reversionary interest."[9] Amendments were added in 1942, 1948, 1950 and 1953, relating to consideration of reversionary interests as an incident of ownership in cases arising under another section which allowed the taxpayer to disregard the payment of premiums made before January 10, 1941, where the insured possessed no incidents of ownership in the policy after that date. Portions of the definition of reversionary interests, with respect to life insurance as it appears in the present Code, were contained in substantially the same form in the Revenue Act of 1950.

Regulations issued with respect to the prior Code provided:

8 Int. Rev. Code § 2042(2) (1954).
9 Int. Rev. Code § 811(d) (1939).

> The term "reversionary interest" includes a possibility that the policy, or the proceeds of the policy, may return to the decedent or his estate and a possibility that such policy, or the proceeds of such policy, may be subject to a power of disposition by him. The determination of whether the decedent has retained a reversionary interest arising by the express terms of the policy or other instrument and the determination of whether the value of such interest exceeds five percent of the value of the policy shall be made in accordance with the principles of § 81.17(c), as added by Treasury Decision 5834, approved March 8, 1951.[10]

Section 81.17(c) of the regulations provided in part as follows:

> The term "reversionary interest" includes a possibility that property transferred by the decedent may return to him or his estate and a possibility that property transferred by the decedent may become subject to a power of disposition by him. The term "reversionary interest" is not used in a technical sense; it includes any reserved right under which the transferred property shall or may be returned to the grantor.[11]

In a number of cases arising under the prior Code, the courts have held that the right of the estate of the insured to succeed to the policy proceeds, if the insured survived all of the irrevocably designated beneficiaries, was a reversionary interest constituting an incident of ownership.[12]

Other cases have gone even further, and have held that the insured has a reversionary interest if his estate will succeed to the policy proceeds if he survives the designated beneficiaries, even though the assignee of the policy had the right to surrender the policy and receive the cash value and even though the assignee had the right to change the beneficiary designation.[13]

In *Estate of Charles H. Thieriot,*[14] the court said:

> We think the observation made by the lower court in *Goldstone v. United States*, 52 Fed. Supp. 704, in a somewhat similar situa-

[10] U.S. Treas. Reg. 105, § 81.27.

[11] U.S. Treas. Reg. 105, § 81.17.

[12] Hock v. Commissioner, 152 F.2d 574 (8th Cir. 1945); Liebmann v. Hassett, 148 F.2d 247 (1st Cir. 1945); Schongalla v. Hickey, 149 F.2d 687 (2d Cir. 1945); Schultz v. United States, 140 F.2d 945 (8th Cir. 1944); Commissioner v. Washer, 127 F.2d 446 (6th Cir. 1942); Chase National Bank v. United States, 116 F.2d 625 (1st Cir. 1940); Estate of Herman D. Brous v. Commissioner, 10 T.C. 597 (1948); Estate of John E. Cain, Sr. v. Commissioner, 43 B.T.A. 1138 (1941).

[13] Goldstone v. United States, 325 U.S. 687 (1945); Estate of Wilbur B. Ruthrauff, 9 T.C. 418 (1947); Estate of Charles H. Thieriot, 7 T.C. 119 (1946); Bank of New York v. United States, 115 F. Supp. 375 (S.D.N.Y. 1953).

[14] 7 T.C. 1119 (1946).

tion, is pertinent. "The plaintiffs have placed too much importance on the word 'reverter' . . . if any interest therein could come to him by reason of any contingency, then it comes squarely within the doctrine of *Helvering v. Hallock.*" It is plain that, while the life beneficiary had the power to erase the decedent's reversionary interest, she did not exercise it. In *Goldstone v. United States*, 325 U.S. 687, the Supreme Court said:

". . . Whatever the likelihood of the exercise of this power, it is a fact that the wife did not change the beneficiaries or surrender the contracts so as to destroy decedent's reversionary interest. The string that the decedent retained over the proceeds of the contract until the moment of his death was no less real or significant, because of the wife's unused power to sever it at any time."

Moreover, the fact that the life beneficiary had absolute control over the policy and could surrender it and take the cash value is not controlling. Since the power to surrender was not in fact exercised before the death of the insured, then the death of the insured was the intended event which cut the string by which the proceeds of the policy might be brought back to the insured and brought them into the possession and enjoyment of the beneficiary. *Hock v. Commissioner* . . .

It can be argued that the right of a wife to terminate the reversionary interest reduces the value of the interest to less than five per cent of the value of the policy immediately before death. If the policy were a term policy or a recently issued policy, its value immediately before death might be little or nothing. Under such circumstances, a right ultimately to succeed to the policy proceeds, even though remote, could exceed five per cent of the value of the policy before death. Proving the value of a reversionary interest will be difficult, particularly when it involves such unkown factors as the chance that a wife will take action to change the beneficiary, and further, that she will do it with the purpose of eliminating the reversionary interest.

Another argument involves construction of the Code provisions relating to reversionary interests in life insurance in harmony with the provisions relating generally to reversionary interests. There are statements in the committee reports to support the argument that Congress intended the general rule, relating to reversionary interests, to apply to life insurance policies. The weakness in this argument lies in the fact that the general Code provisions contain limitations which are absent in the provisions relating to insurance.[15]

[15] The Code provisions governing trusts and other property appear in Section 2037 of the new Code. This section expressly limits its application to cases where the possession or enjoyment of the property, through ownership of such interest, can be obtained only by surviving the decedent,

The safest rule to follow in the planning stage is to arrange the insurance so that no reversionary interest may result. While a good argument can be made to the effect that the reversionary interest referred to must be limited to some interest, either as owner or as beneficiary, which remains with the insured after the transfer has been made, it would not be safe, at this time, to rely on that limited construction in the planning stage. It is not anticipated the regulations or the court decisions will go further than the cases arising under the old law, but again, the plan should be set up, if possible, so that no possible reversion exists. Because of the problems of proof, it is not recommended that much reliance be placed on the ability to show that the value of the reversion was less than five per cent of the value of the policy before death.

Although many suggestions have been made for avoiding the problems, including the designation of a large number of owners who are also the beneficiaries, the safest method is to provide, in both the designations of the owners and beneficiaries, a charitable organization as the final owner and beneficiary, or to provide a trust as either the primary owner and beneficiary or at least the final contingent owner and beneficiary. One other suggestion, which seems to have merit, involves a disclaimer in the assignment so that neither the insured nor his estate will, under any circumstances, succeed to the interest of the owner of the policy or any benefits payable after death.

B. GIFT TAX PROBLEMS

(1) Gifts in Contemplation of Death

Careful consideration should be given to the gift tax problems involved in the transaction before any gift of life insurance policies is undertaken.

Although there are exceptions to the rule,[16] it is generally true that a gift of a life insurance policy, because of its associa-

and further provides: "Notwithstanding the foregoing, an interest so transferred shall not be included in the decedent's gross estate under this section if possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment (as defined in section 2041) which in fact was exercisable immediately before the decedent's death."

[16] In some cases, where it has been shown that the purpose of the transaction was to protect the insurance from the claims of creditors, gifts of life insurance have been held to be not in contemplation of death. Flick's Estate v. Commissioner, 166 F.2d 733 (5th Cir. 1948); Cronin's Estate v. Commissioner, 164 F.2d 561 (6th Cir. 1947); Estate of Verne C. Hunt, 14 T.C. 1182 (1950); Estate of Wilbur B. Ruthrauff, 9 T.C. 418 (1947).

tion with the death of the insured, will be considered to have been made in contemplation of death.[17]

That being true, a question arises as to the effect of premium payments by the insured after the incidents of ownership of the policy have been disposed of. If the gift of the policy is in contemplation of death, are not gifts of premiums in the same category? If so, what does the gift consist of—the dollars in premium given, the pro-rata share of the proceeds produced by those premiums, or possibly all of the proceeds, based on the theory that the policy would have lapsed, except for the premium payment made in contemplation of death.

It is not anticipated that the extreme situation in the latter suggestion will be contended for, but there is an analogy from which it can be argued that the pro-rata share of the proceeds, produced by gifts of premiums in contemplation of death, will be considered to be a part of the estate for tax purposes.[18] Thus, even though the "payment of premiums" test has been abolished, payment of premiums by the insured may result in taxing a portion of the policy proceeds in the insured's estate.

(2) Gifts And The Annual Exclusion

Another gift tax problem to be considered before making the gift of insurance policies is whether the gift is of a present interest.[19] If money is given, and the donee buys insurance, it is

[17] Slifka v. Johnson, 161 F.2d 467 (2d Cir. 1947); Vanderlip v. Commissioner, 155 F.2d 152 (2d Cir. 1943); May Billings et al., Executors, 35 B.T.A. 1147 (1937).

[18] In Liebmann v. Hassett, 148 F.2d 247 (1st Cir. 1945), the assignee of the insurance policies paid two premiums on the policy after the purported assignment. The court found the portion of the insurance proceeds, resulting from payment of premiums by the insured, to be included in the estate because of the reversionary interest, but allowed the portion of the proceeds, supposedly resulting from the premiums paid by the assignee, to be taken out of the estate. In other words, if the insured paid eight premium payments and the assignee paid two, the court would allow twenty per cent of the policy proceeds to be taken out of the estate for tax purposes. Reversing the situation, this same reasoning might be applied to include in the estate the proportionate part of the insurance proceeds resulting from premium payments made by the insured which are held to have been made in contemplation of death.

[19] Under existing law, a donee is entitled to an annual gift tax exclusion of $3,000 ($6,000, if a return is filed and the spouse consents) per person, provided the interest given is a present interest as distinguished from a future interest. Int. Rev. Code § 2503 (1954). The property law conception of a future interest is not applicable. Considerable confusion has existed with respect to gifts in trust to minors as to just what it takes to constitute a present interest. See Stifel v. Commissioner, 197 F.2d 107 (2d Cir. 1952); Kieckhefer v. Commissioner, 189 F.2d 118 (7th Cir. 1951).

obviously a present interest, subject to the $3,000 annual exclusion. If an existing policy is given, the present cash value of the policy would seem to be a present interest, but what of the payment of the premium the following year? That payment may be a gift of a future interest which will not qualify for the annual exclusion.[20]

(3) Gift Tax On Beneficiary Designation By Donee

One further gift tax consequence to be considered is the rather disasterous result which may occur where the donee of the gift of a life insurance policy designates a beneficiary other than herself or her estate. Consider an example where the husband gives a $50,000 policy, having a present value of $5,000, to his wife. The wife designates the daughter as beneficiary. On the husband's death, it has been held that the wife made a gift at the time of the husband's death to the daughter of $50,000, the policy proceeds.[21] The gift did not occur before the husband died since the designation of the beneficiary was revocable. The value of the gift at the time the gift was completed was held to be the face amount of the policy.

In the light of these problems, what advice can a lawyer give his client who comes in with a plan to give his insurance policies to his wife to avoid estate tax?

1. First, the client should be advised that such a gift will be considered to be in contemplation of death and will not be effective for estate tax purposes if the client dies within three years.

2. Unless the policy has been paid up, any payment of premiums by the client within three years of the date of his death may be held to be in contemplation of death, and a pro-rata share, and possibly all of the policy proceeds resulting from such payments, may be included in his estate. If it can be so arranged. premium payments should still be made by the donee. Gifts of other property might be advisable to provide for premium payments. At the very least, the gift should be of money which the donee could use to pay the premiums. Even though the "payment of premiums" test has been abolished, payment of premiums is still important insofar as the gift tax question of a future interest and the estate tax question of gifts in contemplation of death are concerned.

20 A gift of money, instead of payment of the premium, might avoid the problem. Money given, with no strings attached, would constitute a present interest. How far the courts will go in attempting to look through the form of the transaction to determine the substance in this situation remains to be seen.

21 Goodman v. Commissioner, 156 F.2d 219 (2d Cir. 1946).

3. The arrangement should be carefully handled so it is clear the insured has no reversionary interest in the policy or the proceeds.

4. The disadvantages of the arrangement, resulting from the loss of flexibility, should be mentioned. Once the insured makes the gift, he has no further control over the matter, and regardless of his future problems, he cannot exercise any control over the policy or any of the incidents of ownership.

5. Consideration should be given to the problems which will arise when the wife dies before the husband. In such event, the cost of replacing the policy is included in the wife's estate for tax purposes. Further problems are involved unless careful plans are made in advance concerning payment of premiums, changing the beneficiaries. and borrowing money on the policy after the wife dies. The wife should make provision in her will covering all of these points; otherwise, beneficiaries who are not certain of getting the proceeds may be reluctant to pay any premiums.

6. The client should be advised of the dangers of a gift tax if the donee designates a beneficiary.

7. Consideration should be given to the possibility of accomplishing the desired result by the use of the marital deduction, or by gifts of other property.

8. If, after considering the problems and the other possibilities, it is determined to be advisable to make a gift of the insurance, the advantages of an insurance trust should be explored. All incidents of ownership can be vested in the trustee, and the grantor or insured may clearly provide that, under no circumstances, are the incidents of ownership of the policy or the proceeds to return to him or his estate, to avoid the reversionary interest question. Flexibility can be preserved. and no problem arises when the wife dies first. The possibility of inadvertently creating a gift tax liability by designation of a beneficiary by the donee is also avoided.

C. THE MARITAL DEDUCTION AND LIFE INSURANCE PLANNING

As indicated, it is often advantageous to qualify life insurance for the marital deduction. Payments can be made in monthly installments over the widow's lifetime to provide for her care and support. There is an income tax advantage in that annually she can receive tax free $1,000 of what would otherwise amount to taxable interest.[22] Normally, the fund dwindles so the second tax on the insurance proceeds is of little concern upon the widow's death.

[22] Prior to the enactment of the 1954 Code, the one big advantage enjoyed by beneficiaries under life insurance policies was the right to receive tax free all payments made under one of the installment options provided by the policy. This privilege has been restricted by the 1954 Code to the surviving spouse, and the maximum interest on the installment obligation which can be received by the spouse tax free is $1,000. Int. Rev. Code § 101(d) (1954).

If it is determined that the life insurance should qualify for the marital deduction, care should be taken to make sure that it does. All of the policies should be examined by the lawyer who is supervising the estate planning. The life insurance men involved in the so-called estate planning team, can be of assistance, but no lawyer is justified in accepting their advice or judgment, or the advice and judgment of home office counsel, in place of his own judgment. The problems involved are legal problems, and the only one on the team qualified to make the ultimate decision is the lawyer.

Qualifying life insurance or annuity payments for the marital deduction is separately provided for by the Code.[23] All of the Code requirements must be met. Since laws providing deductions are construed most strongly against the taxpayer,[24] any ambiguity will be resolved against the taxpayer. The burden is on the taxpayer to qualify his estate for the deduction. These are the requirements which must be met if the insurance is payable in installments or otherwise than in a lump sum:

1. The installments, or interest payments, must be payable annually or at more frequent intervals.
2. The payments must commence not later than thirteen months after the decedent's death.
3. The amounts payable must be payable only to the surviving spouse during her lifetime.
4. The surviving spouse must have the right to appoint to herself or her estate all amounts payable under the policy or portion of the policy qualifying for the marital deduction.
5. No other person can have the power to appoint such amounts to anyone except the surviving spouse.
6. The power of appointment must be exercisable by the surviving spouse alone, and must be exercisable in all events.

One "joker" to be guarded against is a policy provision to the effect that the proceeds will be paid to the spouse, "if living at the time proof of loss is filed with the company." A revenue ruling holds that such a provision will defeat the marital deduction, since the proof of loss might not be filed until after six months from the date of death.[25] Similarly, a power of appointment, which can only be exercised after submission by the wife

23 Int. Rev. Code § 2056(b)(6) (1954).

24 Deductions are construed to be a matter of legislative grace, and are allowed only when plainly authorized. Helvering v. Inter-Mountain Life Insurance Co., 294 U.S. 686 (1934).

25 Rev. Rul. 54-128, 1954-1 Cum. Bull. 196. Compare with Estate of Kellar v. Kaspar, 53-2 U.S.T.C. ¶ 10,919 (1953), now pending appeal to the Eighth Circuit.

of proof of death, would not be exercisable in all events and would not qualify for the marital deduction.

Another source of trouble in connection with qualifying insurance proceeds for the marital deduction arises from failure to permit the wife to appoint the disposition of any guaranteed installments if she should die before the guaranteed amounts are paid out. If the wife is to receive the insurance money under an installment option or under the interest option, she must also have the right to appoint the disposition of any amount remaining after her death if the insurance proceeds are to qualify for the marital deduction. [26]

Another problem in marital deductions is the case of *Second National Bank of Danville v. Dallman.*[27] Decedent's father purchased a life insurance policy, naming the decedent as beneficiary. Under a settlement option elected by the insured, the company was to make yearly payments of three per cent of the face amount to the beneficiary for life. Decedent had the right to name a contingent beneficiary to take the principal amount upon her death. In default of such appointment, the principal was to be paid to her "executors, administrators or assigns." Decedent died without exercising her right to name a contingent beneficiary so the fund was paid over to her executor, who in turn paid it to a trust established by the residuary clause of decedent's will. The government argued that the property should be included in the gross estate of the decedent as property passing under a general power of appointment exercised by the decedent. The court held that the decedent did not have a testamentary general power of appointment because the insurance contract did not specifically create such a power.

There is a strong possibility that the rationale of the *Danville* case will be carried over to Section 2056 and disallow a marital deduction on the grounds that the decedent did not pass a general power of appointment to the surviving spouse.[28]

II. Provision Against Apportionment

If the insurance proceeds do not qualify for the marital deduction, it is important to give consideration to the apportionment provisions of the Code[29] and the Nebraska statutes.[30] Unless the will expressly provides against apportionment of the estate tax insofar as the insurance proceeds are concerned, the insurance

[26] Estate of Thomas J. White, 22 T.C. No. 85 (1954).
[27] 209 F.2d 321 (7th Cir. 1954).
[28] Note, 64 Yale L.J. 137 (1954).
[29] Int. Rev. Code § 2206 (1954).
[30] Neb. Rev. Stat. § 77-2108 (Reissue 1950).

beneficiaries must contribute to the estate tax. If the insurance is payable on the installment basis, it may work a real hardship for the beneficiary to contribute his or her share of the tax based on the value of the total payments. To provide against apportionment, the insurance beneficiaries should be specifically mentioned. A general provision against apportionment will be construed strictly, and will be limited, in most cases, to the probate estate.

Conclusion

The new Code has created new opportunities for estate planning. With these opportunities are the usual uncertainties and a number of pit-falls. It is suggested that until the situation is crystalized, the usual amount of care and a certain degree of restraint is necessary.